Minutes – Executive Policy Committee – April 20, 2022

REPORTS

Item No. 6 Establishment of Safe Access Zones for Health Care Facilities and Public Schools

EXECUTIVE POLICY COMMITTEE DECISION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service:

1. That this Report be received as information.

DECISION MAKING HISTORY:

Moved by Councillor Rollins,

That the recommendation of the Winnipeg Public Service be concurred in.

Yea:	Bowman, Allard, Browaty, Chambers, Gilroy, Mayes, Rollins	7
Nay:		0

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 8, 2021, the Executive Policy Committee granted an extension of time of up to 120 days for the Winnipeg Public Service to provide a report creating options for the implementation of safe access zones considering prohibition of protestors from coming within 150 meters of medical clinics, hospitals, healthcare facilities and K – 12 schools and contemplates a safe access zone fine regime structure.

COUNCIL DECISION:

On October 28, 2021, Council concurred in the notice of motion, as amended, and adopted the following:

1. That the Winnipeg Public Service be directed to report back to the Executive Policy Committee in 60 days with a report creating options for the implementation of safe access zones considering prohibition of protestors from coming within 150 meters of medical clinics, hospitals, healthcare facilities and K – 12 schools and contemplates a safe access zone fine regime structure.

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: Establishment of Safe Access Zones for Health Care Facilities and Public Schools

Critical Path: Executive Policy Committee

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Jack	M. Jack	N/A	M. Jack

EXECUTIVE SUMMARY

The motion giving rise to the Report was introduced following a large protest in the immediate vicinity of the Health Sciences Centre in opposition to COVID-19 restrictions. In reaction to the protest, there was significant concern in the community about potential harassment, intimidation and coercion of patients, healthcare workers and others attempting to access health services, along with potential traffic congestion and the instruction or impediment of emergency vehicles; all of which could further strain a healthcare system already facing significant challenges from the pandemic.

Subsequent to this and similar protests across Canada, the federal government passed amendments to the Criminal Code (Bill C-3), which received Royal assent on December 17, 2021, and came into force thirty days later. These amendments created two new criminal offences:

- Section 423.2(1), which makes it an offence for someone to engage in conduct intended to provoke a state of fear in a person to impede their access to or provision of health services, and
- Section 423.2(2), which makes it an offence for someone, without lawful authority, to intentionally obstruct or interfere with another person's lawful access to a place where health services are provided.

This Report suggests that the recent federal amendments are the most effective means to address the primary concern. However, additional options are offered in the event the City wished to create supplementary regulation.

RECOMMENDATIONS

1. That this Report be received as information.

REASON FOR THE REPORT

At its October 28, 2021 meeting, Council concurred in the notice of motion, as amended, and adopted the following:

1. That the Winnipeg Public Service be directed to report back to the Executive Policy Committee in 60 days with a report creating options for the implementation of safe access zones considering the prohibition of protestors from coming within 150 metres of medical clinics, hospitals, healthcare facilities and K – 12 schools and contemplates a safe access zone fine regime structure.

At its December 8, 2021, meeting, the Executive Policy Committee granted a 120-day extension of time for the Winnipeg Public Service to report back on the matter.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no implications to receiving this report as information.

HISTORY/DISCUSSION

The motion giving rise to the Report was introduced following a large protest in the immediate vicinity of the Health Sciences Centre in opposition to COVID-19 restrictions. In reaction to the protest, there was significant concern in the community about potential harassment, intimidation and coercion of patients, healthcare workers and others attempting to access health services, along with potential traffic congestion and the instruction or impediment of emergency vehicles; all of which could further strain a healthcare system already facing significant challenges from the pandemic.

The Winnipeg Police Service attended 185 special events in 2021, of which 135 were categorized as a “protest/rally.” The most prevalent theme of those was opposition to government policies related to COVID health orders and vaccine mandates. Of these, two protests occurred at or near a school, hospital, or medical facility. This is summarized in the following excerpt from the WPS Special Events Unit – 2021 Yearly Dashboard (below):



On August 24, 2021, a protest in front of the University of Winnipeg attracted about 50 participants. The event organizer was later arrested and charged by members of the Winnipeg Police Service for contravening a Provincial Health Order.

On September 1, 2021, a protest against mandatory vaccines outside of the Health Sciences Centre attracted approximately 1,000 participants and caused disruption to the facility, access thereto, and vehicular traffic flow in the immediate vicinity. Although there were no reports of violence, the WPS response required significant resources to manage the protest. No protestors were subject to charges under the Criminal Code or for contraventions of the existing Provincial Health Orders.

There has not been another protest at a health facility or school within the city since that time.

The WPS approach to protests and demonstrations recognizes the right of citizens to peacefully assemble and draw attention to a variety of issues for the public and/or government to consider. These activities enjoy a level of protection under the Charter of Rights and Freedoms, and are carefully considered by the WPS when contemplating the enforcement of any and all laws (criminal laws, provincial acts or municipal by-laws) during a protest or demonstration.

The WPS attempts to liaise with organizers or apparent leaders of protest events whenever possible, to provide advice focused upon ensuring peaceful events and public safety. Tactical considerations vary depending on a number of factors, including: the size of the crowd, the nature of the gathering, the focus of the issue, and the likelihood that police intervention will be required for community safety, health, and well-being.

The Council motion came after provincial government Bills 207 (*Abortion Protest Buffer Zone Act*) and 239 (*Protest Buffer Zone Act (COVID-19 Restrictions*) were introduced by a member of

the Official Opposition on March 4, 2021, and October 8, 2021, respectively. Bill 207 was defeated on October 14, 2021, and Bill 239 was not proceeded with before the end of the legislative session on October 14, 2021.

Bill C-3 was first introduced in Parliament on November 26, 2021. It was passed and received Royal Assent on December 17, 2021. The two new offences relating to health care facilities came into effect 30 days after Royal Assent.

In consultation with the WPS following the September 1, 2021 event, options were canvassed to determine whether any incremental municipal actions (e.g. by-laws, CAO Orders) would have assisted the WPS in either preventing or managing the protest. The WPS has indicated that in light of Bill C-3 there would be no operational value in a new by-law, because the enforcement tools available to police officers while enforcing the Criminal Code unequivocally exceed any tools that would become available as a result of introducing new by-law requirements or restrictions.

The Criminal Code now includes the following two new offences:

> **Intimidation — health services**
> **423.2** (1) Every person commits an offence who engages in any conduct with the intent to provoke a state of fear in
> (a) a person in order to impede them from obtaining health services from a health professional;
> (b) a health professional in order to impede them in the performance of their duties; or
> (c) a person, whose functions are to assist a health professional in the performance of the health professional's duties, in order to impede that person in the performance of those functions.
>
> **Obstruction or interference with access**
> (2) Every person commits an offence who, without lawful authority, intentionally obstructs or interferes with another person's lawful access to a place at which health services are provided by a health professional.
>
> **Punishment**
> (3) Every person who commits an offence under subsection (1) or (2) is
> (a) guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years; or
> (b) guilty of an offence punishable on summary conviction.
>
> **Defence**
> (4) No person is guilty of an offence under subsection (2) by reason only that they attend at or near, or approach, a place referred to in that subsection for the purpose only of obtaining or communicating information.

When the Manitoba provincial legislative session opened in November 2021, both the *Abortion Protest Buffer Zone Act* (Bill 203) and the *Protest Buffer Zone Act* (Bill 204) were reintroduced by the Official Opposition.

In addition, other provincial legislatures have introduced or passed substantially similar legislation, including the governments of British Columbia, Alberta, Saskatchewan, Ontario, Quebec, and Nova Scotia. Legal Services has performed a jurisdictional scan, attached

herewith as Schedule A. It should be noted that no municipality has enacted such a regulation; these types of legislative schemes have only been enacted at the provincial or federal levels.

Notwithstanding the introduction of these Acts, the police already have the duty to ensure public safety and preserve the public peace, in addition to enforcing existing federal criminal laws, which include offences such as criminal harassment, assault, causing a disturbance, uttering threats, intimidation, mischief, and unlawful assembly.

Supplemental regulation by by-law

Legal Services has been consulted in the preparation of this Report, and is in agreement that the recent Criminal Code amendments present the most effective means to regulate the type of conduct in question.

Should Council direct that a by-law nonetheless be prepared, the Public Service will prepare the same for Council's consideration. Given the Charter of Rights and Freedoms provides some level of protection for the peaceful dissemination of information, any by-law would need to be geared more directly toward the types of conduct that are the subject of the new Criminal Code amendments. A blanket by-law that simply prohibited any protest activity or dissemination of information within a certain proximity to various types of buildings would not be advisable, as it would likely not be legally justifiable.

Community By-law Enforcement Services also advises that in most instances of the types of protests observed in 2021, the WPS is the only appropriate agency to perform any kind of enforcement within a protest zone or area. By-law Enforcement Officers are trained primarily regarding property standards contained within the By-laws they enforce; their training and qualifications are not focused on crowd control, conflict de-escalation, and use of force. In situations where those skills and tools are required, BEOs would typically request WPS assistance.

Conclusion

The Public Service believes the intent of the disposition giving rise to this Administrative Report has been addressed most effectively with amendments to the Criminal Code which came into effect after the disposition. Accordingly, the Public Service recommends that this Report be received as information.

FINANCIAL IMPACT

Financial Impact Statement Date: March 24, 2022

Project Name:
Establishment of Safe Access Zones for Health Care Facilities and Public Schools

COMMENTS:
There is no financial implication associated with receiving this report as information.

"electronically approved by J. Peters"
Jocelyn Peters, CPA, CGA
Manager of Finance (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with:

- Winnipeg Police Service
- Community Services (Community By-law Enforcement Services)
- Legal Services (as to legal issues)

OUR WINNIPEG POLICY ALIGNMENT

Alignment with OurWinnipeg 2045 (awaiting third reading)

Leadership and Good Governance

Objective #1: Establish and implement priority actions through evidence-informed decision-making processes.
Objective #2: Promote trust and government responsiveness through meaningful, inclusive and informed
community engagement.
Objective #3: Achieve community-responsive service delivery through an aligned, integrated, collaborative and results-oriented organizational culture.

1.4 Integrated Knowledge and Resources
1.7 Equitable Service Access
1.10 Representative and Participatory Democracy
1.11 Representative and Participatory Democracy
1.19 Equitable Service Access

Good Health and Well-Being

Objective #1: Enable access to basic needs for good physical and mental health.
Objective #3: Proactively identify and address threats to community safety and well-being.

4.1 Health Equity
4.2 Evidence-Informed Health Action
4.6 Community Safety
4.7 Community Safety
4.9 Inclusive Public Spaces
4.11 Equitable Service Access

Social Equity

Objective #1: Uphold human rights so that no one is left behind.
Objective #2: Build bridges spanning ideas, cultures, identities and generations on a foundation of truth, understanding, and rights-based reconciliation.
Objective #3: Build social cohesion through community development solutions, coordinated, effective partnerships, and responsive service delivery.

5.1 Equitable Service Access

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

N/A

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Goal 6: All City Services are Equitable, Inclusive and Accessible

A. Residents have equitable access to City services, in particular demographic groups who experience marginalization.
C. Use of City's tools and resources are maximized to reduce systemic inequities

SUBMITTED BY

Department: Office of the CAO
Prepared by: M. Jack
Date: March 25, 2022
File No: N/A

Attachment:

Schedule A: Covid-19 “Safe Zones” in Canada: Federal and Provincial Regulation