Agenda – Council – June 26, 2020

Report – Executive Policy Committee – June 18, 2020

Item No. 6 Agreement with Province of Manitoba to permit for continued by-law enforcement

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 18, 2020, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That, retroactive to March 31, 2020, the City authorize the Province of Manitoba to continue to enforce the Food Service Establishment By-law No. 5160/89 and the Body Modification By-law No. 40/2005 until March 31, 2023.

2. That the City enter into, execute and deliver an Agreement with the Province which will take effect on March 31, 2020 to implement the intent of Recommendation 1 and such other agreements as determined necessary by the Director of Legal Services and City Solicitor (the "Ancillary Agreements").

3. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Agreement with the Province referred to in Recommendation 2 and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

4. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – June 18, 2020

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 18, 2020, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

ADMINISTRATIVE REPORT

Title: Agreement with Province of Manitoba to permit for continued by-law enforcement

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Jack	M. Ruta	N/A	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

Enforcement and licensing responsibilities under the City's Body Modification By-Law No. 40/2005 and Food Service Establishment By-law No. 5160/89 (collectively "the By-laws") were transferred to the Province of Manitoba ("the Province") in spring 2012, with the larger transfer of Public Health inspection duties to Manitoba Health. Initially, the Agreement with the Province prescribed March 31, 2015 as the end of the transition period during which the Province would carry on and enact enforcement duties under the By-laws, rather than through Provincial legislation. However, the Agreement provided that the Province could extend this transition period to March 31, 2020, which it did by providing formal notice to the City.

On February 18, 2020, the Province requested an extension of time to allow them to continue to provide enforcement services within Winnipeg under the By-Laws. In order to do this, the Province and the City must enter into an agreement, retroactive to March 31, 2020, that extends the current by-law enforcement arrangement.

If the City and the Province do not enter into this agreement, the Province will lose its ability to enforce current regulatory and licensing requirements under the By-Laws. Further, as per previous transition agreements with Manitoba Health, the City is under no obligation to return to enforcing requirements under the By-Laws, as the Province has taken over jurisdiction of Public Health-related enforcement duties. By way of its request to extend the timeframe for the transition, the Province has indicated that it is amenable to continuing to enforce under the By-laws until March 31, 2023.

RECOMMENDATIONS

1. That, retroactive to March 31, 2020, the City authorize the Province of Manitoba to continue to enforce the Food Service Establishment By-law No. 5160/89 and the Body Modification By-law No. 40/2005 until March 31, 2023.

2. That the City enter into, execute and deliver an Agreement with the Province which will take effect on March 31, 2020 to implement the intent of Recommendation 1 and such

other agreements as determined necessary by the City Solicitor / Director of Legal Services (the “Ancillary Agreements”).

3. That authority be delegated to the Chief Administrative Officer to negotiate and approve the terms and conditions of the Agreement with the Province referred to in Recommendation 2 and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

4. That the proper officers of the City do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Council approval is required in order for the City to enter into the proposed agreement.

IMPLICATIONS OF THE RECOMMENDATIONS

The Province will not have the continued ability to enforce regulatory and licensing requirements under the By-laws unless an agreement is entered into, as recommended herein. The Public Service recognizes that the public health of all persons within the City of Winnipeg would be best served by continuity of enforcement in these areas.

HISTORY/DISCUSSION

Prior to 2012, the City and the Province (“the Parties”) had been engaging in discussions regarding areas of “split jurisdiction” over various public health matters; in particular, public health regulation pertaining to 1) food service establishments, and 2) body modification establishments.

As a result of these discussions, the Parties entered into a Memorandum of Understanding dated April 3, 2012 (“MOU”) in which the Parties expressed their common desire to take certain steps to eliminate the split jurisdiction of public health services in Winnipeg and align certain public health services under provincial jurisdiction.

In the MOU, the Parties agreed that their intentions would be best facilitated by a transition period, beginning April 1, 2012 and ending March 31, 2015 (the “Transition Period”) which was to be governed by an agreement to be negotiated by the Parties. Prior to 2012, the City employed a contingent of Public Health Inspectors who carried out a variety of functions within City boundaries. A transition period was necessary to transition all employees and all of the administrative functions to the Province in a manner that would minimize disruption to the residents of Winnipeg, as well as the businesses that served them.

To this end, the Parties entered into an agreement dated April 4, 2012 respecting the transition period, which enabled the Province, in its sole discretion and upon 90 days written notice to the City, to continue to enforce one or both of the By-laws beyond the Transition Period, but in any event until no later than March 31, 2020.

The Province subsequently provided such notice to the City with the result that the City has maintained the By-laws in force to this date, with actual enforcement being provided by the Province.

On February 18, 2020, Manitoba Health, Seniors and Active Living requested an additional extension of time to allow the Province to enforce the By-laws beyond March 31, 2020.

In order for the enforcement actions taken by the Province since March 31, 2020 to be valid, the agreement being proposed will have to be made retroactive to that date.

The Public Service recognizes that the public interest of all residents of Winnipeg would be best served by continuity of enforcement of the By-laws. As such, the Public Service is recommending that Council allow the Province of Manitoba to continue to enforce the Food Service Establishment By-law No. 5160/89 and the Body Modification By-law No. 40/2005 until March 31, 2023.

FINANCIAL IMPACT

Financial Impact Statement

Date: May 14, 2020

Project Name:
Agreement with Province of Manitoba to permit for continued by-law enforcement

COMMENTS:

There is no financial impact to the City of Winnipeg for continuing the arrangement of the Province of Manitoba enforcing the Food Service Establishment By-law No. 5160/89 and the Body Modification By-law No. 40/2005 until March 31, 2023.

Prosecutions will continue to be undertaken by the City of Winnipeg's Legal Services department upto 50 prosecutions per year. Any fines collected through such prosecutions will be revenue to the City.

electronically signed by
Tanis Yanchishyn, CPA, CA
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with:

Manitoba Health, Seniors and Active Living
Legal Services
Community Services

OURWINNIPEG POLICY ALIGNMENT

01-2a COLLABORATE TO MAKE SAFE COMMUNITIES
Direction 3: Promote safety in buildings

- Ensure that all buildings are in compliance with adopted fire and health by-laws

01-3 PROSPERITY
Direction 3: Maintain strong intergovernmental cooperation

- Provide integrated, streamlined, seamless and transparent government service
- Pursue collaborative approaches to crime prevention, infrastructure renewal, competitive taxation, regulatory overlap and regional economic development

03-2 VITALITY
Direction 5: Support effective public health inspection services

- Work collaboratively and partner with other levels of government in order to provide consistent, effective and efficient public health inspection services

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

SUBMITTED BY

Department: Office of the CAO
Prepared by: Michael Jack
Date: May 15, 2020