Agenda – Council – September 29, 2023

Report – Executive Policy Committee – September 21, 2023

Item No. 11 Application of Enforcement Fees under the Neighbourhood Liveability and Vacant Building By-laws to Property Taxes

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 21, 2023, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the draft by-law (attached as Appendix 2) that amends the Neighbourhood Liveability By-law No. 1/2008, the Vacant Building By-law No. 79/2010, and the Municipal By-law Enforcement Act Enabling By-law 59/2016, be approved.

2. That, subject to Recommendation 1 being adopted, Non-Compliant Inspection Fees for third and subsequent inspections under the Neighbourhood Liveability By-law No. 1/2008 be rescinded, and that those fees be deleted from the Fees and Charges Schedule.

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

Agenda – Council – September 29, 2023

Report – Executive Policy Committee – September 21, 2023

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 21, 2023, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

On July 5, 2023, the Executive Policy Committee granted an extension of time of 30 days for the Winnipeg Public Service to report back on options to allow for the addition of unpaid fees related to the administration and enforcement of the Neighbourhood Liveability By-law 1/2008 and the Vacant Building By-law 79/2010, directly onto the property tax bill of offending property owners.

COUNCIL DECISION:

On January 26, 2023, Council concurred in the recommendation of the Standing Policy Committee on Community Services and adopted the following:

1. That the Winnipeg Public Service provide options to allow for the addition of unpaid fees related to the administration and enforcement of the Neighbourhood Liveability By-law 1/2008 and the Vacant Building By-law 79/2010, directly onto the property tax bill of offending property owners.

2. That the Winnipeg Public Service be directed to report back in 180 days to the appropriate Committee of Council.

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

ADMINISTRATIVE REPORT

Title: Application of Enforcement Fees under the Neighbourhood Liveability and Vacant Building By-laws to Property Taxes

Critical Path: Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
W. Yee	C. Fernandes	N/A	M. Jack

EXECUTIVE SUMMARY

The *City of Winnipeg Charter Act* (the "Charter") authorizes Council to pass by-laws and provide enforcement services, including inspections, to enforce provisions of the Charter and the by-laws it passes for determining whether persons are complying with the Charter or by-laws.

The Charter also authorizes Council to establish fees for appeals, permits, licenses, inspections, and other matters in respect of the administration of the Charter or the administration of the affairs of the City.

The Charter provides options for recovery should these fees not be paid but does not allow for these debts to be recovered in the same manner as property taxes (e.g., by imposing liens on real property), except where those fees are utility fees for the provision of water.

Although fees cannot generally be collected in the same manner as property taxes, s. 175 of the Charter allows for the imposition of "monetary penalties" under certain limited circumstances. These monetary penalties may be imposed where there has been a by-law contravention, but only if there is a "fee, rate, charge or cost" that is either associated with the conduct that gave rise to the contravention or related to the enforcement of the by-law. These monetary penalties, in turn, may be recovered in the same manner as property taxes.

Due to the costs associated with repeated inspections of non-compliant properties under the Neighbourhood Liveability and Vacant Building By-laws ("NLB" and "VBB", respectively), the Public Service recommends imposing a monetary penalty on property owners for third and subsequent inspections ("Enforcement Inspections") conducted to enforce NLB and VBB compliance orders. Substituting the Non-Compliant Inspection Fees with these monetary penalties is expected to improve compliance with these two by-laws by penalizing owners who choose to absorb the costs of complying with the order as the Charter authorizes the City to collect monetary penalties in any manner that a property tax is collected.

RECOMMENDATIONS

1. That Council approve the draft by-law (attached as Appendix 2) that amends the Neighbourhood Liveability By-law No. 1/2008, the Vacant Building By-law No. 79/2010, and the Municipal By-law Enforcement Act Enabling By-law 59/2016.

2. That, subject to Recommendation 1 being adopted, Council rescind Non-Compliant Inspection Fees for third and subsequent inspections under the Neighbourhood Liveability By-law No. 1/2008, and that those fees be deleted from the Fees and Charges Schedule.

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

REASON FOR THE REPORT

On January 26, 2023, Council concurred in the recommendation of the Standing Policy Committee on Community Services and adopted the following:

1. That the Winnipeg Public Service provide options to allow for the addition of unpaid fees related to the administration and enforcement of the Neighbourhood Liveability By-law 1/2008 and the Vacant Building By-law 79/2010, directly onto the property tax bill of offending property owners.

2. That the Winnipeg Public Service be directed to report back in 180 days to the appropriate Committee of Council.

IMPLICATIONS OF THE RECOMMENDATIONS

If approved, these changes will not be applied retroactively and all attempts to collect existing outstanding fees will continue to be pursued through existing collection processes and through civil litigation when applicable.

Monetary penalties for Non-Compliant Inspections can be avoidable through compliance with the relevant by-law.

As compliance rates for Compliance Orders improve, the value of monetary penalties issued will decrease.

The Non-Compliant Inspection Fee listed in the Schedule of Fees and Charges, currently set at $243, will be rescinded upon approval of the monetary penalty as outlined in this report.

Additional amendments will also be made to the MBEA to designate “failing to comply with an order” under either the NLB or VBB as a by-law contravention that may be dealt with by a penalty notice. This contravention will be assessed an administrative penalty in the amount of $500 with an early payment option of $250.

HISTORY/DISCUSSION

Community By-law Enforcement Services (CBES) is responsible for the administration and enforcement of several by-laws including the Neighbourhood Liveability By-Law (NLB) and the Vacant Building By-Law (VBB).

The City of Winnipeg maintains a Schedule of Fees and Charges that are charged to the public for their use or consumption of various commodities or services. When there is a failure or refusal to pay these fees, the City may take various measures, including seeking a court order for payment of outstanding fees and discontinuing or disconnecting the service or the means of delivery of the commodity or service, as applicable.

CBES maintains applicable fees and charges as part of that Schedule of Fees (See Appendix 1) which are broken down into three categories, as it relates to the services it provides to the public: 1. License Service Fees; 2. Vacant Building Administration and Enforcement Fees; and 3. General By-law Inspection Fees, which currently includes fees related to the enforcement of the NLB. For the purposes of this report, it will focus on fees on the latter two fee categories, and specifically any fees identified as a cost incurred by the City and related to the enforcement of the NLB and VBB.

The Public Service has reviewed the various methods for collecting the relevant fees and charges, including the option of collecting a fee or charge in the same manner as a tax. While service or commodity related fees cannot generally be added to taxes, Council may impose a monetary penalty for a contravention of a by-law if the penalty relates to a fee, rate, charge or cost that is related to the enforcement of the by-law.

1. Business License Services

The CBES License Branch administers the City's Business License Services to the public for licenses that are required under the Community Safety Business Licensing By-law No. 91/2008 ("CSBL"). This includes any required inspections and approvals that are required prior to any license to be approved and issued to the customers.

As fees under the CSBL must be paid before any license application is processed, and since the Council direction was focused on the NLB and VBB, the public service recommendation does not apply to these fees.

2. Vacant Building Administration and Enforcement

The Vacant Building By-law has fees related to Boarded Building Permits, Occupancy Certificates and Annual Schedule A Maintenance Inspections. These fees are all service fees.

Boarded Building Permit Fees

Schedule B of the VBB regulates how a vacant building must be secured. If a vacant building owner needs to secure their building through the installation of boards, the owner must do so in compliance with Schedule B, including obtaining a Boarded Building Permit.

Should an owner fail to take out the necessary Boarded Building Permit to have their vacant building boarded and subsequently fail to comply with a VBB Compliance Order to obtain the necessary Boarded Building Permit, the by-law authorizes By-law Enforcement Officers to remediate this violation by obtaining the permit on an owner's behalf. Given that the drawing of a permit is an additional and unusual cost to the City, above the normal cost of enforcing the VBB, the City has also implemented a monetary penalty as a deterrent to the owners. If no monetary penalty were put in place, the owners of vacant buildings could simply allow the City to take the action (drawing a permit) that they should be doing themselves. With the monetary penalty in place, such owners may be deterred from avoiding that responsibility.

The remediation costs to obtain the permit and the monetary penalty of $1000 for boarding a building without a permit are both associated with the City's cost of enforcing the bylaw. As a result, CBES is able to collect this debt in the same manner that a property tax is collected.

Occupancy Certificate Fee

Similar to business licenses, an Occupancy Certificate will not be issued until the associated fee has been paid in full and therefore the payment and collection issues that this report is addressing are not applicable.

Annual Schedule A Inspection Fees

CBES provides a passive monitoring regime of vacant buildings for compliance with the VBB through an annual inspection program, which is a benefit to the public and emergency services. CBES, at a minimum, will conduct a full inspection of all vacant buildings once per calendar year to confirm if a building is still vacant and is maintained in compliance with the VBB, both inside and outside of the building.

Schedule A Inspection Fees are charged directly to vacant building owners to recover some of the service costs of maintaining a dedicated enforcement unit that is responsible for conducting the annual inspections and to regularly monitor for compliance by vacant building owners in the city.

The Schedule A Inspection is assessed at a fee rate that reflects an owner's compliance with the VBB at the time of each Schedule A Inspection. The VBB limits the application of this fee to a maximum of one charge per calendar year.

The Schedule A Inspection Fee is a service fee and the Charter provides options that can be pursued should these fees not be paid. The Public Service has reviewed this inspection fee and the Charter does not allow for this type of fee to be collected in the same manner as a property tax.

Empty Building Fee

The Empty Building Fee was approved by Council to be charged to the owners of long-term vacant buildings in 2019. The intent of Council was to address the number of vacant buildings that was monitored by the City, deter vacant building owners from keeping their buildings vacant for extended periods of time, and to financially impact the owners of long-term vacant buildings to encourage them to use the building for its intended use or otherwise occupy the building.

The Charter does not allow for this type of fee to be collected in the same manner as a property tax.

3. **General Bylaw Enforcement Service**

CBES delivers a General Bylaw Enforcement Service that responds to public complaints regarding the compliance and enforcement of by-laws. This service is delivered through a Three-Stage Bylaw Enforcement Process which are: Stage 1 - Investigation; Stage 2 - Compliance; and Stage 3 - Enforcement.

Stage 1 and the related activities to investigate including any necessary inspections are all done to determine if a contravention of a by-law has occurred or continues to occur. There are no service fees charged at this stage.

Stage 2 and the related activities to notify and order a person to come into compliance with a by-law include the issuance of a compliance order. There are no services fees to produce, mail or serve the compliance order. The necessary inspection to confirm that the compliance order was responded to, and all contraventions had been corrected is also conducted without any service fees charged to the complainant or the person in contravention of a by-law.

If a compliance order is responded to in full, then the service for that complaint would be completed and CBES would not charge any service fees to the owner to perform the activities related to investigating and attempting to obtain voluntary compliance.

When a person fails to comply with an order under a by-law that CBES is responsible for enforcing, such as the NLB and the VBB, CBES will begin to conduct Stage 3 Enforcement Activities.

Activities conducted under Stage 3 Enforcement are a consequence of a person's failure to comply with a by-law. Actions at Stage 3 include: the issuance of tickets (under the *Provincial Offences Act*) and penalty notices (under the *Municipal By-law Enforcement Act*) that may result in fines or penalties being imposed; remediation measures taken by the City to correct a contravention; and ongoing Enforcement Inspections to be conducted until such time that a compliance order has been responded to in full.

Costs Related to Remediation Action

CBES will enforce specific provisions of the by-laws under its jurisdiction, and the Charter authorizes the imposition of a monetary penalty related to the costs of the remediation action taken in order to bring a condition into compliance with a by-law.

CBES will remediate Vegetation (Long Grass), Garbage Accumulation, and Vacant Building Security (Schedule B) compliance orders. The NLB also imposes additional monetary penalties of $100 when the City has to remediate vegetation contraventions as an additional method to promote future compliance with this by-law. A monetary penalty in the amount of $1000 is also applied when the City remediates Vacant Building Security Boarding Permit contraventions, by taking out the required Boarded Building Permit on behalf of the owner.

The costs of remediating those contraventions, including administrative costs, are currently collected by the City in the same manner that it collects property taxes, as are any monetary penalties that are issued in addition to those remedial costs. Monetary penalties deter potential by-law contraveners from relying on City services to ensure their properties comply with the relevant by-laws. If only the direct costs of the services are recoverable, then owners may choose to let the City ensure compliance instead of taking proactive steps to comply on their own. Additionally, where these services are provided by the City and an owner refuses or is unable to pay, that cost is borne by taxpayers. The use of monetary penalties in this context may be more effective in ensuring the costs of remediation are borne by the person responsible for the applicable by-law contravention.

Enforcement Inspections and Non-Compliant Inspection Fees

In 2019, Council approved recommendations included in an Administrative Report titled: **Strategies and Tools to Enhance Neighbourhood Liveability** that detailed strategies or tactics to further promote voluntary compliance and deter repeat or long-term non-compliance of the NLB and VBB.

Prior to this, CBES did not charge any service fees for the ongoing Stage 3 - Enforcement Inspections that were conducted to determine if a compliance order was eventually complied with or further enforcement action such as tickets needed to be issued. Regardless of the number of failed Enforcement Inspections CBES conducted, the cost of additional inspections to enforce an outstanding compliance order was not recovered in any manner.

One recommendation Council approved. was to impose a new inspection fee to recover costs on behalf of the City of Winnipeg and to act as a deterrent to ongoing non-compliance.
The Non-Compliant Inspection Fee has since been applied as a service fee under the NLB. The Charter provides options for debt collection should these fees not be paid but does not allow for such fees to be directly recovered in the same manner as property taxes.

This fee was implemented in Spring of 2020 and as of May 12, 2023, CBES has conducted 2865 inspections that were eligible to be charged this fee for the total amount invoiced of approximately $619,000; approximately $434,000 remains unpaid.

Monetary Penalty for Failing to Comply with An Order

As it was Council's intent to impose the Non-Compliant Inspection Fee to act both as a deterrent to ongoing non-compliance and as a means of recovering costs related to the enforcement of a by-law, the Non-Compliant Inspection Fee is a fee related to the enforcement of a by-law. As a result, the Public Service recommends that monetary penalties be imposed after any inspection where an enforcement officer determines that an owner has failed to comply with a Compliance Order issued under the NLB or VBB and subsequently issues an MBEA Penalty Notice for Failing to Comply with an Order.

These monetary penalties will be set to $250 dollars per inspection, which reflects the approximate cost to the City of conducting such inspections.

If the amending by-law is approved, Council will exercise its authority to impose monetary penalties for failing to comply with NLB and VBB Compliance Orders. Similar to the existing service fees for non-compliant inspections under the NLB, these monetary penalties would be representative of the costs the City incurs to conduct these additional, but avoidable, inspections and the City could collect these monetary penalties in the same manner as, and with the same priorities, as a property tax is collected.

These new monetary penalties would not be subject to appeal to any committee of Council, but a property owner will receive a mandatory refund of a monetary penalty should they have all related penalty notices cancelled pursuant to the Municipal By-law Enforcement Act.

Additional amendments will be made (as referenced in Recommendation 1) so that MBEA Tickets for “Failing to Comply with an Order” can be issued under the MBEA Enabling By-law. These amendments will also align the penalties under both by-laws at $500 where currently failing to comply with a VBB order can result in escalating provincial fines of $500 to $2000 or a maximum provincial fine of $5000 for failing to comply with an NLB order.

FINANCIAL IMPACT

Financial Impact Statement Date: August 17, 2023

Project Name:
Application of Enforcement Fees under the Neighbourhood Liveability and Vacant Building By-laws to Property Taxes

COMMENTS:

There are no material financial implications or budget adjustments required as a result of the recommendations contained within this report.

The monetary penalties imposed for failing to comply with an order as a result of the by-law amendments proposed in recommendation 1 will improve the probability of collections, as the monetary penalties will be collected in the same manner as property tax is collected. In addition, the amendment to the by-law will further act as a deterrent to continued non-compliance by property owners to avoid the imposition of the penalty.

Ryad Ali on behalf of Ozzy Garrett on August 17, 2023
Ozzy Garrett CPA, CGA
Manager of Finance
Community Services Department

CONSULTATION

This Report has been prepared in consultation with:

- Legal Services (as to legal matters)

OURWINNIPEG POLICY ALIGNMENT

Goal: Good Health and Well-Being

Policy 4.8 Building Safety

Enforce compliance with building codes and property maintenance standards, to ensure housing quality, safe building occupancy, and extended building lifecycles. (LG, ER, SE, CB)

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Climate Action Plan (CAP), and it was determined that the CAP is not applicable to this specific report.

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Poverty Reduction Strategy (PRS) and its Goals and Objectives, and it was determined that the PRS is not applicable to this specific report.

SUBMITTED BY

Department: Community Services
Division: Community By-law Enforcement Services
Prepared by: John Lorbis, Coordinator Business Supports & Enforcement Processes
Date: August 17, 2023
File No: CMS-2023-15

Attachments:
Appendix 1 –CBES 2023 Fees and Charges

Appendix 2 – Amending By-law