Agenda – Council – July 22, 2021

Report – Standing Policy Committee on Water and Waste, Riverbank Management and the Environment – June 29, 2021

Item No. 1 Use of Retention Ponds for Recreational Activities

STANDING COMMITTEE RECOMMENDATION:

On July 14, 2021, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment and submitted the following to Council:

1. That the Winnipeg Public Service be directed to consult with neighbourhood associations and community centers in all 15 Council Wards on a request for these organizations to assume the responsibility for maintaining the safe operation of retention ponds for winter recreational activities within the City, beginning in winter 2021, and report back to the Standing Committee at its October 8, 2021 meeting with any associated costs, and include the following:

    A. The cost of adding five additional pleasure rinks, and monitoring five retention ponds during the 2021/2022 winter season.

2. That any insurance related matters associated with Recommendation 1 be covered under the City's liability policy.

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

Report – Standing Policy Committee on Water and Waste, Riverbank Management and the Environment – June 29, 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 Water and Waste, Riverbank Management and the Environment and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 29, 2021, the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment did not concur in the recommendation of the Winnipeg Public Service and submitted the following to the Executive Policy Committee and Council:

1. That the Winnipeg Public Service be directed to consult with neighbourhood associations and community centers in all 15 Council Wards on a request for these organizations to assume the responsibility for maintaining the safe operation of retention ponds for winter recreational activities within the City beginning in winter 2021, and report back to the Standing Committee at its October 8, 2021 meeting with any associated costs, and include the following:

    A. The cost of adding five additional pleasure rinks, and monitoring five retention ponds during the 2021/2022 winter season.

2. That any insurance related matters associated with Recommendation 1 be covered under the City's liability policy.

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

The following persons submitted communications with respect to the matter:

- Councillor Lukes, Waverley West Ward, submitted a communication dated June 29, 2021
- Joe Paletta submitted communications dated June 25, 2021 and June 28, 2021
- Edward Kennedy submitted a communication dated June 29, 2021

Report – Standing Policy Committee on Water and Waste, Riverbank Management and the Environment – June 29, 2021

DECISION MAKING HISTORY (continued):

COUNCIL DECISION:

On May 27, 2021, Council concurred in the recommendation of the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment and adopted the following:

1. That an extension of time of 60 days be granted for the Winnipeg Public Service to report back with a cross jurisdictional review of the use of retention and detention ponds, rivers, and creeks for recreational activities, and include recommendations on the following:

    A. The requirements needed to enable recreational activities on retention and detention ponds, rivers, and creeks in the City of Winnipeg; and
    B. Any necessary amendments to the Frozen Waterways By-law No. 93/2014.

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

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 18, 2021, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment and submitted the matter to Council.

Councillor Lukes, Waverley West Ward, submitted a communication dated May 17, 2021, in support of the matter.

STANDING COMMITTEE RECOMMENDATION:

On May 7, 2021, the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment recommended to the Executive Policy Committee and Council:

1. That an extension of time of 60 days be granted for the Winnipeg Public Service to report back with a cross jurisdictional review of the use of retention and detention ponds, rivers, and creeks for recreational activities, and include recommendations on the following:

    A. The requirements needed to enable recreational activities on retention and detention ponds, rivers, and creeks in the City of Winnipeg; and

Report – Standing Policy Committee on Water and Waste, Riverbank Management and the Environment – June 29, 2021

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

B. Any necessary amendments to the Frozen Waterways By-law No. 93/2014.

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

COUNCIL DECISION:

On January 28, 2021, Council concurred in the recommendation of the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment and adopted the following:

1. That the Winnipeg Public Service be directed to conduct a cross jurisdictional review of the use of retention and detention ponds, rivers, and creeks for recreational activities, and report back to Council within 120 days with recommendations on the following:

   A. The requirements needed to enable recreational activities on retention and detention ponds, rivers, and creeks in the City of Winnipeg; and

   B. Any necessary amendments to the Frozen Waterways By-law No. 93/2014.

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

ADMINISTRATIVE REPORT

Title: Use of Retention Ponds for Recreational Activities

Critical Path: Standing Policy Committee on Water and Waste, Riverbank Management and the Environment – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Jack	M. Ruta	n/a	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

The COVID-19 pandemic required the City (along with other service providers) to cease operations and/or close facilities that provide indoor recreation opportunities during winter months in Winnipeg (including most ice rinks upon which hockey and other sports would traditionally be enjoyed).

This brought a corresponding dramatic increase in the prevalence of Winnipeggers utilizing outdoor frozen surfaces for recreation. While this is nothing new in Winnipeg, there was a significant increase in the use of areas like retention ponds for recreational purposes. This increase highlighted various gaps in City policy and procedure for such activities.

This Report provides an overview of the current state and a scan of how other winter cities address these issues. Considering:

- the high level of access to established indoor ice sheets in Winnipeg;
- the availability of outdoor ice sheets via Community Centre sites;
- the results of the jurisdictional scan; and
- the various dangers and difficulties of managing frozen retention ponds, or storm retention basins (SRBs), as approved recreational facilities,

the Public Service is recommending that Council does not allow access to SRBs for winter recreational activity. The Public Service intends to bring forward some minor amendments to the City's Frozen Waterways By-law, not directly connected to this Report, in the near future.

RECOMMENDATIONS

1. That the Public Service not enable recreational activities on retention and detention ponds, rivers, and creeks in the City of Winnipeg.

REASON FOR THE REPORT

At its January 28, 2021 meeting, Council concurred in the recommendation of the Standing Policy Committee on Water and Waste, Riverbank Management and the Environment and adopted the following:

1. That the Winnipeg Public Service be directed to conduct a cross jurisdictional review of the use of retention and detention ponds, rivers, and creeks for recreational activities, and report back to Council within 120 days with recommendations on the following:
    a. The requirements needed to enable recreational activities on retention and detention ponds, rivers, and creeks in the City of Winnipeg; and
    b. Any necessary amendments to the Frozen Waterways By-law No. 93/2014.
2. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

An extension of 60 days was granted by Council on May 27, 2021.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no implications of the recommendation.

HISTORY/DISCUSSION

The nature of natural waterways in Canada, and specifically in Winnipeg, are complicated by a number of jurisdictional powers and local weather patterns. Bodies of water that cross international boundaries (e.g. the Red River) are governed by federal legislation in terms of navigation and international relations under the International Boundary Waters Treaty Act (R.S.C., 1985, c. I-17). However, once the surface of the Red River has frozen and it is no longer navigable via its flowing water surface, jurisdiction over most activities occurring thereupon transfers to the municipality. It should also be noted that many municipalities that were contacted for the jurisdictional scan found later in this report, like those on the west coast of Canada, do not experience the same extreme winter weather patterns of Winnipeg, and therefore do not frequently deal with this annual pattern of alternating legal jurisdiction.

At the municipal level, access to frozen City of Winnipeg water surfaces is governed by the Frozen Waterways By-law No. 93/2014 (the “By-law”), which defines a waterway as a river, stream, creek, or retention pond (also called storm retention basins - “SRBs”) and includes the Red River, the Assiniboine River, the Seine River, Sturgeon Creek, and Omand’s Creek. Under s.3 of the By-law, a “designated employee” - in this case, the Director of Planning, Property and Development (“Director of PPD”) or any employee authorized by the same - may prohibit activity on frozen waterways based on:

> (a) the risk of harm to individuals;
> (b) the risk of harm to the environment, including the waterway, riverbanks and other areas adjacent to the waterway;
> (c) noise or other nuisances likely to be suffered at nearby properties; and
> (d) other relevant factors.

Under s. 4(1) of the By-law, certain activities on frozen waterways can only be allowed under permit:

> (a) construction of a building that would be subject to the Winnipeg Building By-law if it
> took place on land;
> (b) operation of a motor vehicle or heavy equipment;
> (c) activities that are expected to attract more than 200 people to one place on the river;
> (d) any commercial activity, including any activity for which admission is charged and any activity for which a permit is required under The Liquor Control Act.

Pursuant to s. 9 of the By-law, a person who contravenes this By-law is guilty of an offence and on summary conviction is subject to a minimum fine of $200.00 for each day the offence continues.

Since this By-law was originally enacted in 2014, “designated employee” status has been ascribed to the Director of PPD in order to allow oversight of specific events, such as pop-up restaurants on the Red River once it has frozen.

The most prominent and successful example of the annual use of the frozen rivers is arguably the Forks River-trail, referred to by different names depending on the particular year and respective sponsorship arrangements. Depending on a given year’s weather pattern and resulting ice conditions, the length of trail that is created and groomed for recreational use is lengthy, and often record breaking.

The success of the river trail is understandably not achieved without sufficient resources provided to support it. In consultation with the Forks, the following processes and standards are adhered to:

- In the construction of the river trail, the Forks closely follows the Contractor’s Manual for Construction and Maintenance of Manitoba Infrastructure & Transportation Winter Roads (Attached as Appendix 1);

- Testing techniques are employed that are officially recognized across Canada as the standard in ice thickness measurements;
- Once the trail is established, regular testing at key locations is performed and recorded. Any anomalies are immediately reported to all interested parties;
- Day-to-day maintenance is performed using a Zamboni, water tanker, pumps, tractor, utility vehicles, bobcat skid steer, trucks and a variety of hand tools; and
- Ensuring a smooth skating surface and safe ice conditions are the primary objectives.

Implications of the COVID-19 Pandemic

With the COVID-19 Pandemic and the November 12, 2020 enactment of the "Provincial Response Level: CRITICAL" (or "Code Red") to restrict the spread of COVID-19, residents of Winnipeg became relatively limited in their available winter recreation options. Indoor arenas, recreational facilities and gyms were closed, organized sports were disallowed, and group sizes were restricted for indoor gatherings. Combined with a relatively mild winter through 2020-2021, this led to Winnipeggers flocking to frozen water surfaces in unprecedented numbers for activities like skating, sledding, walking, and hockey on frozen river and creek surfaces, but also the frozen surfaces of man-made assets like the City's retention pond and land drainage network.

In November, WFPS received twice the number of usual calls for people on ice surfaces from prior years, leading to a greater awareness of the unprecedented number of individuals using retention ponds or SRBs for winter recreation. In terms of COVID-19 measures, the City had committed to doing everything reasonably within its ability to comply with and support the Provincial Public Health Orders to limit gatherings. Thin ice was also a very serious concern, especially with the mild winter and the fluctuating nature of the City's land drainage network.

<u>Storm Retention Basins</u>

SRBs are integrated components of the City's land drainage network that store and carry rainfall and snowmelt runoff from developed areas to the river system. SRBs are interconnected by land drainage sewer pipes and drainage ditches. SRBs have an inlet pipe(s) where runoff enters the basin and an outlet pipe(s) where runoff exits the basin. The volume and duration of runoff entering a SRB is direct result of environmental factors such as rainfall amounts, daytime highs and lows for snowmelt as well as operational activities such as street snow clearing and salting operations, and water main breaks.

SRBs may receive runoff year-round and in the winter months, water flow beneath the ice transports heat and impacts ice formation processes such that the spatial variability in ice thickness cannot be assumed to be similar to natural lakes or even that of rivers. During the winter, runoff from early snowmelt or nearby water main breaks drains into the SRBs. This winter runoff is often mixed with street salts that can cause the ice to melt and thin quickly. The runoff enters the SRBs underneath the ice, resulting in a thinning of the ice that can't be seen from the surface.

There is no current monitoring of ice thicknesses across the City's SRB network and there is no current monitoring of runoff inflow and outflows. Since SRBs are unmonitored, the City cannot be reasonably assured of the thickness and quality of ice cover across the SRB network. While the risk of a fatality from falling through the ice into an SRB is certainly lesser than the same situation on a river, the risk to safety is nonetheless significant.

In the winter of 2020-21, the Public Service concluded that the City's overall public education efforts to inform residents of the life safety risks were insufficient. Accordingly, the decision was made on December 1, 2020 to:

- restrict activities on retention ponds across the board under s.3 of the Frozen Waterways By-law;
- enact a public education campaign through City By-law Enforcement Officers and communications delivered to homes adjacent to retention ponds, and on the City of Winnipeg COVID-19 webpage; and
- focus on education rather than enforcement, considering the nature of the COVID-19 pandemic.

The magnitude of this decision was heightened by reports of individuals and pets falling through the ice on river surfaces in late 2020 and early 2021. Having said this, the Public Service acknowledges that there is not any significant statistical evidence of the inherent dangers regarding retention ponds; the majority of calls received by the WFPS are typically related to people observed on the ponds at times of the year thought to be most dangerous (early winter freeze-up and spring thaw). Nonetheless, the design and operation of SRBs creates an inherent conflict to having the City actively promote or support their use as recreational amenities.

Jurisdictional Scan

To satisfy the disposition and to better inform the decision-making of the Public Service on this issue, a jurisdictional scan was launched.

The Public Service proceeded to assemble a working group of subject matter experts from across the organization, including representation from:

- the Office of the CAO (lead)
- WPS, for their role in managing the River Patrol service
- WFPS, for their role in responding to water emergencies
- Legal Services, for legal interpretation and by-law revisions
- Water and Waste, for their role in managing the City's land drainage network
- PPD, for their role in enforcing the Frozen Waterways by-law
- Community Services, for their role in providing recreational programming and activities
- Public Works, for their experience in engaging in operational activities on frozen water surfaces

This group developed a list of questions for the jurisdictional scan, which was as follows:

Legal Authority

- Does your municipality allow recreational activities, such as walking, ice skating, skiing, tobogganing or ice fishing, on:
    - Frozen retention ponds?
    - Frozen ponds in municipal parks?
    - Frozen rivers or any other frozen waterways (creeks, etc)?
- If so:
    - What is the source of your authority to do so? Have you ever had your authority challenged legally? Have you ever been sued or otherwise legally challenged for
        - regulating or failing to regulate, or
        - authorizing or failing to authorize, or
        - improperly regulating activities on or notifying people about dangers associated with activities on frozen ice surfaces?
    - Does your municipality have a policy document governing the use of recreational use of frozen water surface?
    - Do you have a criteria for determining which bodies of water can be used for winter recreation, and do you monitor ice thickness?
    - For naturalized retention ponds, how do you manage potential damage to vegetation?
    - Does your municipality provide any maintenance or amenities (e.g. snow clearing, flooding, lighting, benches, access, rubber mats, etc).?
- If not: what are the main reasons, and under what authority is recreational activities prohibited, in particular on natural waterbodies (ie. creeks, rivers, and lakes)?

Safety and Liability

- If your municipality allows public recreational activity on frozen water surfaces, what kind of safety and risk measures, if any, do you offer to mitigate risk and liability? Examples could include but are not limited to: signage of dangerous ice, ice depth testing and monitoring, ice safety patrols, etc.
- Do your policies and safety measures differentiate between engineered assets (e.g. retention basins, reservoirs, canals) and natural waterbodies (e.g. lakes, rivers, streams and ponds)?
- Which entity within their municipality monitors the activities and or provides patrols of the frozen water surfaces, ie: police (river patrol) or fire or paramedic services (water rescue)?
- water surfaces—for example, people going through the ice? If so, how many responses occurred in 2019 vs 2020?
- Does your municipality provide any public-facing safety information on frozen water surfaces? For example, do you have training seminars, public education messaging, or media strategies?
- Does your municipality have a Safe Work Procedure (SWP) for its staff to work on or monitor frozen waterways? If so, could you please provide the same?

Types of Activities

- Does your municipality program recreational activities on frozen outdoor surfaces, for example, outdoor ice-skating lessons, public skating times, or other activities?
- If so, please provide details on the same, including type of location (frozen rivers, retention ponds, outdoor rinks), levels of service, staffing, approximate cost to offer programs, and approximate revenue.
- Specifically for retention ponds, does your municipality offer any sort of community stewardship or sponsorship program?
- How to you manage parking, litter control, noise, and other issues at outdoor recreation sites?
- Which City department runs your program?

The results of the jurisdictional scan are attached as Appendix 2. Eleven municipalities were contacted, of which 9 responded: Vancouver, Victoria, Edmonton, Calgary, Saskatoon, Regina, Toronto, Ottawa, and Halifax. To summarize, of the nine responsive municipalities:

- only Saskatoon allows recreational activities on frozen retention ponds, and only selected ones; otherwise local by-laws prohibit use of retention ponds, or the weather is such that they do not freeze over
- Edmonton and Toronto allow recreational activities on frozen ponds in municipal parks
- only Halifax allows recreational activities on frozen lakes
- Ice testing is generally in place for any surfaces the municipality allows for recreational activities; other options include flag systems and use-at-own-risk signage
- Municipal recreation offerings in winter were limited to municipal rinks or skating ovals, not on retention ponds or frozen natural water surfaces.

Saskatoon allows recreational activities on 12 retention ponds; https://www.saskatoon.ca/community-culture-heritage/neighbourhoods-community-associations/recreational-use-stormwater-ponds. It specifically prohibits usage of naturalized ponds due to high use of naturalized parks as nesting habitats for wildlife.

Current State of Winnipeg ice availability

According to the draft Recreation Strategy, available at https://engage.winnipeg.ca/winnipeg_recreation_and_parks/widgets/46343/documents, Winnipeg currently has an inventory of 45 indoor ice sheets, with more indoor ice sheets per capita than most comparable municipalities. On average, 94% of Winnipeggers are within 4 kms of three indoor ice sheets. There are also over 130 outdoor hockey pens at Community Centre sites. The table below, from page 11 of the draft Recreation Strategy, compares municipally-owned ice sheets across multiple Canadian jurisdictions, showing that per capita Winnipeg ranks third, only below Regina and Hamilton.

HOW DOES WINNIPEG COMPARE?

	Population (2016)	Number of indoor ice sheets	Indoor ice sheets/population
Regina	215,106	14	1/15,364
Saskatoon	246,376	6	1/41,062
Edmonton	932,546	23	1/40,545
Hamilton	536,917	27	1/19,885
Toronto	2,731,571	65	1/42,024
Calgary	1,239,220	19	1/65,222
Winnipeg	705,244	34	1/20,742

** Numbers only include facilities owned by the municipality*

Fig. 36: Table comparing the number of municipally owned indoor ice sheets per population in various Canadian cities. Source: Facility counts for Regina, Hamilton, Toronto and Calgary come from the Municipal Benchmarking Network Canada (2017). Facility counts for Saskatoon and Edmonton were obtained by jurisdictional scan.

Considering:

- the high level of access to established indoor ice sheets;
- the availability of outdoor ice sheets via Community Centre sites;
- the results of the jurisdictional scan; and
- the various dangers and difficulties of managing frozen SRBs as approved recreational facilities,

the Public Service is not at this time recommending that Council allow access to SRBs for winter recreational activity.

Frozen Waterways By-law

As aforementioned, the By-law was enacted in response to some very specific subject matter and concerns (i.e. the erection of temporary structures on a frozen river to provide a pop-up restaurant experience). Since 2014, it has become clear that Winnipeggers have chosen to embrace their frozen waterways in a variety of ways beyond pop-up restaurants. Accordingly, the Public Service will be bringing back recommendations for amendments to the By-law that are not directly connected to the current disposition, to ensure that the By-law reflects current state and that the most appropriate “designated employee” is assigned.

However, in relation to the current disposition, the Public Service is not recommending any immediate amendments to the By-law, for the following reasons, in addition to those mentioned already:

1) Danger of using due to thinning of ice;
2) Resources for inevitable end of winter clean-up (hockey nets, straw bales, etc.)

3) Difficulty in determining which SRBs would and should be designated for winter use. While those who wish to use the SRBs for these purposes may be vocal, the City receives significant feedback from adjacent residential property owners who find such use problematic. With the use being currently prohibited, there is no straightforward process which would determine which neighbourhood should be required to permit these.
4) The potential for damage to vegetation in and around an SRB, which becomes more of a concern with respect to naturalized SRBs;

It is further hoped that as we emerge from the pandemic (both locally and globally), the ample inventory of both indoor and outdoor recreational ice in Winnipeg will adequately address the demand for such spaces.

FINANCIAL IMPACT

Financial Impact Statement **Date:** June 14, 2021

Project Name:

Use of Retention Ponds for Recreational Activities

COMMENTS:

There are no financial implications associated with the recommendations of this report.

(Signed electronically by F. Dela Cruz)
Fernando Dela Cruz, CPA, CGA
Acting Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with:
Legal Services (as to legal issues)
Winnipeg Police Service
Winnipeg Fire Paramedic Services
Water & Waste Department
Planning Property & Development Department
Public Works Department
Community Services Department

OURWINNIPEG POLICY ALIGNMENT

01-5 RECREATION
Direction 6: Plan for sustainable and connected recreation and leisure infrastructure

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

SUBMITTED BY

Department: Office of the CAO
Prepared by: Michael Jack
Date: June 14, 2021

Attachments:

Appendix 1 – Province of Manitoba, Contractor’s Manual for the Construction and Maintenance of Manitoba Infrastructure & Transportation Winter Roads

Appendix 2 – Jurisdictional Scan