Minutes – Executive Policy Committee – May 22, 2020

REPORTS

Item No. 9 Bill 49: The Building and Electrical Permitting Improvement Act (Various Acts Amended and Permit Dispute Resolution Act Enacted)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and recommended to Council:

1. That the Public Service be directed to attend the Provincial Standing Committee Hearing for Bill 49 to present City of Winnipeg concerns and seek clarification on the content of the Bill and anticipated Regulations.

2. That the Chief Administrative Officer request the Province of Manitoba to include the City of Winnipeg in active collaboration in the creation of the regulations for Bill 49.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Minutes – Executive Policy Committee – May 22, 2020

DECISION MAKING HISTORY:

Moved by Councillor Rollins,

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than four business days preceding the committee meeting, be considered by Committee.

Carried

Moved by Councillor Mayes,

That the recommendation of the Winnipeg Public Service be concurred in and forwarded to Council.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 28, 2020, the Executive Policy Committee passed the following motion:

WHEREAS on March 19, 2020 the Manitoba Legislative Assembly gave first reading to three bills including Bill 44-The Public Utilities Ratepayer Protection and Regulatory Reform Act, Bill 48- The Planning Amendment and City of Winnipeg Charter Amendment Act, and Bill 49 – The Building and Electrical Permitting Improvement Act (Various Acts Amended and Permit Dispute Resolution Act Enacted) ("The Bills");

AND WHEREAS Bill 44 establishes a new regulatory framework that would replace Winnipeg City Council's ability to determine water and sewer rates in favour of these rates being determined by the Public Utilities Board;

AND WHEREAS Bill 48 would provide the Municipal Board with jurisdiction to make binding decisions on appeals of municipal land use decisions in the City of Winnipeg;

AND WHEREAS Bill 49 would enact new legislation to resolve disputes related to building and electrical permits by having provincially appointed adjudicators issue binding orders on these matters;

AND WHEREAS the Bills may contain financial implications for residents of the City of Winnipeg and implications for the City's decision making framework;

DECISION MAKING HISTORY (continued):

EXECUTIVE POLICY COMMITTEE RECOMMENDATION (continued):

AND WHEREAS on April 20, 2020 the Standing Committee on Property and Development, Heritage and Downtown Development requested the Winnipeg Public Service provide a verbal update of Bills 48 and 49 at its May 21, 2020 meeting.

THEREFORE BE IT RESOLVED that the Winnipeg Public Service be directed to report back within 30 days to the Executive Policy Committee with individual written reports on the financial, organizational, policy and any other relevant implications to the City of Winnipeg with respect to Bills 44, 48 and 49, as tabled in the Manitoba Legislature in March, 2020.

ADMINISTRATIVE REPORT

Title: Bill 49: The Building and Electrical Permitting Improvement Act (Various Acts Amended and Permit Dispute Resolution Act Enacted)

Critical Path: Executive Policy Committee

AUTHORIZATION

Author	Department Head	CFO	CAO
A. Crocker	J. Kiernan	N/A	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

On March 19, 2020, the Legislative Assembly of Manitoba gave first reading to Bill 49 - *The Building and Electrical Permitting Improvement Act.*

Bill 49 is aimed at providing a direct response to the Provincial recommendations from the 2019 Review of Planning, Permitting and Zoning in Manitoba.

The Public Service has reviewed the Bill and is providing the highlights, as well as areas that may significantly impact the City of Winnipeg, and are identified below.

With respect to City of Winnipeg Building permits matters, the adoption of Bill 49 will establish:

- a high-level framework for a new provincial dispute 'adjudicator' system to process appeals related to an approving authority's administration of the provincial building code and to assign costs to approving authorities where applicable (Permit Dispute Resolution Act – Schedule A).
- service level standards for the processing of permits administered under The Buildings and Mobile Homes Amendment Act, including timeframes for permitting and inspections services and potential assignment of costs to the City for not adhering to service level standards.
- timeframe requirements for the Province to adopt future editions of the National Building Code or standards (The Buildings and Mobile Homes Amendment Act).
- requirements for the adoption of a single Provincial Electrical Code which would apply to all jurisdictions, including the City of Winnipeg, and replace the City of Winnipeg Electrical By-law (Manitoba Hydro Amendment Act).
- a starting point for the development of further, more detailed regulations required to implement aspects of the legislation.

- The Province of Manitoba engaged in limited consultation with the Public Service during the development of Bill 49. More fulsome engagement should occur in advance of further consideration of Bill 49 and the drafting of the accompanying Regulations to minimize increased costs and disruption to operations and customers.

- Key issues identified at this stage of the legislation review process include:

- **Permitting and Inspections Services** - Bill 49 implements a service standard for permitting reviews and inspection timeframes which will require an overhaul of current operations, to be based on resulting regulations.
- **Costs** – The City is at risk of incurring costs, including those associated with adjudication under the Permit Dispute Act, new service standards for permitting and inspections, implementation efforts for process and IT redesign, as well as amendments to City of Winnipeg By-laws.
- **Single Adjudicator Model** – A single adjudicator responsible for providing a definitive answer to a dispute poses risks to the consistency and accuracy of the decision making.
- **Manitoba Electrical Code (MEC)** – The adoption of the MEC is transitioning to Cabinet and the City may not be given the opportunity to collaborate during development.
- **Implementation Effort** – The adoption of Bill 49 will require substantial implementation efforts by operations in the Development and Inspections Division, including process and IT redesign and amendments to City of Winnipeg by-laws.
- **Collaboration** – Further collaboration between the Province and approving authorities is required in order to minimize costs and disruptions to customers involved in the permitting process as a result of the implementation of Bill 49.

In order to ensure that the impacts on the City of Winnipeg are identified, the Public Service is recommending that they attend the Provincial Standing Committee Hearing and request involvement in the creation of the regulations.

The Public Service will continue to review the Bill to identify further impacts on existing processes and by-laws.

RECOMMENDATIONS

1. That the Public Service be directed to attend the Provincial Standing Committee Hearing for Bill 49 to present City of Winnipeg concerns and seek clarification on the content of the Bill and anticipated Regulations.

2. That the Chief Administrative Officer request the Province of Manitoba to include the City of Winnipeg in active collaboration in the creation of the regulations for Bill 49.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

On April 28, 2020, the Executive Policy Committee directed the Public Service to report back within 30 days to the Executive Policy Committee with individual written reports on the financial, organizational, policy and any other relevant implications to the City of Winnipeg with respect to Bills 44, 48 and 49, as tabled in the Manitoba Legislature in March, 2020.

Pursuant to Section 4 of the City Organization By-law No 7100/97, the Executive Policy Committee has jurisdiction over Inter-Governmental Affairs and acts as the Inter-Governmental

affairs Committee to conduct all necessary formal relationships with the Government of Manitoba.

IMPLICATIONS OF THE RECOMMENDATIONS

Should the Recommendations be concurred, in, the Public Service will attend the Provincial Standing Committee Hearing for Bill 49 to raise City of Winnipeg concerns and request clarification on content of the Bill and Regulations that have yet to be released.

By participating in both the Provincial Standing Committee Hearing and the creation of the regulations, the City of Winnipeg can determine and streamline any proposed changes and their potential impact to our organization both structurally and financially.

Further clarity will be sought regarding the implications of adopting province wide regulations to ensure that the changes adequately reflect the existing Winnipeg Electrical By-law.

HISTORY/DISCUSSION

- On May 8, 2019, by way of Manitoba Order in Council 157/2019, the Treasury Board was assigned to carry out a review of policies and processes for land use and development under the authority of Manitoba statutes and municipal by-laws, including zoning decisions and the issuance and administration of permits.

- On May 28, 2019, The Treasury Board Secretariat (TBS) released the "Planning, Zoning and Permitting in Manitoba –Findings" report (Attachment 1). The report included an analysis of current systems in Manitoba, cross jurisdictional best practices, and an assessment of how permitting timeframes impact economic investment within the province. The report outlined the Province's interest in further consultation and provincial involvement in helping to improve planning, zoning and permitting processes in Manitoba.

- On June 6, 2019, the City of Winnipeg Interim Chief Administrative Officer provided the Province with written response to the "Planning, Zoning and Permitting in Manitoba – Findings" report, which included constructive feedback on the findings and a request for better collaboration and engagement on developing the legislative and regulatory changes (Attachment 2). With respect to Building Code matters, the City made four specific requests to be considered by the Province in its recommendations:

    - Adopt the 2015 National Building Code,
    - Develop modified building code requirements to allow for more cost-efficient conversion options for small scale multi-tenancy dwellings with four or fewer tenants,
    - Formally adopt the "Richardson Report" to allow for more flexibility in enforcing safety requirements when applying the code to existing buildings, and
    - Amend *The City of Winnipeg Charter* to allow the City to apply development agreements to building permits, or be a condition of a variance order or for the approval of a conditional use as is the case for other jurisdictions governed by the Manitoba Planning Act.

- On June 11, 2019, the TBS released 12 recommendations to Cabinet in response to the "Planning, Zoning and Permitting in Manitoba – Findings" report and further stakeholder feedback, including feedback received from the City of Winnipeg.

- On September 18, 2019, following the 2019 Provincial election, Premier Pallister unveiled the provincial government's 100-Day Action Plan to "move Manitoba forward to lower taxes, better services and a stronger economy" (Attachments 3, 4). The Plan included working toward implementing recommendations from the 2019 Review of Planning, Permitting and Zoning in Manitoba.

- On December 18, 2019 employees of the Planning, Property and Development Department's Development and Inspections Division met with the Office of the Fire Commissioner and Provincial representatives to provide an overview of The City's permitting and inspection process. The meeting was intended to serve as the groundwork to help the Province draft legislation in response to the TBS' recommendations.

- On January 13, 2020 The Province and the City had a 'roundtable' meeting to answer questions and provide feedback on the recommendations and subsequent regulations. Some items of discussion focused around the legislation of the Winnipeg Building Commission and its oversight.

- On March19, 2020, Bill 49 - *The Building and Electrical Permitting and Improvement Act*, and *Dispute Resolution Act* was introduced at the 2nd session, 42 Legislature (Attachment 5).

- Bill 49 is aimed at providing a direct response to the Provincial recommendations from the 2019 Review of Planning, Permitting and Zoning in Manitoba. Bill 49 passes a new Act (Permit Dispute Resolution Act) and amends two other Acts (The Buildings and Mobile Homes Act and the Manitoba Hydro Act). From a City of Winnipeg perspective, the following is of note:

    - **Permit Dispute Resolution Act** (Schedule A) - looks to resolve disputes related to building and electrical code. Expert adjudicators are appointed to conduct hearings and make definitive decisions regarding:
        - Technical requirements of building and electrical code, and
        - Service standard concerns related to the turnaround time of inspections and permit applications.

    - **Buildings and Mobile Homes Amendment Act** (Schedule B) looks to implement regulated performance standards. Provincial and Municipal officials must conduct inspections and make decisions on applications for building and occupancy permits within regulated time periods. Additional changes noted include:
        - Mobile homes being removed from the scope of the Act
        - New timeframe requirements for the adoption of amendments to building construction code or standards

- **Manitoba Hydro Amendment Act** (Schedule C) looks to implement two major changes to the Manitoba Hydro Act:
    - A code of standards is established by regulation for the installation repair and use of electric wiring and related equipment across Manitoba. The City of Winnipeg must adopt this code and enforce it in Winnipeg.
    - Performance standards are established by regulation that require Manitoba Hydro and the City of Winnipeg to conduct inspections and make decisions on applications for electrical permits within periods established by regulation.

- Following the introduction of Bill 49, The Development and Inspections Division reviewed the Bill with internal stakeholders, and consolidated questions/concerns/items that required further understanding and/or discussion. On April 8, 2020, the Province and the City held a Skype meeting to review the proposed legislation, and the City's questions/concerns/items that required further understanding.

Key Issues:

1. **Permitting and Inspection Services - Bill 49 implements a service standard for permit reviews and inspections timeframes which will require an overhaul of current operations.**
    - Service standards will be developed within forthcoming regulations.
    - Bill 49 is being modeled after the system established for the Province of Ontario, which operates on the basis of a very different legislative context from Manitoba, including a distinct provincial building code and distinct separation of powers and responsibilities between the various levels of authority. Service levels within Ontario may not be readily transferable to another province or permitting system.
    - Current City of Winnipeg permitting services follows a 'one stop shop' model. This model ties building and development permits into one application and review stream. Specific service standards related to building permits will require the separation of building and development permits in some instances. A reduction in convenience and an increase in the full permitting timeframe for an applicant may result.
    - Achieving a service standard for Inspections will have a significant impact on operations. Depending on forthcoming regulations, the City may need to overhaul the inspection services system in order to accommodate peak construction seasons. Alternative methods of documenting compliance may need to be considered including the acceptance of Certifications and Declarations from Professional Architects/Engineers and Licensed Contractors.

2. **Costs – The City is at risk of incurring significant costs, including those associated with adjudication under the Permit Dispute Act, new service standards for permitting and inspections, implementation efforts for process and IT redesign, as well as amendments to City of Winnipeg By-laws.**
    - The City is responsible for fees associated with appeals heard by the Adjudicator under the Permit Dispute Act. The appellant making the appeal is not responsible for paying fees, which puts the City at risk of incurring significant costs.
    - The cost of implementing process and IT redesign to achieve the new service standards for permitting and inspections is significant, requiring inter-

departmental coordination and resource availability of subject matter experts and technical support staff.

3. **Single Adjudicator Model – A single adjudicator responsible for providing a definitive answer to a dispute poses risks to the consistency and accuracy of the decision making.**
    - A single adjudicator is not a common practice, and the risks associated with the decisions of a single adjudicator are much higher than those of a board of collective decision makers. The decision of the adjudicator will be considered precedent for future disputes. The regulations will allow for multiple adjudicators to be appointed, however only one is required to preside over any single dispute. The adjudicator will hold the authority to decide if additional subject matter experts need to be brought in to assist with the adjudication. The adjudicator has full authority to order the City to comply with their decisions and apply fees as necessary, and the City does not have the ability to appeal the adjudicator's decision. This represents a significant compromise to the City's current authority.
    - Should the Winnipeg Building Commission continue to operate, any decisions or recommendations of the Commission could be overruled by the adjudicator.

4. **Manitoba Electrical Code (MEC) – The adoption of the MEC is transitioning to Cabinet and the City may not be given the opportunity to collaborate during development.**
    - The City may have to rely on a 45 day public comment (similar to National Codes), rather than being a key participant in the development of the MEC as per current practice. It would be in the City's best interest to see a mandated committee comprised of members from all Provincial electrical AHJ's participating in development, given that amendments to the MEC are not possible.
    - The MEC will be implemented by proclamation, although it will not be enforced by passing the Act and there is no adoption date planned at this time.
    - The Winnipeg Electrical By-law (WEB) will require significant changes as a result of the changes to the MEC, including: separating the technical interpretations from the Code, coordination with Manitoba Hydro, relocating Contractor Licence items to the Winnipeg Building By-law, etc.

5. **Implementation Effort – The adoption of Bill 49 will require substantial Implementation Efforts by operations in the Development and Inspections Division, including process and IT redesign and by-law amendments.**
    - Significant resource availability will be required to plan, develop, and implement the regulated process changes associated with Bill 49 in the Zoning and Permits Branch, Residential and Commercial Plan Examination Branches, and Residential and Commercial Inspections Branches. The divisional change management efforts will be substantial for the Administrators, Technical Support Officers, Process Improvement Team, and IT Division to support the changes, taking away resource availability to implement the 2020 Divisional Process Improvement Plan, for which Industry and KPMG helped to develop. Reassessment of priorities in the 2020 Divisional Process Improvement Plan will need to be considered due to the implementation efforts associated with Bill 49.

6. **Collaboration – Further (and improved) collaboration between the Province and approving authorities is required in order to minimize costs and disruptions to customers involved in the permitting process as a result of the implementation of Bill 49**
    - Bill 49 provides a number of high level 'solutions' for improving building permitting process in Manitoba, and the Bill relies on the development of further regulations in order to address outstanding questions or details of how the new system is to operate. A full costing of the proposed system is not available.
    - To date, limited engagement and consultation with approving authorities has occurred. Should this approach continue with the further development of detailed regulations, opportunities to minimize costs and disruption to operations and customers may be lost.
    - It is recommended that further consultation, particularly with respect to implementation of Bill 49 take place between the Province and approving authorities take place prior to the adoption of Bill 49.

7. **Consultation:**

The Province of Manitoba engaged in limited consultation with the Public Service during the development of Bill 48. More fulsome engagement should occur in advance of further consideration of Bill 48 and the drafting of the accompanying Regulations to minimize increased costs and disruption to operations and customers. The Public Service has posed many questions to the Province that remain unanswered.

Financial Impact Statement

Date: May 7, 2020

Project Name:

Bill 49: The Building and Electrical Permitting Improvement Act (Various Acts Amended and Permit Dispute Resolution Act Enacted)

COMMENTS:

There are no direct financial implications associated with the recommendations contained in this report. There will be direct and potentially significant financial implications to the City with the passage of Bill 49. The amount and timing of these financial implications is not reasonably determinable at this time.

Mike McGinn May 7, 2020

Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

N/A

OURWINNIPEG POLICY ALIGNMENT

N/A

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

SUBMITTED BY

Department: Planning, Property & Development
Division: Development & Inspections
Prepared by: A. Crocker
Date: May 12, 2020

Attachments:

- Attachment 1: Planning, Zoning and Permitting in Manitoba –Findings
- Attachment 2: June 6, 2019 letter from City of Winnipeg
- Attachment 3: September 18, 2019 News Release, “Province Unveils 100-Day Action Plan for Renewed Mandate”
- Attachment 4: 100-Day Action Plan
- Attachment 5: Bill 49: The Building and Electrical Permitting Improvement Act (Various Acts Amended and Permit Dispute Resolution Act Enacted)