Agenda – Council – July 22, 2021

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – July 7, 2021

Item No. 3 Amendments to Private Access By-law No. 49/2008

STANDING COMMITTEE RECOMMENDATION:

On July 14, 2021, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submitted the following to Council:

1. That amendments to the Private Access By-law No. 49/2008 in accordance with this report (draft amending by-law is attached as Schedule A to this report), be enacted.

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

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – July 7, 2021

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 14, 2021, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 7, 2021, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Amendments to Private Access By-law No. 49/2008

Critical Path: Standing Policy Committee on Infrastructure Renewal and Public Works – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Neirinck, P. Eng.	J. Berezowsky	N/A	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

The Public Service received a Manitoba Ombudsman report which investigated a complaint in respect of a non-conforming private residential approach application that was denied by a Community Committee twice in 2018 before it was approved in 2019. The Manitoba Ombudsman's review concluded that the Public Service should review section 9(3) of Private Access By-law No. 49/2008 (the "By-law") for clarity and to ensure that city entities share a common interpretation of the provision, and that the City should document its interpretation in writing and make it available to the public.

The Public Service has undertaken a review of the By-law and is recommending that Council enact amendments to section 9(3) to clearly define the timeframe and circumstances in which a previously denied non-conforming approach application can be heard.

The Public Service is recommending additional amendments to the By-law to remove or revise some provisions relating to non-residential approaches and to provide authority to the Public Service to approve non-conforming applications for non-residential private approaches and loading bays. Additionally, the Public Service is recommending amendments which would add language to better differentiate residential and non-residential approaches.

RECOMMENDATIONS

1. That amendments to the Private Access By-law No. 49/2008 in accordance with this report (draft amending by-law is attached as Schedule A to this report), be enacted.

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

REASON FOR THE REPORT

Amendments to by-laws require Council approval.

IMPLICATIONS OF THE RECOMMENDATIONS

Amendments to the Private Access By-law No. 49/2008 (the "By-law") will clarify and make public the timelines and circumstances in which an applicant can reapply for a non-conforming approach application if a similar application has been previously denied by the relevant Committee.

Amendments to the By-law to remove or revise some non-conforming items for non-residential approaches will reduce the number of non-conforming applications.

Additional amendments to the By-law provide the Public Service the authority to approve non-conforming applications for non-residential private approaches and loading bays that do not have safety or traffic operating concerns. This would reduce the number of non-residential non-conforming reports that the Public Service needs to submit to the Standing Policy Committee for approval and would streamline the process.

HISTORY/DISCUSSION

The Manitoba Ombudsman reviewed a complaint in respect of a non-conforming private residential approach application that was denied twice by a Community Committee – first on June 12, 2018 and then again on July 3, 2018. The application was heard a third time and approved on July 9, 2019. Following their review, the Manitoba Ombudsman recommended that the City review section 9(3) of the By-law for clarity and ensure that all city entities share a common interpretation of the provision. Further, the Manitoba Ombudsman recommended that the City document its interpretation in writing and make it available to the public.

The draft amending By-law, attached as Schedule A to this report, identifies that no other application in respect of the same property may be made within a period of 12 months starting from the date of decision of the relevant Committee except in the limited circumstances. The Director of Public Works must not accept a subsequent application for a private access permit in respect of the address within 12 months following the date of rejection, unless:

(a) the Director is satisfied that, since the date of the rejection in respect of the initial application, a person who ordinarily resides, or will ordinarily reside, does or is reasonably likely to experience long term physical mobility impairment such that the subject private access is reasonably required for ingress to and egress from the property; or

(b) where the rejection was based or partially based on safety concerns, since the date of the rejection, the Director is satisfied that the City has initiated changes or alterations within the right-of-way that eliminates or addresses those safety concerns.

The draft amending By-Law also removes or revises some non-conforming items to better align with the applications that are being received and are being approved on a regular basis with no safety or traffic operating concerns being identified. The remaining non-conforming items will still provide guidance to developers and contractors.

The Public Service receives non-conforming applications for non-residential private approaches and loading bays that do not have any identifying safety or traffic operating concerns for

pedestrian or vehicular traffic upon the adjacent street. Developers and contractors require approval for non-conforming non-residential private approaches for construction purposes. In particular in the summer, when Standing Policy Committee meetings are reduced, these approvals hold up construction activities and leave the developers and contractors guessing on how to proceed.

FINANCIAL IMPACT

Financial Impact Statement **Date:** June 17, 2021

Project Name:

Amendments to Private Access By-law No. 49/2008

COMMENTS:

There is no financial impact associated with the recommendation of this report.

"signed by J. Ruby, CPA, CA"
J. Ruby, CPA, CA
Manager of Finance & Administration

CONSULTATION

This Report has been prepared in consultation with: Legal Services (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

N/A

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

SUBMITTED BY

Department: Public Works
Division: Engineering
Prepared by: Brad Neirinck, P. Eng.; Manager of Engineering
Date: June 17, 2021
Attachments: Schedule A - Draft Amending By-law