Agenda – Executive Policy Committee – January 16, 2024

Report – Standing Policy Committee on Public Works – January 9, 2024

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. 3 Public Works – Streets By-Law Enforcement

STANDING COMMITTEE RECOMMENDATION:

On January 9, 2024, the Standing Policy Committee on Public Works concurred in the recommendation of the Winnipeg Public Service, as amended, and submitted the following to Council:

1. That Council enact a by-law to amend the MBEA Enabling By-law No. 59/2016, a draft of which is attached as Appendix A to this report.

2. That the Winnipeg Public Service be directed to conduct a cross jurisdictional analysis to determine best practices in other cities, and report back in 150 days on:

    A. A list of options to upgrade the existing Program.

    B. The cost of an upgraded program.

3. 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 – January 16, 2024

Report – Standing Policy Committee on Public Works – January 9, 2024

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On January 9, 2024, the Standing Policy Committee on Public Works concurred in the recommendation of the Winnipeg Public Service with the following amendment:

- That the following new Recommendation be added, and the remaining Recommendation be renumbered accordingly:

    "2. That the Winnipeg Public Service be directed to conduct a cross jurisdictional analysis to determine best practices in other cities, and report back in 150 days on:

        A. A list of options to upgrade the existing Program.

        B. The cost of an upgraded program."

and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Public Works – Streets By-Law Enforcement

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

AUTHORIZATION

Author	Department Head	CFO	CAO
D. Patman, P. Eng.	J. Berezowsky	C. Kloepfer	M. Jack

EXECUTIVE SUMMARY

The *Municipal By-law Enforcement Act* (MBEA) allows the City to give penalty notices when people disobey rules listed in the MBEA Enabling By-law 59/2019. Each rule within the by-law has a specific penalty to prohibit people from breaking it.

In 2017, 17 violations from the Streets By-law 1481/77 were added to the MBEA Enabling By-law. The penalties for these 17 violations have not since been updated. Currently, many people still break these right-of-way-related rules.

The Public Service believes that one reason for this is that the penalties (costs) are too low to be effective.

This report recommends changes to the penalties for the 17 right-of-way-related violations. Recommendations include:

- Increasing the cost for disobeying these rules;
- Removing the early payment discount for each penalty; and,
- Adding new violations to the MBEA Enabling By-law.

It is expected the changes will prohibit people from breaking the bylaw. The changes will also allow staff time to be used more effectively.

RECOMMENDATIONS

1. That Council enact a by-law to amend the MBEA Enabling By-law No. 59/2016, a draft of which is attached as Appendix A to this report.

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

Changes are required to increase compliance with 17 right-of-way-related infractions within the MBEA Enabling By-Law.

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

IMPLICATIONS OF THE RECOMMENDATIONS

The proposed changes to the MBEA Enabling By-law may generate a small increase in revenue due to the increased fine amount; however, the value of the increase is indeterminable at this time. The primary desired outcome of this change is improving the effectiveness of the fines as a deterrent to non-compliance.

HISTORY/DISCUSSION

Municipal By-law Enforcement Background

The Municipal By-law Enforcement Act (MBEA) allows the City of Winnipeg to issue penalty notices for contraventions of City-designated bylaws. For this purpose, the MBEA Enabling By-Law No. 59/2016 was enacted in 2016. Initially, only parking offences were included. The by-law has since been amended to include administrative penalties for contraventions of other City bylaws.

In 2017, the City's MBEA Enabling By-Law was amended to include 17 right-of-way-related contraventions from the Streets By-law. Administrative penalties for these contraventions have not been changed since 2017.

Streets By-law and Traffic By-law Enforcement

Four special constables are assigned to enforce bylaws related to the right-of-way. Three focus on residential issues on local and collector streets and one is dedicated to enforcement on regional roads.

Enforcement complaints come from a variety of sources. Many cases are assigned through the City's 311 system, while others may come from contacts in the construction industry or members of the Public Service involved in monitoring and managing traffic. Cases are assessed and prioritized based on safety, traffic impact, source of request, difficulty, and location. Severe safety concerns should be addressed as soon as possible.

Enforcement outcomes depend on the severity of the incident and the history of the offender. Enforcement outcomes can range from a phone call warning to a written order or charges. The most serious responses can include stop work orders, Municipal By-law Enforcement Act penalty notices, Provincial Offences Act charges, and compliance orders.

The financial penalties for bylaw infractions are intended to deter non-compliance. It would appear that one reason for non-compliance is the insignificant amount of the penalties. In some cases, an offender is issued a penalty for not obtaining the proper permit; however, the penalty is similar to the cost of the permit and, as a result, the permit process becomes ineffective.

For example, if a private contractor was to block a sidewalk and a lane of traffic on a regional road for a purpose related to a private business (e.g., using a crane to erect a sign), they would require a basic Use of Street Permit for construction. This would cost around $128. Blocking the roadway without a permit is a violation of the Streets By-law and the administrative penalty in the MBEA Enabling By-Law is $250, or $150 with the early payment discount. If the contractor meets the requirements of the early payment discount, the penalty (i.e., that difference in cost between the permit and the fine) for getting caught in contravention of the by-law is only $22.

The most common infractions are contractors that do not have the proper temporary traffic control setup, do not have permission to occupy a portion of the street, or who do not properly repair the street when an excavation is made. These are typically contractors hired by private developments and not City of Winnipeg managed or administered contracts.

Recommended changes to administrative penalties

Table 1 shows the changes the Public Service recommends be made to administrative penalties for the MBEA Enabling By-Law.

The proposed changes:

- Remove the early payment discount for all penalties in the Streets By-law;
- Increase fines for some provisions; and,
- Introduce a tiered fine for individuals and corporations for some provisions.

The new fine amounts are set with consideration for the cost of any related permits, the incremental cost of acting in compliance with the by-law, and the impact to safety.

The proposed increases to administrative penalties would make the deterrent of the fine more effective when other means have failed. They would also make more effective use of the limited resources available to enforce these right-of-way infractions.

Table 1 - Proposed Changes to Administrative Penalties

Streets By-law, By-Law No. 1481/77		Administrative Penalty (Current)		Administrative Penalty (Proposed)	
Provision	Contravention summary	Administrative Penalty ($)	Early Payment Discount ($)	Administrative Penalty ($)	Early Payment Discount ($)
2.02.01(a)	Throw, pile, deposit, or leave any articles, merchandise, water or material on a street.	250	150	250	n/a
2.02.01(b)	Carry out or permit any action causing or resulting in the creation of a nuisance in a street.	250	150	Individual – $250 Corporation - $500	n/a
2.03(a)	Deposit or permit to be deposited, fall or spill earth, stone, refuse, garbage or other solid waste, or	100	75	250	n/a

	other substance from a vehicle onto a street.				
2.03(b)	Allow mud, clay or other material to be deposited in a street from the wheels of a vehicle.	100	75	250	n/a
2.08	Move snow and ice from private property onto a street.	150	100	Individual – $150 Corporation - $400	n/a
2.13.01	Allow door or gate to swing into street.	250	150	250	n/a
3.01	Excavate or landscape in a street, make a street cut, repair or construct paved or unpaved roadway or shoulder surfaces or sidewalks, construct or repair drainage ditches, water, wastewater and storm sewer pipes without a licence.	350	250	500	n/a
4.01.01(a)	Engaging in an activity, including parking or stopping a vehicle in a street, that obstructs vehicular traffic on a street without a Use of Street Permit.	250	150	Individual – $250 Corporation - $500	n/a
4.01.01(b)	Engaging in an activity that obstructs pedestrian traffic on a roadway or sidewalk without a Use of Street Permit.	250	150	Individual – $250 Corporation - $500	n/a
4.01.01(c)	Engaging in a commercial transaction on a street without a Use of Street Permit.	250	150	250	n/a
4.01.01(d)	Depositing or storing equipment, materials, garbage, waste materials or any other thing on a street	250	150	250	n/a

	without a Use of Street Permit.				
4.01.01(e)	Engaging in work on or over a street, including operating equipment on or over a street without a Use of Street Permit.	250	150	250	n/a
4.01.01(f)	Erecting a fence, hoarding or protective cover on or over a roadway or sidewalk without a Use of Street Permit.	250	150	250	n/a
4.01.01(g)	Erecting or operating a construction crane which extends over a street in any way without a Use of Street Permit.	250	150	250	n/a
4.01.05	Install street furniture without Use of Street Permit.	250	150	250	n/a
4.06.03	Violation of a condition imposed on Use of Street Permit.	350	250	500	n/a
4.12.01(1)	Make a street cut(s) on a block without a Street Cut Permit.	150	100	750	n/a
4.12.01(3)	Fail to apply for a street cut permit as soon as possible after emergency work carried out.	100	50	100	n/a
4.13.02	Fail to comply with Manual of Temporary Traffic Control when working in or obstructing the normal use of a street.	250	150	Individual – $250 Corporation - $850	n/a
5.01.01	Driving vehicle across a sidewalk, boulevard or curb without a Crossing Permit.	350	250	Individual – $250 Corporation - $850	n/a
7.04.01	Interfere with official or other individual acting under authority of the By-law.	250	150	250	n/a

7.04.02	Refuse to exit vehicle that is subject to removal of s. 7.02.	250	150	250	n/a

New Contraventions in the MBEA Enabling By-Law

The Public Service is also recommending two provisions of the Streets By-law become enforceable through the MBEA. These two provisions relate to street cuts, which are required when a private contractor must cut or excavate pavement. This is typically to provide access to an underground utility. Table 2 shows the proposed additions to the MBEA Enabling By-Law and their administrative penalties.

Table 2 - Proposed additions to the MBEA Enabling By-Law

Streets By-law, By-Law No. 1481/77		Administrative Penalty (Proposed)	
Provision	Contravention summary	Administrative Penalty ($)	Early Payment Discount ($)
4.12.02(2)	Failure to make a street cut in compliance with the Street Cuts Manual	850	-
4.12.03	Failure to maintain a temporary restoration	850	-

Requested Changes

At a briefing on December 6, 2023, an earlier draft of this administrative report was reviewed by Mayor's Office staff and the following revisions were requested:

- Add information regarding statistics for frequent violators.

Note that the above information is not available as of the writing of this report, and the Public Service will speak to the matter when this report is considered by the SPC.

FINANCIAL IMPACT

Financial Impact Statement Date: November 24, 2023

Project Name:

Public Works – Streets By-Law Enforcement

COMMENTS:

No financial implications are expected from the recommendations of this report.
Revenue impacts due to the change in fines are not determinable at this time.

J. Ruby, 2023-11-30
J. Ruby CPA, CA
Manager of Finance & Administration

CONSULTATION

This Report has been prepared in consultation with:

- Legal Services
- Winnipeg Parking Authority

OURWINNIPEG POLICY ALIGNMENT

This report is in accordance with OurWinnipeg2045 as per:

- Policy 4.10 Transportation Safety: Design, construct, maintain, and regulate an integrated and sustainable transportation system and related infrastructure that optimize safe, connected and reliable mobility, and minimize severe injuries and fatalities for all road users.

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: Public Works
Division: Transportation
Prepared by: Greg Blatz, P. Eng.
Date: November 30, 2023

Attachments:
Appendix A - DRAFT MBEA Enabling By-law – Streets By-law Table Replacement