Agenda – Executive Policy Committee – October 17, 2023

Report – Standing Policy Committee on Public Works – October 10, 2023

Moved by Councillor

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than four business days preceding the committee meeting, be considered by Committee.

Item No. 1 Collection Powers for Fines Issued Under The Municipal By-law Enforcement Act and The Provincial Offences Act

STANDING COMMITTEE RECOMMENDATION:

On October 10, 2023, the Standing Policy Committee on Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the Province of Manitoba be requested to make the necessary legislative and/or policy amendments to:

    A. Allow the Registrar of Motor Vehicles to refuse to issue or renew the driver's licence and/or vehicle registration of an individual who has outstanding fines issued under The Municipal By-law Enforcement Act or The Provincial Offences Act;

    B. Allow the Registrar of Motor Vehicles to refuse to accept insurance premiums from a registered vehicle owner who has outstanding fines issued under The Municipal By-law Enforcement Act or The Provincial Offences Act, even if refusal results in cancellation of insurance;

    C. Allow the City to add any outstanding fines issued under The Municipal By-law Enforcement Act or The Provincial Offences Act to a property owner's property taxes; and

    D. Waive the fee for filing a certificate in the Court of King's Bench in accordance with section 23(1) of The Municipal By-law Enforcement Act.

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

Agenda – Executive Policy Committee – October 17, 2023

Report – Standing Policy Committee on Public Works – October 10, 2023

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On October 10, 2023, the Standing Policy Committee on Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Collection Powers for Fines Issued Under The Municipal By-law Enforcement Act and The Provincial Offences Act

Critical Path: Standing Policy Committee on Public Works – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Topolniski	J. Berezowsky	C. Kloepfer	M. Jack

EXECUTIVE SUMMARY

Manitoba municipalities may enforce their by-laws through either of two Provincial statutes: *The Municipal By-law Enforcement Act* (MBEA) or *The Provincial Offences Act* (POA). The Province requires that all parking-related by-law offences be enforced via the MBEA rather than the POA, but the City may choose either option for non-parking offences (e.g. allowing garbage to accumulate on a property, failing to keep a dog on its leash, having untrimmed grass on a property, etc.).

These Acts differ in how they allow the City to collect unpaid fines. The City may register a lien on the personal property (e.g. a vehicle) of someone with outstanding fines under the MBEA, and the property may be seized and sold to cover the debt. The City may also file a certificate with the Provincial court to protect the debt from bankruptcy and allow the City to garnish the debtor's income. However, this is a labour-intensive process with a significant cost to the City.

By contrast, when someone has outstanding fines for provincial offences under the POA, the Registrar of Motor Vehicles may refuse to issue or renew their driver's licence and/or vehicle registration. The Manitoba Public Insurance Corporation (MPI) may also refuse to accept payment of the insurance premiums for any vehicle owned by the debtor. However, these two remedies are only available for fines owed to the Province and cannot be used for municipal by-law offences, including parking tickets[1].

Separate from the collection tools for fines, *The City of Winnipeg Charter* allows the City to add certain inspection and property remediation costs to the property taxes of offenders. The City may collect these costs in the same manner as taxes. Outstanding fines issued under the MBEA or POA are not eligible for inclusion on a property tax bill.

[1] The MBEA allows for the enforcement of by-law offences through a 'penalty notice' while the POA allows for enforcement of offences through either a 'ticket' or an 'information'. For the purposes of this report, all documents through which a monetary fine is levied for contravention of a City by-law will be referred to as 'tickets'.

The cost of the City's inability to use all of the collection tools available for other types of fines and fees is significant. This report recommends Council request the Province of Manitoba to make any legislative and/or policy changes needed in order for the City to add by-law fines to property taxes and for MPI to deny a driver's licence, vehicle registration, and insurance to anyone with outstanding fines for City by-law offences. If approved, the City would work with the Province to determine appropriate policies for the application of these debt collection tools. This report also recommends that Council request the Province to waive its fee for filing certificates with the court. In requesting these amendments, the City would be seeking only the same remedies currently used by the Province to collect fines related to Provincial offences and by the City to collect outstanding property remediation costs.

Vehicle owners with multiple tickets make up a significant portion of outstanding parking fines. The Winnipeg Parking Authority (WPA) intends to implement a new policy whereby a vehicle found in violation of one of the City's parking regulations will be towed and impounded immediately if its owner already has three or more unpaid parking tickets. These vehicles will be held until the cost of the tow and any administrative fees are paid. The WPA also intends to continue refusing to issue parking permits to anyone with outstanding parking tickets.

RECOMMENDATIONS

1. That the Province of Manitoba be requested to make the necessary legislative and/or policy amendments to:

    a. Allow the Registrar of Motor Vehicles to refuse to issue or renew the driver's licence and/or vehicle registration of an individual who has outstanding fines issued under *The Municipal By-law Enforcement Act* or *The Provincial Offences Act;*

    b. Allow the Registrar of Motor Vehicles to refuse to accept insurance premiums from a registered vehicle owner who has outstanding fines issued under *The Municipal By-law Enforcement Act* or *The Provincial Offences Act*, even if refusal results in cancellation of insurance;

    c. Allow the City to add any outstanding fines issued under *The Municipal By-law Enforcement Act* or *The Provincial Offences Act* to a property owner's property taxes; and

    d. Waive the fee for filing a certificate in the Court of King's Bench in accordance with section 23(1) of *The Municipal By-law Enforcement Act*.

2. 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

Only Council may request amendments to Provincial legislation on behalf of the City.

IMPLICATIONS OF THE RECOMMENDATIONS

If the Province were to accede to Council's requests as recommended in this report, there is every reason to believe that the WPA would have greater success in collecting unpaid fines and encouraging compliance with City by-laws.

HISTORY/DISCUSSION

The Provincial Offences Act and The Municipal By-law Enforcement Act

Manitoba municipalities are able to enforce their by-laws through either of two Provincial statutes: *The Provincial Offences Act* (POA) and the *The Municipal By-law Enforcement Act* (MBEA). The POA may be used to enforce municipal by-laws as well as Provincial Acts and regulations, while the MBEA applies exclusively to municipal by-law offences.

The two Acts also differ in terms of the powers available to the City for the purpose of collecting unpaid fines. When someone has outstanding fines issued under the MBEA, the City may register a lien on their personal property (i.e. their vehicle). If the fine still remains unpaid, the City may seize that property and sell it to cover the debt. (Note: vehicle seizures and auctions are conducted by a contracted agent on behalf of the City.) The City may also file a certificate of judgement with the Provincial court. The certificate protects the debt from bankruptcy and allows the City to garnish the debtor's income. However, filing these certificates and implementing the related debt collection tools for the substantial number of outstanding fines issued under the MBEA would present a significant administrative burden and cost to the City.

By contrast, when an individual has outstanding fines from tickets issued under the POA and the Province has issued a notice to the debtor demanding payment by a specific deadline, the Act enables the Registrar of Motor Vehicles to refuse to issue or renew their driver's licence and/or vehicle registration. Manitoba Public Insurance (MPI) may also refuse to accept payment of the premiums for insurance of any vehicle owned by the debtor, even when the refusal may lead to the insurance being cancelled. However, these two remedies can only be applied when the Province notifies the debtor that they will be used unless the fines are paid by a specific deadline. This means that these remedies are only available for POA fines owed to the Province, not to the City. Fines issued under the MBEA – which is the only way parking offences can be enforced – are not eligible for these debt collection measures.

Other key differences between these enforcement frameworks include the venue in which appeals are heard (the recipient of a ticket issued under the POA for a City by-law offence may contest it in Provincial court, whereas the recipient of a ticket issued under the MBEA may contest it before a City screening officer and Provincially-appointed adjudicator) and the maximum fine amounts (MBEA offences must have a set fine of no more than $1,000, whereas POA offences may have much higher discretionary fine amounts set by the Provincial court on a case-by-case basis).

Current Enforcement Fine Collection Rate and Outstanding Fine Accumulation

The cost to the City resulting from the inability to access Provincial fine collection tools is significant. The Winnipeg Parking Authority's (WPA) enforcement fine collection rates in 2021 and 2022 were 77 percent and 79 percent, respectively. While the WPA does make use of the

collection powers provided under the MBEA (i.e. liens and vehicle seizures), the total amount of unpaid parking fines has increased steadily by a total of 28 percent, or $1.8 million, between 2016 and June 2023. This trend has occurred despite a significant reduction in the number of tickets issued in 2020 and 2021 when the City offered one hour of complimentary on-street paid parking and relaxed residential time limits in response to COVID-19. As of June 30, 2023, the total amount of outstanding City by-law tickets (for both parking and non-parking offences) was approximately $12 million. This suggests that the mechanisms currently available to pursue outstanding fines are insufficient for a substantial number of offenders.

Driver's Licence, Registration, and Insurance Denial

The MBEA contains a provision requiring that municipalities use it, rather than the POA, to enforce all parking offences. Municipalities may also decide to use the MBEA to enforce other non-parking offences with set fines of no more than $1,000. Any offences not explicitly listed in the City's MBEA Enabling By-law are enforceable under the POA. The City is prosecuting an increasingly large proportion of its by-law offences under the MBEA rather than the POA, because the MBEA offers a more expeditious process for enforcement and appeals.

Before the MBEA and POA came into force in 2016, by-law offences were enforced under *The Summary Convictions Act* (SCA). While the denial of a driver's licence, registration, and insurance could be used to facilitate fine collection under the SCA, the Province never employed this tool for tickets that were issued for municipal by-law offences. When the SCA was repealed and replaced by the MBEA and POA, these debt collection powers were not extended to offences issued under the MBEA. They are, however, available for offences enforced under the POA, but the process by which these remedies may be used means they can only be applied to fines issued for Provincial offences. In requesting amendments to legislation and existing policy that would see the Registrar of Motor Vehicles deny a driver's license, registration, or insurance to those with outstanding fine debt from municipal by-law offences, the City would be seeking the same remedies currently in use by the Province to collect on fines related to Provincial offences.

The denial of a driver's licence or vehicle registration is used across Canada to enforce court judgements, and several other Canadian jurisdictions also employ these tools to encourage the payment of fines for municipal by-law offences. Municipalities in Alberta and Ontario, for example, can deny licence plate renewal to a vehicle owner who has outstanding tickets issued for parking offences or moving violations. The denial of insurance is less common, but this can likely be attributed at least in part to the challenge of implementing the practice in provinces that do not require drivers to purchase their insurance from a single Crown corporation.

In 2020, the City entered into an information sharing agreement with the Manitoba Public Insurance Corporation to help support mutually beneficial enforcement practices. If the appropriate legislative authorities were granted, this agreement could help to expedite the implementation of licence, registration, and insurance denial as a tool to encourage the timely collection of fines. The WPA met with colleagues at MPI in November 2022 to discuss the prospect of implementing licence, registration, and insurance denial. Aside from the legislative issues, no significant operational barriers were immediately apparent.

Addition of Fines for Municipal By-law Offences to Property Taxes

The City of Winnipeg Charter empowers the City to add several types of costs associated with the enforcement of municipal by-laws to the property taxes of offenders, and to collect those

costs in the same manner as the taxes. Examples of items that may be added to property taxes include inspection fees and the costs of remediation for property offences. However, outstanding fines for municipal by-law offences are not eligible for inclusion on a property tax bill, other than certain 'monetary penalties' that can be added to taxes in limited circumstances (in accordance with section 175(d)(i) of the Charter). As a result, collecting on the fines incurred by some outstanding debtors can be a significant challenge. In the case of property-related offences in particular (e.g. allowing garbage to accumulate on a property, allowing nuisance and unsanitary conditions on a property, having untrimmed grass on a property, etc.), the outstanding fine amounts can be significant. The total balance owing for property-related offences from the top ten outstanding accounts alone is approximately $211,000.

Collecting Unpaid Fines as a Judgment of the Court of King's Bench

The POA and MBEA allow the City to issue a certificate showing the name of a debtor and the total amount of any unpaid fines, and to file that certificate in the Court of King's Bench. Once filed, the certificate becomes a judgment of the Court and may be enforced as such. Filing a certificate gives the City access to fine collection remedies such as garnishment of wages and bank accounts. However, engaging in this process for the high volume of unpaid tickets would represent a significant administrative burden for the City and the Provincial court. There is also a $30.00 fee for filing a judgement with the Court of King's Bench. This report recommends requesting the Province to waive the filing fee for municipal by-law offences. Otherwise, the amount would need to be recouped from the applicable debtors. The WPA has engaged Manitoba Justice to discuss the options and process for filing certificates of judgement. The power to garnish wages and bank accounts may be appropriate for those with large outstanding debt amounts but, given the significant administrative processes required for garnishment, the WPA does not believe it will be ideal for broader use with all POA and MBEA fines.

Other Fine Collection Measures

While the recommended improvements to the City's fine collection powers will require amendments to Provincial legislation, other mechanisms that are permissible under existing laws can be rolled out in the interim. Vehicle owners with multiple outstanding tickets account for a substantial portion of the total amount of parking fines owing. As of June 2023, there were more than 9,800 accounts with three or more unpaid parking tickets that have passed the window when the vehicle owner could have requested a review by a City screening officer or Provincial adjudicator. The total amount owing from these unpaid tickets is more than $3.6 million.

In 2023, the WPA intends to implement a policy, in accordance with *The Highway Traffic Act* and its authority under section 64 of the Winnipeg Parking By-law No. 86/2016, whereby vehicles that are parked illegally on city streets will be towed and impounded immediately if their owners have three or more unpaid tickets for prior parking offences.

Once their vehicles are impounded, vehicle owners will need to pay the towing fee and any related administrative fees in order to retrieve their vehicles (not the full outstanding fine amount). The intent is for this policy to provide a stronger incentive to pay outstanding fines.

This tow policy will not be applied to any vehicles displaying a valid accessible parking permit, nor to rental or carshare vehicles whose current drivers are likely not the ones responsible for incurring the outstanding fines. Furthermore, being parked in contravention of a residential parking ban will not trigger an immediate tow. This exemption is meant to ensure the primacy of

snow-clearing operations, as the time required for a tow truck to move a vehicle to an impound lot instead of performing a courtesy tow to an adjacent block would unduly hinder the tow truck's ability to remove other vehicles from routes designated for immediate plowing.

The WPA has worked with Corporate Communications to develop a one-time mail-out that will be sent to vehicle owners with three or more outstanding parking tickets prior to the implementation of this policy. That way, vehicle owners will have ample opportunity to pay their outstanding fines and avoid the risk of an automatic tow for any subsequent offences. The mail-out also reminds vehicle owners of the City's ability to register a lien on their vehicles and informs them that the WPA will refuse certain parking-related services such as parking permits to anyone with outstanding parking fines. A warning will also appear on all parking tickets going forward, so that vehicle owners are aware of the risk of being towed if they have accrued multiple unpaid fines.

The City will continue to employ its existing debt collection remedies along with this new tow policy, but the restriction of driving privileges and the addition of fines to property taxes as recommended in this report will ultimately be far more effective tools. If the Province supports the City's request for these additional collection powers, the WPA will develop an internal policy to ensure that a fair and consistent process is followed with respect to which measures are employed for fines related to a given offence (e.g. using the denial of a driver's licence as a primary collection method for parking-related offences and the addition of fines to property taxes for property-related offences).

FINANCIAL IMPACT

Financial Impact Statement Date: July 20, 2023

Project Name:
Collection Powers for Fines Issued Under The Municipal By-law Enforcement Act

COMMENTS:

There are no immediate financial implications from recommendations in this report. Since there is no historical information at this time it is difficult to predict how and when implementation of these recommendations will effect collection rates as well as compliance with City bylaws. It is anticipated that both collection rates and compliance will improve. Future financial impacts, if any, will be included in WPA's operating budgets as part of the regular budgeting process.

Lioubov Gavrilova-Crozier, July 20, 2023
Lioubov Gavrilova-Crozier, CPA, CA
Manager of Finance, Parking Authority

CONSULTATION

This Report has been prepared in consultation with:

- Legal Services
- Assessment & Taxation (with respect to the addition of fines to property taxes)

OURWINNIPEG POLICY ALIGNMENT

Accepting the recommendations in this report to enhance the City's ability to collect on outstanding fines will support the OurWinnipeg 2045 goal of *Leadership and Good Governance*, Policy 1.8- Accountable Revenue Generation.

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

Goal 1- Equity and a culture of caring are demonstrated through strategy implementation and systems change.

SUBMITTED BY

Department: Public Works
Division: Winnipeg Parking Authority
Prepared by: L. Gavrilova-Crozier/D. Locke
Date: September 12, 2023
File No: WPA-006-2023