Minute No. 419
Report - Standing Policy Committee on Property and Development - April 27, 2004

Item No. 12 **Plan Examination and Building Inspections for Construction Projects outside the City's Regulatory Authority**
File GL-5.8.1

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the City Organization By-law No. 7100/97 be amended to permit the Chief Administrative Officer to negotiate fee-for-service arrangements with other jurisdictions, such as crown corporations and federally-regulated industries, with respect to construction projects that fall outside the city's regulatory powers on the basis that these fees will not be subsidized by City taxpayers.

2. That the Chief Administrative Officer be authorized to execute agreements and other documents necessary to formalize these fee-for-service arrangements.

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

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DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,
That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 12, 2004, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On April 27, 2004, the Standing Policy Committee on Property and Development concurred in the administrative recommendation and submitted the matter to the Executive Policy Committee and Council.

Re: Plan Examination and Building Inspections for Construction Projects outside the City's Regulatory Authority

For Submission To: Standing Policy Committee on Property and Development

Submitted By: Development and Inspections Division, Planning, Property and Development Department

Report Date: March 12, 2004

RECOMMENDATION(S):

1. That Council amend the City Organization By-law to permit the Chief Administrative Officer to negotiate fee-for-service arrangements with other jurisdictions, such as crown corporations and federally-regulated industries, with respect to construction projects that fall outside the city's regulatory powers on the basis that these fees will not be subsidized by City taxpayers.

2. That the CAO be authorized to execute agreements and other documents necessary to formalize these fee-for-service arrangements.

3. That the proper officers of the City be authorized to do all things necessary to implement the foregoing.

Report Summary

KEY ISSUES:

Municipal by-laws are not binding on other levels of government. Therefore, to the extent that construction is carried on by the Federal and Provincial governments or crown corporations, it is exempt from the City's regulatory authority. Those aspects of businesses that are federally regulated are also exempt from the City's regulatory authority.

When Crown corporations, federally-regulated industries and the Federal and Provincial governments are willing to pay the City to review plans, conduct building inspections and otherwise ensure that construction complies with codes and by-laws, the City should be prepared to enter into fee-for-service agreements.

It is recommended that Council delegate to the CAO the power to negotiate and execute these agreements.

The fees will at minimum be based upon the prescribed fees identified in the fees by-law for the type of project and the provision of any additional or extraordinary services would need to be negotiated, including any costs to protect the City against any future liabilities.

The City may be exposed to additional liability that it would otherwise not be, as a result of undertaking work of this nature. The fees will be designed to cover any costs to ensure protection against any future liabilities.

The private industry may raise objections that the City is beginning to provide additional services similar to project management, which the private sector are capable of providing.

IMPLICATIONS OF THE RECOMMENDATION(S):

General Implications

	None
x	For the organization overall and/or for other departments
x	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract
	Comment(s): This report proposes to establish a standard basis for providing plan review and construction inspection services to crown corporations, federally-regulated industries and the Federal and Provincial governments for construction projects that are not subject to the relevant codes and by-laws of the City of Winnipeg.

Policy Implications

	None
X	Yes
	Comment(s): This report recommends that the city provide these services upon payment of fees, calculated on the basis that these services will not be subsidized by City taxpayers.

Environmental Implications

X	None
	Yes
	Comment(s):

Human Resources Implications

X	None
	Yes
	Comment(s):
	While there are no immediate human resource implications, it is possible that providing services for specific projects may result in additional hiring on a temporary or permanent basis. The fees for this work will at minimum recover all costs, including an amount sufficient to cover any risk associated with future liabilities.

Financial Implications

X	Within approved current and/or capital budget
	Current and/or capital budget adjustment required
	Comment(s):
	Fee-for-service arrangements permitted by the recommendations in this report could result in net revenue for the City but the amount of revenue cannot be quantified at this time.

REASON FOR THE REPORT:

The recommendation involves an amendment to the City's Organization By-law.

HISTORY:

Municipal by-laws are not binding on other levels of government. Therefore, to the extent that construction is carried on by the Federal and Provincial governments or crown corporations or with respect to those aspects of industries that are federally regulated, they are exempt from the City's regulatory authority. In carrying out new construction or renovations, these entities are not required to comply with the City's land use planning by-laws, the Manitoba Building Code, the Winnipeg Building By-law and other relevant municipal legislation. This exemption is sometimes referred to as "royal prerogative".

Despite the fact that they are not obliged to do so, some entities have voluntarily sought the City's assistance in ensuring that their new construction complies with all or part of the system of codes and by-laws that would otherwise apply. In many cases, these entities are not willing to comply with zoning by-laws but are interested in ensuring that the construction itself complies with relevant building codes and by-laws.

In the past, requests from these entities that the City review plans and conduct inspections of new construction have been dealt with in an *ad hoc* manner. In many cases, City staff have charged fees and issued permits for these projects as if the project fell within the City's regulatory jurisdiction. However, this practice failed to take into account the fact that the City had no

ability to deal with instances of non-compliance by issuing orders and prosecuting contraventions. It also failed to clarify critical issues such as the City's liability for situations in which the construction fails to meet codes or by-laws. The recommendations in this report are designed to regularize the City's approach to these construction projects.

Currently, several large-scale construction projects are being planned by extra-jurisdictional entities, including the Winnipeg Airports Authority and Manitoba Hydro. In addition, many smaller scale renovations and new construction projects are being undertaken by numerous extra-jurisdictional entities more-or-less continuously.

DISCUSSION:

The recommendations put forward in this report are intended to provide a basis for negotiating fee-for-service agreements with extra-jurisdictional entities with respect to construction or renovation projects. These entities include but are not limited to the following:

Provincial or Federal crown corporations, such as:
Manitoba Hydro,
Manitoba Lotteries (including casinos),
Manitoba Liquor Control Commission,
Canada Post, and
Via Rail.

Federally-regulated industries, such as
Canadian National Railways,
Canadian Pacific Railways,
Winnipeg Airports Authority, and
Air Canada.

the Government of Canada and the Province of Manitoba;

Despite the fact that they are not required to comply with relevant codes and by-laws with respect to specific construction projects, some of these entities have asked the City to examine plans and inspect construction to ensure compliance with the codes and by-laws. Because these projects do not fall within the City's regulatory authority, the appropriate basis for the City to provide these services is through a contractual arrangement.

1. Should the City enter into agreements to provide these services upon request by extra-jurisdictional entities?

There are several benefits to the City in providing these services.

First, it allows the City to ensure that these buildings meet the standards expected of other structures in the City. The Manitoba Building Code, the Manitoba Fire Code, the Winnipeg Building By-law, the Electrical By-law, and other relevant legislation ensures the health, safety, and comfort of occupants and visitors to buildings. In general terms, it is in the City's interests to be able to satisfy itself that that all buildings in the City meet these standards. More specifically, the City has an interest in ensuring that a building meets basic safety standards so that it is not a danger to neighbouring structures.

A related concern is that the City requires some basic information and assurances concerning the building, in order to ensure that the emergency services it provides to these buildings do not unduly jeopardize the safety of emergency personnel. For example, knowledge of the details of a building plan can be important in dealing with a fire. Moreover, when risking their lives to fight a fire, City firefighters need to be assured that there are no dangerous conditions created by a failure to comply with the building standards.

To be fair, it must be noted that a failure to obtain City plan examination and inspection services does not necessarily mean that these buildings will be unsafe, unhealthy or problematic in any way. It may be that the projects will be built in compliance with the National Building Code and other codes, for example. However, the willingness of these entities to obtain these services from the City gives the City a chance to satisfy itself that these buildings meet the codes that are generally applicable throughout the city.

Secondly, unlike the typical situation in which the City's involvement in building design is restricted to examining and approving building plans after they have been developed, a contractual arrangement may allow the City to be involved during the design phases of a project. City staff can then deal with building code and design issues during the design process as opposed to reviewing the work after it has been completed. By being paid for this additional involvement of staff, the City can improve and guarantee permit turnaround times.

Thirdly, providing these services gives the City an opportunity to earn additional revenue. This report is proposing the fees will at minimum be based upon the prescribed fees identified in the fees by-law for the type of project and may be adjusted upward based on recovery of actual costs of providing service and/or providing services above what would normally be provided for a similar permit application, including any costs to protect the City against any future liabilities. The fee-for-service agreements should not involve subsidization by City taxpayers. In other words, an agreement would have to at least cover the costs to the City. It remains open to the CAO under this limitation to ensure that these agreements generate net revenue for the City.

Finally, the recommendations put forward in this Report are fully in line with Plan Winnipeg. One of the basic principles in Plan Winnipeg is "partnership and collaboration", including working collaboratively with other governments. Policy 2B-03 commits the City to "working cooperatively with other jurisdictions to ensure that services desired and required by its residents are delivered in a coordinated manner to maximize convenience to the public…" Policy 4B-02

commits the City to promoting safety in buildings by ensuring that all buildings are in compliance with adopted fire and health by-laws. The proposal that these services should be provided with at least full cost recovery and that they may on occasion generate revenue for the City is also consistent with principles of sound municipal management in Policy 2B-04.

There may be an argument that the City should not be providing services that could be provided by the private sector. It is likely that private sector consultants, engineers and others would provide similar services if the City were not inclined to provide them. It is also possible that these individuals and corporations would take issue with the decision of the City to enter into competition with them in the provision of these services. However, it should be noted that, so long as City taxpayers are not subsidizing the provision of these services, the competition between the City and the private sector to provide these services is not unfair.

2. Who should be authorized to enter into these agreements on behalf of the City?

The agreements discussed in this report will sometimes involve significant projects of many years' duration but will also involve much smaller projects, including renovations to existing buildings. It is important that the City have the flexibility to enter into these agreements quickly to ensure that there are no undue delays in the projects.

In addition, in at least some cases, it will be important to the entity that is seeking the service, that the details of the project should not be available to the general public. If every agreement requires Council approval, that level of confidentiality will not be possible.

Currently, the City Organization By-law requires that Council must approve all fees for municipal services. This report proposes that the authority to negotiate and finalize these fee-for-service arrangements should be delegated to the CAO on condition that the fee should at least cover the City's costs in providing the service. Where this condition cannot be met, the CAO would either have to forego an agreement or, alternatively, seek Council approval of the agreement notwithstanding the fact that it does not cover the City's costs. This delegation of authority to the CAO would require an amendment to the City Organization By-law.

The report proposes this delegation because the CAO is in a position to determine whether a business case is made out for a particular agreement and to approve and execute agreements quickly where this is the case. The CAO is also able to maintain confidentiality with respect to the business affairs of these entities.

3. On what basis should the City offer these services?

This report proposes that the fees paid by crown corporations, federally-regulated industries or governments for these services should at least cover the City's costs in providing the services and the fees will at minimum be based upon the prescribed fees identified in the fees by-law for the type of project. The provision of any additional or extraordinary services would need to be

negotiated, including any costs to protect the City against any future liabilities. This permits, but does not require, the CAO to negotiate fees that would more than cover these costs. If the CAO were able to do so, the result would be net revenue for the City.

In order to ensure that the City's costs are covered by the fees for a particular project, the CAO would be expected to take into account all of the relevant costs to the City in providing the service. This would include the cost associated with exposure to liability (ie. the cost of insurance), legal advice and "overhead" costs.

One option that was considered was to simply charge these extra-jurisdictional entities the same fees approved by Council from time to time for construction within the City's jurisdiction. The difficulty with this approach is that, in most cases, the fees approved by by-law do not fully cover the costs of the service. If these same fees were charged to extra-jurisdictional entities, in many cases, City taxpayers would be subsidizing the provision of these services. Therefore, while the fees charged to governments, crown corporations and federally-regulated industries should not be less than that charged by the fee schedule for the same service, it may be greater where this is necessary to cover the costs of the service or where additional services are requested.

4. What are other municipalities doing in this regard?

Informal discussions with other municipalities across Canada revealed no clear policy or procedure when dealing with building projects for senior levels of government, crown agencies and federally regulated industries. Additionally, an administrative official from the City of Edmonton stated that if Winnipeg implemented a formal agreement and / or contract for projects, it could set a standard or precedent for other jurisdictions. It has been suggested that Winnipeg inform other municipalities of any decisions associated with this issue.

FINANCIAL IMPACT STATEMENT:

Plan Examination and Building Inspections for Construction Projects Outside the City's Regulatory Authority

24-Feb-04 First Year of Program **2004**

	2004	2005	2006	2007	2008
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					
Less: Incremental Revenue/Recovery					
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts					
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

While the implementation of the recommendations of this report will likely result in additional revenues and costs to the City, the net benefits to the City cannot reasonably be determined.

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Manager of Support Services, PP&D

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

Legal Services Division

THIS REPORT SUBMITTED BY:

Department Planning, Property and Development
Division Development and Inspections
Prepared By: Deepak Joshi

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