Agenda - Council - March 23, 2005

Report - Standing Policy Committee on Protection and Community Services - March 7, 2005

Item No. 4 The Derelict Vehicles By-law No. 41/2005
File EH-1

STANDING COMMITTEE RECOMMENDATION:

On March 16, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submits the following to Council:

1. That the Derelict Vehicles By-law No. 41/2005 be approved, and that the existing Derelict Vehicles By-law No. 460/73 be repealed.

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

Report - Standing Policy Committee on Protection and Community Services - March 7, 2005

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 16, 2005, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 7, 2005, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendation and submitted its recommendation to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

RE:	**Derelict Vehicles By-law 460/73**
FOR SUBMISSION TO:	**Standing Policy Committee on Protection and Community Services**
ORIGINAL REPORT SIGNED BY:	**Ursula Stelman, Director Community Services Department**
REPORT DATE:	**February 18, 2005**

RECOMMENDATION(S):

- That Council enacts the proposed new Derelict Vehicles By-law, replacing the existing Derelict Vehicles By-law No. 460/73.

REPORT SUMMARY:

Key Issues:

- The enactment of the City of Winnipeg Charter has required the update of the City of Winnipeg Derelict Vehicle By-law.

- The new Charter, unlike the old City of Winnipeg Act, does not define "derelict vehicle" and does not specify the details of a derelict vehicle by-law. The City is therefore free to create a definition and by-law structure that reflects current needs and community standards.

- The proposed by-law will facilitate the removal of derelict vehicles from private property which are unsightly, interfere with the enjoyment of property, reduce the value of private property, contribute to urban blight, and create public health and safety hazards.

- The proposed replacement by-law does not radically alter the existing system for dealing with derelict vehicles. However, it does:
    - Streamline and update the existing by-law by:
        - increasing the maximum amount that can be charged to the owner for removing and storing a derelict vehicle from $25.00 to $100.00 and from $3.00 to $20.00 per day, respectively;
        - allowing the Chief of Police to dispose of an unclaimed vehicle after 10 days without having to have the vehicle appraised and without being required to sell at auction any derelict vehicle appraised at more than $75.00.

- Change the definition of a "derelict vehicle" to an objective standard by removing the requirement that the vehicle must either be abandoned or be kept primarily for salvage or to be sold as scrap, specifically;
  "Derelict Vehicle" means a used motor vehicle or the body or chassis of a used motor vehicle that
  - *is not in an operating condition and is rusted, wrecked or partly wrecked, or is dismantled or partly dismantled;*
  - *is not insured and registered under The Highway Traffic Act and does not have a current, valid license plate attached to it; and*
  - *has been parked outside of a building for more than one month.*

- Include within the definition of "derelict", those derelict vehicles that are covered by a tarp or parked under a carport. The previous by-law did not clearly specify storage requirements.
- Remove references to "derelict vehicle" from the Unsightly Premises By-law so that derelict vehicles are dealt with solely under the proposed by-law.

Implications of the Recommendation(s):

General implications:

None

X **For the organization overall and/or for other departments**

Comment(s):

The proposed changes will better articulate policy intent and thereby facilitate efficient and effective enforcement processes.

X **For the community and/or organizations external to the City of Winnipeg**

Involves a multi-year contract

Comment(s):

Property owners and/or owners of derelict vehicles will be somewhat affected by the changes in the replacement By-law in that it:

- provides citizens with a clear understanding of the requirements of the by-law;
- protects the community from unsightly and unsafe conditions within neighbourhoods;
- provides an appeal mechanism to the Community Committee which allow decisions to reflect acceptable standards within a particular neighbourhood.

Policy implications:

No

X **Yes**

Comment(s):

Policy choices are reflected in the changes in the definition of "derelict vehicle"

and the procedure for disposing of derelict vehicles:

- based on objective standards that provides clearer direction for both the public and enforcement officers;
- removes the condition that the vehicle must either be abandoned or be kept primarily for salvage or to be sold as scrap;
- explicit that, to avoid contravention of the by-law, a derelict vehicle must be kept within a building;
- allows the Chief of Police to sell the vehicle in whatever manner is most efficient unless the owner redeems it within 10 days.

Environmental implications:

X No
Yes
Comment(s):

Human resources implications:

X No
Yes
Comment(s):

Financial implications:

X Within approved current and/or capital budget
Current and/or capital budget adjustment required
Comment(s):

REASON FOR THE REPORT:

The By-law being proposed as a replacement for the Derelict Vehicles By-law No. 460/73 must be enacted by Council.

HISTORY:

The current Derelict Vehicles By-law No. 460/73 has been in place since 1973 and amended in 1995 and 2000.

Over the past several years, public complaints and experience of Environmental Health Officers when enforcing the By-law have indicated that a review of this By-law was needed. As a result, although most City By-laws were amended in December 2002 to ensure that they complied with

the new City Charter, The Derelict Vehicles By-law No. 460/73 was not amended at that time in order to allow for a more thorough review and the drafting of a replacement by-law.

DISCUSSION:

The City of Winnipeg Charter permits the City to enact and enforce by-laws related to property standards, safety and health. Derelict vehicles are unsightly, interfere with the enjoyment of property, reduce the value of private property, contribute to urban blight, and create public health and safety hazards. The current By-law was enacted in 1973 and has been used extensively by Environmental Health Services. In 2004, Environmental Health Services responded to 146 derelict vehicle related complaints.

As the attached chart (Appendix 1) shows, in many other Canadian municipalities, derelict vehicles are treated the same as other junk or refuse; enforcement officers are authorized to prosecute and remedy nuisances or unsightly, unhealthy and unsafe conditions by removing and disposing of the junk whether it involves vehicles or not. However, in Winnipeg, derelict vehicles have historically been the subject of a distinct by-law that attempts to define exactly what constitutes a "derelict vehicle" and gives special protections and privileges to the owner of a derelict vehicle.

The proposed by-law does not change the basic system that is in place; derelict vehicles will still be categorized differently than other nuisances and owners will still be given special safeguards and special rights to redeem derelict vehicles after they have been removed. If they disagree with an order to remove a derelict vehicle, owners will continue to have 30 days in which to register an appeal with the local Community Committee.

As with the current by-law, if the order is not appealed or the appeal is rejected, in the absence of compliance, Winnipeg Police Services may authorize the towing and storage of the vehicle. The Police must notify both the owner of the property and the registered owner of the vehicle about the removal and both are offered a chance to redeem the derelict vehicle. If the vehicle is left unclaimed 10 days after it has been removed, it can be sold by the Chief of Police. All of this will remain unchanged in the replacement by-law.

However, the proposed by-law does make the following changes from the previous by-law:

- Updating. The new by-law proposes that the maximum costs that can be charged to the owner for towing the derelict vehicle should be increased from $25.00 to $100.00. It further proposes that the maximum costs for storing the derelict vehicle should be increased from $3.00 to $20.00 per day. Neither of these amounts has been changed since the By-law was enacted in 1973. These new rates as proposed, reflect actual and reasonable costs of the present day.

- Streamlining. Rather than requiring the Chief of Police to have the vehicle appraised and sent to auction it if it is worth more than $75.00, the proposed by-law simply allows the

Chief to sell the vehicle in whatever manner is most efficient unless the owner redeems it within 10 days.

- Changes to the definition of "derelict vehicle". There are two notable changes to the definition in the proposed by-law.
  First, the currently existing by-law states that the vehicle must not be left in the open. The new definition in the proposed by-law is explicit by stating that, to avoid contravention of the by-law, a derelict vehicle must be kept within a building; it is not adequate simply to cover the derelict vehicle with a tarpaulin or place it under a carport. This clarification was made because placing a vehicle under a tarp or carport does little to alleviate either the unsightly condition or the health and safety concerns that the by-law is intended to address. For example, a vehicle under a tarp or carport remains easily accessible to children.

  Second, changes to the definition were forced by the new City of Winnipeg Charter. Under the old City of Winnipeg Act (CWA) a vehicle was derelict if:

  (a) it was not in an operating condition;

  (b) it was unlicensed and unregistered;

  (c) it was kept in the open; and

  (d) its owner had either abandoned it or was keeping it primarily to salvage or sell parts from it or to sell it as scrap metal.

  The CWA went on to impose a "reverse onus" with respect to clause (d); unless the owner established the contrary, a vehicle was deemed to be abandoned if, for a period of at least one month, it had been left in the open or, in the opinion of the City or the court, it had been deserted. This reverse onus was necessary because of the difficulty in proving the intentions of the owner with respect to the vehicle.

  The new City of Winnipeg Charter does not define "derelict vehicle" and does not impose a reverse onus. Therefore, a by-law governing derelict vehicles must define the term and, since the City has no power to impose a reverse onus, it must do so in a way that can be proven by the City in court. The proposed by-law has adopted most of the old definition in creating a new definition for "derelict vehicle"; it must still be inoperable, unlicensed and kept in the open. However, the new definition has not included the requirement that a vehicle must be proven to have been abandoned or kept for salvage before it will be considered "derelict".

  The new definition is based on objective standards that provide a clearer direction for enforcement. Moreover, it better reflects community standards inasmuch as a vehicle can constitute an eyesore and a nuisance in the neighbourhood whether or not it has been "abandoned" or kept for salvage or parts.

- An amendment to Unsightly Premises By-law No.8151/2002. Currently, the Unsightly Premises By-law includes "vehicles" as a potential unsightly condition, with the result that they can be removed in the same way as other junk or refuse. This reference is being removed so that the derelict vehicles fall only within the proposed by-law and the owners of derelict vehicles are always given the safeguards offered under the proposed by-law. At the same time, this amendment will ensure that the proposed by-law will fit seamlessly with the Unsightly Premises By-law.

Financial Impact Statement

Date: February 18, 2005

Project Name: Derelict Vehicle By-law

First Year of Program 2005

	2005	2006	2007	2008	2009
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
External	-	-	-	-	-
Grants (Identify)	-	-	-	-	-
Reserves, Equity, Surplus, Other	-	-	-	-	-
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	$ -	$ -	$ -	$ -	$ -

Additional Comments:

There are no financial implications associated with this report.

"Original signed by"
Cindy Fernandes, B. Comm (Hon), CMA
Acting Manager of Finance & Administrative Services

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

- Legal Services
- Winnipeg Police Service

THIS REPORT SUBMITTED BY:

Community Services Department
Prepared by: Kelly Goldstrand, Manager of Community Resource, Protection & Safety Services
File No.

APPENDIX 1

OTHER JURISDICTIONS

The following table contains information from Canadian cities that was easily accessible on the Internet.

CITY	DEFIN ITION	USE
KELOWNA	**Derelict Vehicle means any vehicle or part thereof , propelled otherwise than by muscle power which:** • **is physically wrecked or disabled;** • **is not capable of operating under its own power; and** • **does not have attached number plates for the current year…** **- Discarded Material includes the definition of Derelict Vehicle**	**-No owner…shall allow their property to become…unsightly by accumulation of Discarded Material**
EDMONTON	**Nuisance includes:** • **wrecked or dismantled vehicles, or** • **those that are unsightly and abandoned,** • **unregistered or uninsured**	**-owners, agents, tenants must prevent occurrence of, or immediately remedy, any Nuisance**
REGINA	**Junked Vehicle – is considered junked if it:** • **has no current license plate; and** • **is wrecked, dismantled, inoperative, abandoned or rusted; and is on private property**	**-required to remove them or place them in a garage**
SASKATOON	**Junked Vehicle means any automobile, tractor, trailer or other vehicle that:** **1. either** • **has no valid license plates attached to it; or** • **is in a rusted, wrecked, partly wrecked, dismantled, partly dismantled, inoperative or abandoned condition; and** **2. is located on private land, but that:** • **is not within a structure…** • **does not form part of a business…** **Nuisance includes Junked Vehicle**	**-No person shall cause or permit a nuisance to occur on any property owned by that person** **-No person shall cause or permit any junked vehicle to be kept on any land owned by that person** **--A yard shall be kept free and clean from…junked vehicles and dismantled machinery**
MISSISSAUGA	**Definition of "refuse and debris" includes inoperative vehicles and vehicle parts and accessories**	**…shall move such refuse and debris from the land so that the land is left in clean condition**

The by-laws for the cities listed above all have provisions to remove derelict vehicles and add the cost of removal to the owner's taxes. Winnipeg is the only city that provides an additional option for a person to reclaim their vehicle by paying the storage and removals costs.

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of the City of Winnipeg respecting derelict vehicles on private property.

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

Short title

1 This By-law shall be referred to as the Derelict Vehicles By-law.

Purpose of By-law

2 This By-law is intended to prevent the unsightly condition, the depreciation of the value of other land and buildings in the vicinity and the threat to health and safety caused by derelict vehicles.

Definitions

3 In this By-law:

"building" includes a garage but does not include a carport, tarp or covering for a vehicle.

"derelict vehicle" means a used motor vehicle or the body or chassis of a used motor vehicle that

(a) is not in an operating condition and is rusted, wrecked or partly wrecked, or is dismantled or partly dismantled;

(b) is not insured and registered under The Highway Traffic Act and does not have a current, valid license plate attached to it; and

(c) has been parked outside of a building for more than one month**.**

"inspector" means

(a) a public health inspector appointed under The Department of Health Act or The Public Health Act; or

(b) the Director of Planning, Property and Development for the City of Winnipeg or the Director of Community Services for the City of Winnipeg or an employee of the City to whom either of them has delegated authority to enforce or administer all or part of this By-law.

"private property" means any privately-owned land within the City except

(a) a property that is licensed under the City of Winnipeg License By-law No. 4551/95 as a scrap yard or used material yard; or

(b) a property where derelict vehicles are otherwise kept in accordance with the applicable land use controls and licensed by the City of Winnipeg.

Powers of designated employees

4 Inspectors or the Chief of Police of the City of Winnipeg and their delegates may conduct inspections and take steps to administer and enforce this By-law or remedy a contravention of this By-law in accordance with The City of Winnipeg Charter and, for those purposes, have the powers of a "designated employee" under The City of Winnipeg Charter.

Prohibition on storing derelict vehicles on private property

5(1) No person may park, store or leave a derelict vehicle on private property.

5(2) No owner or occupant of private property may permit a derelict vehicle to be parked, stored or left on his or her private property.

Compliance orders

6 Any order to remedy a contravention of this By-law must be issued in accordance with The City of Winnipeg Charter and provide a date for compliance at least thirty days after the date the order was served.

Address for service

7 Where an address for service for sending a notice, order, decision or other document is required, one of the following shall be used:

(a) if the person to be served is the owner of real property, the address maintained by the tax collector for the purpose of issuing the tax notice for that property;

(b) if the person to be served is the occupant of real property, the street address for that property; or

(c) if the person named in the order is the owner of the vehicle, the last address registered for that vehicle at the Motor Vehicle Branch.

Appeals

8 An appeal from an order to remedy a contravention of this By-law may be made to the Community Committee for the area in which the derelict vehicle is situated in accordance with The City of Winnipeg Charter.

Removal of derelict vehicle

9 The Chief of Police of the City of Winnipeg may have a derelict vehicle removed in order to remedy a contravention of this By-law in accordance with The City of Winnipeg Charter.

Notice of removal

10 Within 72 hours after removing a derelict vehicle, the Chief of Police shall notify

(a) the owner of the derelict vehicle, if known, and

(b) the owner or occupant of the private property on which the derelict vehicle was situated

of the removal by personal service, or by sending it by registered mail or delivery to an address determined in accordance with section 6.

Contents of notice

11 The notice of the removal of a derelict vehicle shall:

(a) describe the derelict vehicle and the location from which it was removed;

(b) identify the location to which it has been removed;

(c) set out the costs that must be paid before the derelict vehicle may be returned to the owner; and

(d) advise that a failure to redeem the derelict vehicle by paying the costs could result in the derelict vehicle being disposed of by the City.

Redemption of derelict vehicle

12 The owner of a derelict vehicle may redeem it by providing proof of ownership and paying the costs of removing it, not to exceed $100.00, and the daily costs of storing it, not to exceed $20.00 per day.

Sale of derelict vehicle by the City

13 If a derelict vehicle has not been redeemed by the owner within 10 days after has been removed, the Chief of Police may dispose of the derelict vehicle and may execute a bill of sale to the purchaser of the derelict vehicle.

Proceeds of sale

14 The proceeds of the sale of a derelict vehicle may be used to offset the costs incurred by the City in enforcing this By-law, including removing and storing the derelict vehicle, and any balance remaining must be paid to the owner of the derelict vehicle or, if another person claims the balance, to the Court of Queen's Bench to be paid out as the court orders.

Derelict Vehicle By-law repealed

15 The Derelict Vehicle By-law No. 460/73 is hereby repealed.

Amendment to Unsightly Premises By-law

15 Clause 5(1)(b) of Schedule "A" of The Unsightly Premises By-law No. 8151/2002 is amended by striking out "vehicles".

DONE AND PASSED, in Council assembled, this ___ day of_____, 2005.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Community Services

_____
Chief of Police

Certified as to form:

_____
for City Solicitor/Manager of
Legal Services
File No.