Agenda – Executive Policy Committee – November 17, 2021

REPORTS

Item No. 14 Municipal By-Law Enforcement Act Enabling By-law Amendments

WINNIPEG PUBLIC SERVICE RECOMMENDATION:

1. That Council enact the draft amending by-law attached as Appendix A, which includes a new Schedule A to the Municipal By-law Enforcement Act Enabling By-law and several consequential amendments to other by-laws, and that these amendments come into effect 30 days after enactment.

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

ADMINISTRATIVE REPORT

Title: Municipal By-Law Enforcement Act Enabling By-law Amendments

Critical Path: Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
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EXECUTIVE SUMMARY

The Municipal By-law Enforcement Act (MBEA) and *The Provincial Offences Act* (POA) devolve certain aspects of by-law enforcement to the City of Winnipeg that were previously managed through the Provincial courts. While the City may choose which enforcement mechanism to use for the majority of its by-law offences, the MBEA offers a much faster and less cumbersome process than the POA. Under the MBEA, a request for the review of a penalty notice is met by a City-appointed screening officer, often within days, and a second level of review is available through a Provincially-appointed adjudicator. For offences enforced under the POA, a person who wishes to dispute their ticket must request a hearing through the Provincial court. Even those who intend to pay a POA ticket without contesting it may still be required to attend Provincial court to have a fine amount assigned if there is no pre-set fine for their offence. The wait time for those who wish to contest their tickets can often stretch many months, if not years, past the date of the alleged contravention.

In 2016, the MBEA was initially applied to 62 parking offences. Following a major migration of almost 600 non-parking offences in 2017, and several smaller additions since, the MBEA Enabling By-law now covers a total of more than 800 offences contained in 17 City by-laws. This report recommends the administrative transfer of an additional 156 offences. These offences are already contained in existing City by-laws. They are all currently in effect and do not represent any new requirements or restrictions on residents or local business. The report is also proposing:

- the addition of a set fine for parking on a single block face more than once per day in an area with time-limited parking. This prohibition already exists under the Winnipeg Parking By-law; adding a set fine to the MBEA Enabling By-law will simply render it enforceable by penalty notice.
- Changes to the fine amounts for 10 existing offences, five of which are decreasing.
- Changes to the language summarizing 34 offences already listed in Schedule A of the MBEA Enabling By-law that will more clearly describe the offences.
- Removal of four offences from Schedule A to the MBEA Enabling By-law.
- The imposition of a time limit for appellants seeking to reschedule adjudication hearings.

Further to improving compliance, the proposed transfer of 156 offences and the addition of one more offence to the MBEA Enabling By-law are expected to increase net enforcement revenue for the City by an average of $286,101 per year over the next five years. The additional revenue is based on the estimated number of penalty notices to be issued.

RECOMMENDATIONS

1. That Council enact the draft amending by-law attached as Appendix A, which includes a new Schedule A to the Municipal By-law Enforcement Act Enabling By-law and several consequential amendments to other by-laws, and that these amendments come into effect 30 days after enactment.

2. That the proper officers of the City be authorized to do all things necessary to implement the forgoing.

REASON FOR THE REPORT

Only Council has the authority to enact proposed changes to the MBEA Enabling By-law.

IMPLICATIONS OF THE RECOMMENDATIONS

Changes to Fine Amounts

Council's adoption of the proposed by-law amendments would reduce the fine amounts and early payment amounts for five offences, increase the fine amounts and/or early payment amounts for four offences, and eliminate the early payment discount for one offence. Fine amounts are set based on the severity of an offence and at a level required to encourage compliance.

Improved Compliance and Streamlined Appeals

The proposed transfer of 156 offences from the POA to the MBEA Enabling By-law is expected to improve compliance by reducing the barriers to quick enforcement imposed through the Provincial court process. Contesting a ticket issued under the POA can require multiple visits to the Provincial court. Even those who intend to pay a POA ticket without contesting it may still be required to attend Provincial court to have a fine amount assigned if there is no pre-set fine for their offence. The wait time for this can often stretch many months, if not years, past the date of the alleged contravention. On the other hand, penalty notices issued for offences enforced under the MBEA always have pre-set fines, and requests for review by a screening officer can be accommodated far quicker, entirely online, and often within days or weeks of a request being made.

Furthermore, the final amount owing on a POA ticket will also include provincial court fees. Anyone receiving a penalty notice under the MBEA will benefit from the fact that no such costs are added on to their fine amount. There is, however, a $25 adjudication fee, but this is refunded when an appeal is deemed successful by the adjudicator. Diagrams depicting the appeal and collection processes for both POA tickets and MBEA penalty notices are attached as Appendix D.

Increased Enforcement Revenue

The proposed changes are also projected to increase enforcement revenue as departments opt for MBEA penalty notices rather than other more cumbersome and less direct compliance

mechanisms currently in use, such as City-ordered inspection fees, fees for non-compliance with orders or permits, and the issuance of a ticket or information under the POA. In cases where City departments still choose to issue non-compliance fees, the appeal process will remain as-is.

The exact amount of the total change in revenue will depend on the level of enforcement for each offence combined with the deterrent effect of specific fine amounts, but aggregated departmental ticket issuance forecasts suggest an average net annual revenue increase of $286,101 over the next five years. This figure represents the face value of the additional penalty notices the departments expect to issue, minus the Winnipeg Parking Authority (WPA)'s costs for administrative functions (e.g. an increase in the number of screening requests, the portion of the additional penalty notices that is expected to end up being deemed uncollectable 'bad debt', etc.) and the fine revenue that is currently attributed to POA tickets, since that revenue will presumably be transferred over to MBEA penalty notices.

Increased Demand for Screening and Adjudication Services

Enforcing these 156 offences under the MBEA rather than the POA is likely to result in an increase in the number of requests for screenings and adjudications. While parking offences will almost certainly continue to represent the vast majority of cases brought forward for review, the WPA will continue to track the proportion of penalty notices under each by-law and at different fine amounts that proceed to screening and adjudication. This will enable the WPA to identify trends and help determine at what point additional staffing resources will be required to sustain current service levels.

HISTORY/DISCUSSION

History and Function of the MBEA

The MBEA was passed in December 2013 and came into force on August 8, 2016. The Act establishes a new system for enforcing municipal by-law offences by allowing a person who has received a penalty notice to have it reviewed by a City-employed screening officer and, if the person is not satisfied with the screening officer's decision, to request a further review by a Provincially-appointed adjudicator. The MBEA prohibits The City of Winnipeg from enforcing a by-law concerning the parking of vehicles by any means other than an administrative penalty. In order to issue an administrative penalty, the Act requires that Council pass a by-law establishing screening and adjudication processes to be used by appellants in lieu of the Provincial court system. The MBEA also empowers the City to designate other offences for enforcement via administrative penalty. To be eligible for enforcement via the MBEA, offences must have set fines of no more than $1,000. Fine ranges under the POA tend to be significantly higher than those under the MBEA.

To meet the requirements of the MBEA, the MBEA Enabling By-law was enacted in 2016. The first iteration designated 62 parking offences in three different by-laws for enforcement under the new MBEA framework. Since then, 14 other City by-laws have been included and the City is now able to issue penalty notices for more than 800 offences contained in 17 by-laws administered by multiple City departments and special operating agencies. The bulk of these were transferred in July 2017 but the shift has been ongoing. The WPA is responsible for administering appeals, including screening and adjudication services, for all of these offences.

The use of this legislative framework has been successful in streamlining the enforcement and appeal processes for penalty notices, thereby reducing the time between the recognition of a contravention and its ultimate resolution, and reducing the backlog in the Provincial court system. Not only does this benefit the person who receives the penalty notice, but it also supports other stakeholder groups who rely on the quick and effective enforcement of the City's by-laws. Examples might include residents and businesses whose property values are negatively impacted by contraventions of the Neighbourhood Liveability By-Law occurring in their areas, or commuters whose travel times or safety while on the road may be adversely affected by other drivers contravening the Winnipeg Parking By-Law.

MBEA Penalty Notices and Appeals 2019

Bylaw Offence	Penalty Notices Issued	% of Total MBEA Penalty Notices Issued	Number of Screenings	Number of Adjudications
Parking	128,118	95.3%	11,455	103
Vehicle-for-Hire	291	0.2%	84	9
Other	6,025	4.5%	731	43
Total	**134,434**	**100%**	**12,270**	**155**

Please note:

- the 2019 figures are being used here in lieu of 2020 because of the significant influence the COVID-19 pandemic had on enforcement.
- "Other" by-law offences include offences in 14 City by-laws enforced under the MBEA

City by-law offences (other than those related to parking) that are not currently listed in Schedule A to the MBEA Enabling By-law are eligible for enforcement under *The Provincial Offences Act* (POA) but the processes for both the City and the person who received the penalty can be significantly more cumbersome under the POA.

In terms of operational requirements, in 2019 there were 134,434 penalty notices issued under the MBEA. The WPA provided 12,270 screenings and administrative support to 155 adjudications. It is anticipated that the proposed transfer of 156 offences to Schedule A of the MBEA Enabling By-law will drive an increase in the number of screenings requested and a similar rise in the number of adjudications. The WPA anticipates the trend of increased screenings and adjudications to continue as additional City by-laws are brought under the MBEA Enabling By-Law enforcement framework.

Proposed Legislative Amendments

Along with several substantive amendments to existing provisions in the Winnipeg Parking By-law (noted below), seven types of amendments to the MBEA Enabling By-law are being proposed in this report:

1. The transfer of 156 offences, including set fines, to Schedule A to the MBEA Enabling By-law (these are currently enforceable under the POA),
2. The addition of one parking offence to Schedule A to the MBEA Enabling By-law,
3. Changes to fine amounts for 10 offences already included in Schedule A to the MBEA Enabling By-law,
4. Corrections to the numbering of, and/or improvements to the language summarizing 39 offences already included in Schedule A to the MBEA Enabling By-law,
5. Removal of offences currently contained in Schedule A to the MBEA Enabling By-law,
6. An amendment to the language in the Preamble section of the MBEA Enabling By-law, and

7. An amendment to section 25 of the MBEA Enabling By-law that would place a 180-day limit on the timeframe for rescheduling an adjudication hearing, with a maximum of two rescheduling requests allowed for a given penalty notice. The proposed time limit in section 25 would align an appellant's maximum deferral period for an adjudication with the timeframe the MBEA gives the City to issue a penalty notice following the date on which a contravention is alleged to have occurred (one year).

The following is a summary of the proposed by-law amendments; the full list of proposed amendments to Schedule A, including fine changes, is attached as Appendix B. It is important to highlight that the proposed transfers to Schedule A to the MBEA Enabling By-law are existing offences contained in other City by-laws. They are currently eligible for enforcement via a ticket or information issued under the POA and do not constitute new legislated obligations or prohibitions. For offences currently being enforced under the POA, a preset fine may be set out in a City by-law. Where no set fine, minimum fine, or range of permissible fines has been established by City by-law, a penalty of up $5,000 may be imposed at the discretion of the Provincial court and decided on a case-by-case basis.

Alarm By-Law No. 4676/87

The Winnipeg Police Service is seeking to make five offences related to the installation, monitoring, registration, and operation of alarms enforceable under the MBEA rather than the POA. This change requires the establishment of set fines for offences that are currently subject to indeterminate fines between $75 and $1,000 for an individual or up to $5,000 for a corporation. The proposed set fine amounts for these five offences under the MBEA range from $100 to $750. The department is also seeking to increase the set fine for allowing excessive false alarms (which is already listed in Schedule A to the MBEA Enabling By-law) from $135 to $300.

Doing Business in Winnipeg By-Law No. 91/2008

The Community Services Department and the Winnipeg Police Service are seeking to remove four offences from Schedule A to the MBEA Enabling By-law. Two of these offences, which are related to the recording of acquisitions by used goods dealers, would become enforceable under the POA. No preset fine amounts are being proposed. The other two are tied to provisions that have been substantially altered by past amendments to the Doing Business in Winnipeg By-law and now represent administrative matters rather than enforceable contraventions. The summaries of five other offences listed in Schedule A will also be amended to better reflect the actual offences.

Fire Prevention By-Law No. 35/2017

The Winnipeg Fire Paramedic Service and the WPA are seeking to make 55 existing offences (38 of which are provisions adopted from The Manitoba Fire Code) enforceable through the MBEA rather than the POA. These are related to permits, storage of pyrotechnics and combustible goods, safety-related building maintenance, parking that obstructs access by emergency vehicles, and life safety equipment such as alarms. The Fire Prevention By-law contains set fines for some of these offences and, where applicable, these will be carried over to Schedule A of the MBEA Enabling By-law. Set fines being proposed under the MBEA range from $300 to $1,000.

Lot Grading By-law No. 7294/98

Water and Waste is seeking to make the offence of improperly discharging water from a sump pump enforceable through the MBEA rather than the POA. The proposed set fine for this offence is $200.

Neighbourhood Liveability By-law No. 1/2008

Community Services is seeking several non-substantive amendments to Schedule A that will fine-tune the language summarizing offences, correct an inaccurate section number, and remove a fine for spitting in public that is applicable to corporations.

Residential Buildings Fire Safety By-law No. 4304/86

The Winnipeg Fire Paramedic Service is seeking to make two offences related to building maintenance and occupancy permits enforceable through the MBEA rather than the POA. The minimum fine for both offences under the POA is currently $500. The proposed set fine amount for both offences under the MBEA is $500. Please note, the Residential Buildings Fire Safety By-law falls under the purview of the Winnipeg Fire Paramedic Service but these specific provisions are enforced by the Planning, Property and Development Department.

Responsible Pet Ownership By-law No. 92/2013

Animal Services is seeking to make 19 offences related to animal ownership and care enforceable through the MBEA rather than the POA. Additionally, the numbering of one offence already listed in Schedule A is being corrected. Animal Services is also proposing increases to the discounted early payment fines for exceeding the restriction on the maximum number of animals without an excess animal permit and failing to sterilize an adopted pet, as well as reductions in the fine amounts for failing to immediately surrender a dog for rabies observation, failing to remove cat excrement, failing to immediately surrender a cat for rabies observation, failing to properly observe home quarantine, and failing to remove dog excrement. Of the impacted offences, those with preset fines under the POA range from $200 to $1,000. There are also several offences which currently have minimum fines under the POA, including $350 for failing to prevent a dog or cat from injuring a person or animal, $1,000 for failing to ensure a dangerous dog is secured on an owner's property or muzzled and restrained, and $500 for interfering with an enforcement officer or failing to provide them with identification. Proposed fines for the offences being added to Schedule A range from $200 to $500.

Sewer By-law No. 106/2018

The incorrect numbering of one offence is being corrected.

Solid Waste By-law No. 110/2012

The Water and Waste Department is seeking to have 14 offences related to the storage, transportation, and disposal of solid waste enforced through the MBEA Enabling By-law rather than the POA. The Solid Waste By-law contains set fines of $300 for an individual and $600 for a corporation when enforced under the POA. Set fines being proposed under the MBEA range from $300 to $1,000.

Streets By-law No. 1481/77

The incorrect numbering of one offence is being corrected.

Traffic By-law No. 1573/77

The Winnipeg Police Service is seeking to make one offence related to travel routes for trucks enforceable through the MBEA rather than the POA. Under the POA, the offence carries a minimum fine of $150; the fine being proposed under the MBEA is $800.

Vehicle for Hire By-law No. 129/2017

The WPA is seeking to amend 11 contravention summaries in Schedule A to the MBEA Enabling By-law so that they more accurately reflect the offences. The agency is also proposing the elimination of an early payment discount for failing to provide an estimated time of arrival for a requested vehicle.

Water By-law No. 107/2015

Water and Waste is seeking to make 24 offences enforceable through the MBEA rather than the POA. These offences are related to interconnections, backflow prevention requirements, and the use of fire hydrants and public water outlets. The department is seeking to amend language in the contravention summaries of six offences, correct the numbering of one existing offence, and increase the fine amount for failing to ensure that a water meter has not been damaged or tampered with. As currently enforced under the POA, the Water By-law contains a progressive enforcement system with fines ranging from $1,000 for a first offence to $250,000 for third and subsequent offences. Proposed fines under the MBEA range from $125 to $500.

Winnipeg Building By-law No. 4555/87

Planning, Property and Development is seeking to make 19 offences enforceable through the MBEA rather than the POA. These are related to building permitting, construction, and maintenance. The department is also proposing amendments to the summaries of two existing offences. Under the POA, the minimum fines for these offences are set at $500, with a maximum of $5,000. Fines being proposed under the MBEA range from $100 to $1,000.

Winnipeg Electrical By-law No. 86/2018

Planning, Property and Development is seeking to make five offences enforceable through the MBEA rather than the POA. These are related to the permitting, installation, and maintenance of electrical power systems. There are no set fines for these offences under the POA. Proposed fines for all five offences under the MBEA are $1,000.

Winnipeg Parking By-law No. 86/2016

The WPA is seeking to add one offence to Schedule A to the MBEA Enabling By-law for parking on a single block face more than once per day in an area with time-limited parking. The WPA is also proposing amendments to the summaries of seven existing offences. Fines for the affected offences range from $70 to $150.

Please note: the WPA is also proposing a number of changes to the wording of contraventions in the Winnipeg Parking By-law itself (see Appendix C). These include:

- an amendment to the definition of “boulevard” that will improve clarity for drivers and allow for more effective enforcement of an existing offence for parking in a manner that obstructs a sidewalk;
- the extension of prohibitions against parking where signage indicates parking is not permitted or in a traffic lane where the flow of traffic is in the opposite direction, so as to prevent stopping in these locations as well;
- the addition of language clarifying the prohibition against parking in front of a driveway;
- the extension of the existing prohibition against being parked on a street while the vehicle is connected to an electrical cord that crosses the street so that it prohibits being parked anywhere while connected to an electrical cord if the electrical cord crosses a street, sidewalk, or boulevard, and;
- the amendment of several sections that currently apply only to large trucks so that they will apply to any large vehicle.

Winnipeg Zoning By-law No. 200/2006

Planning, Property and Development is seeking to transfer 11 offences to Schedule A of the MBEA Enabling By-law that are currently enforceable under the POA. These are related to building and business permits, lighting standards, and maintenance of salvage yards. Fines for these offences range from $500 to $1,000.

Process for Ongoing Updates

In response to a 2018 report by the City of Winnipeg’s Audit Department, the City is currently undertaking a review of its internal processes related to by-law enforcement. The results of this exercise are likely to influence the process for ongoing updates to the MBEA Enabling By-law, including the identification of a lead department.

In the event that responsibility for coordinating updates to the MBEA Enabling By-law remains with the WPA, the agency intends to canvass all departments and SOAs on an annual basis to identify any proposed revisions to Schedule A. This will establish a regular mechanism for updating and adding or removing offences from eligibility for enforcement under the MBEA legislative framework, and will provide departments and SOAs with a predictable schedule for their required amendments. The WPA would then submit a report similar to this one each year, with a single batch of proposed amendments. These periodic reports may also include updates on the actual financial impacts of previous amendments (i.e. changes to enforcement revenue and/or demand for screening and adjudication services). For offences that need to be transferred to the MBEA or updated to address emerging situations requiring immediate attention, in-year requests would be submitted by the department responsible for enforcement, working in concert with the WPA.

In cases where a department or SOA wishes to introduce a new City by-law, with any fines to be enforced through the MBEA, the department or SOA would submit an administrative report to its respective Standing Policy Committee. In these instances, the WPA would be consulted in order to ensure all necessary components are in place and staff are trained to provide screening services and support to Provincially-appointed adjudicators as required.

FINANCIAL IMPACT

Financial Impact Statement

Date: November 1, 2021

Project Name:

Municipal By-Law Enforcement Act Enabling By-law Amendments

First Year of Program **2022**

	2022	2023	2024	2025	2026
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 397,116	$ 694,767	$ 793,218	$ 892,419	$ 904,492
Less: Incremental Revenue/Recovery	549,512	914,398	1,092,913	1,273,344	1,282,351
Net Cost/(Benefit)	$ (152,397)	$ (219,631)	$ (299,696)	$ (380,925)	$ (377,859)
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (152,397)	$ (219,631)	$ (299,696)	$ (380,925)	$ (377,859)

Additional information: Direct costs above are WPA's costs to administer additional penalties and allocated based on amount of screening requests anticipated for each type of penalty/by-law based on historical information. These costs also include estimated bad debt provision. Some of the penalties do not have historical information and estimates for them were based on statistics that are available to WPA at the date of this report. Costs do not include any possible additional costs by issuing departments. Incremental revenues above are based on anticipated ticket volumes and estimated percentages of those who take advantage of early payment discount where applicable. Estimated historical revenue received under the Provincial Offences Act for similar offence that is being transferred over to MBEA was deducted from anticipated revenue whenever possible. Net cost/(benefit) above represents estimated amounts that may be available for distribution to various issuing departments by WPA. Due to some penalty notices being new and no historical information available to use for forecasts purposes, actual amounts available for transfer may be significantly different from estimates noted above. Budget adjustment for net incremental revenue/departmental transfers is required and should be referred to appropriate budget process.

original signed by
Lioubov Gavrilova-Crozier, CPA, CA
Manager of Finance (WPA)

CONSULTATION

This Report has been prepared in consultation with:
- Legal Services (as to legal issues)
- Planning, Property and Development Department (with respect to the Winnipeg Building By-law, the Winnipeg Zoning By-law, the Winnipeg Electrical By-law, and the Residential Buildings Fire Safety By-law)
- Animal Services (with respect to the Responsible Pet Ownership By-law)
- Water and Waste Department (with respect to the Sewer By-law, the Water By-law, the Solid Waste By-law, and the Lot Grading By-law)
- Community Services (with respect to the Neighbourhood Liveability By-law and the Vacant Buildings By-law)
- Winnipeg Police Service (with respect to the Alarm By-law, the Doing Business in Winnipeg By-law, the Outdoor Smoking By-law, and the Traffic By-law)
- Public Works Department (with respect to the Parks By-law, the Streets By-law)
- Winnipeg Fire Paramedic Service (with respect to the Fire Prevention By-law)

OURWINNIPEG POLICY ALIGNMENT

The recommendations in this report will support the OurWinnipeg municipal development plan in the following areas:

01-2a Collaborate to Make Safe Communities, Direction 3: Promote Safety in Buildings
01-3 Prosperity, Direction 1: Provide Efficient and Focused Civic Administration and Governance
01-4 Housing, Direction 4: Provide Leadership in Encouraging and Enforcing Property-Related Housing Standards that Create and Promote Safe Living Conditions for Homeowners, Tenants and for Communities as a Whole
03-2 Vitality, Direction 4: Maintain the Health and Safety of Neighbourhoods by Enforcing Animal Control By-Laws and Promoting Responsible Pet Ownership

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

A number of the offences found in the Solid Waste By-law No. 110/2012, Water By-law No. 107/2015, and Sewer By-law No. 106/2018 that are being recommended for addition to Schedule A of the MBEA Enabling By-law are directly related to the consumption and proper drainage of water, and the disposal of waste and recyclables.

Improved enforcement capacity for these offences will support Key Directions 1.8- Ensure the City's Land Use, Transportation and Built Environment Policy, Bylaw and Regulation Recognize the Council-Approved Climate Protection and Mitigation Priorities and 6.1- Reduce Consumption and Increase Waste Diversion from Residential, Commercial and Industry.

SUBMITTED BY

Department: Public Works
Division: Winnipeg Parking Authority
Prepared by: L. Vermette/D. Locke
Date: November 1, 2021
File No: WPA-005-2021

Attachments:

Appendix A- MBEA Enabling By-law Draft Amending By-law
Appendix B- Table of Proposed Amendments to the MBEA Enabling By-law Schedule A
Appendix C- Table of Proposed Amendments to the Winnipeg Parking By-law No. 86/2016
Appendix D- POA and MBEA Process Maps