Minute No. 315
Report - Standing Policy Committee on Public Works - March 8, 2005

Item No. 3 **Amendment to The City of Winnipeg Secondary Dyke By-law No. 7600/2000**
File PD

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Public Works and adopted the following:

1. That the proposed amendments to The Secondary Dyke By-law No. 7600/2000 (as outlined on Appendix "A") be approved.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary by-law in accordance with the foregoing and submit same directly to Council.

3. 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 Public Works - March 8, 2005

DECISION MAKING HISTORY:

Moved by Councillor Eadie,

That the recommendation of the Standing Policy Committee on Public Works be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

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

STANDING COMMITTEE RECOMMENDATION:

On March 8, 2005, the Standing Policy Committee on Public Works concurred in the administrative recommendation and submitted its recommendation to the Executive Policy Committee and Council.

RE: A BY-LAW TO AMEND THE CITY OF WINNIPEG SECONDARY DYKE BY-LAW NO. 7600/2000

FOR SUBMISSION TO: THE STANDING POLICY COMMITTEE ON PUBLIC WORKS

ORIGINAL REPORT SIGNED BY: Barry D. MacBride, P. Eng.
Director of Water and Waste

REPORT DATE: February 25, 2005

RECOMMENDATION(S): That the proposed amendments to the Secondary Dyke By-law No. 7600/2000 as described herein and as attached as Appendix "A" be approved.

REPORT SUMMARY

KEY ISSUES: In 1997 an issue arose during the City's flood preparations wherein some property owners in areas protected by secondary dykes were reluctant to begin preparations for the impending flood event in a timely manner thus putting their whole neighbourhood at risk. Once the City declared a state of emergency the proper authorities could order that the flood preparations take place but there are concerns that this declaration may occur too late in the process to be meaningful. Much was learned during the preparations for the 1997 event and the new City of Winnipeg Charter now allows Council the authority to address this issue through amendments to the Secondary Dyke By-law. The proposed amendments to the Secondary Dyke By-law are designed to require owners and occupants on properties on which a secondary dyke is located to prepare for and construct temporary dykes when necessary to prevent flooding.

IMPLICATIONS OF THE RECOMMENDATION(S):

General Implications

	None
	For the organization overall and/or for other departments
X	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment(s): This By-law amendment will require property owners and occupants to take action to prepare their property for a possible flood event.

Policy Implications

X	No
	Yes – Comment(s):

Environmental Implications

X	None
	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):

REPORT

REASON FOR THE REPORT:

City Council has the authority to enact changes to By-laws.

HISTORY:

On April 26, 2000, City Council adopted Clause 4 of the report of the Standing Policy Committee on Public Works, date April 11, 2000, and titled "Legal Protection of Secondary Dikes", and passed the Secondary Dike By-law, No. 7600/2000 related thereto.

DISCUSSION:

Background:

A secondary dike is defined as any permanent dyke or other flood control work within the city of Winnipeg which has been, or is, constructed between a primary dyke and the channel of the Red, Assiniboine, Seine, or LaSalle Rivers, or constructed along the channel of the Sturgeon, Truro, Omand's, or Bunn's Creeks. A permanent secondary dike is typically constructed of clay material, whereas a temporary secondary dike is typically constructed of sandbags.

In the spring of 1997 the "Flood of the Century" occurred in Winnipeg. Subsequent to the initial flood forecasts by the Provincial government, the City began to make arrangements to prepare itself for the worse case scenario. Among these measures was the need to clear snow and other obstacles from the secondary dykes in preparation for raising them by use of sandbags.

In some areas residents were not prepared to cooperate as the preparations may have entailed the removal of decks, fences or other obstacles in the path of the dyke. At the time they believed that the threat was not real - a fact which subsequently was proven false. The delay caused considerable problems for community groups such as the Elm Park Flood Committee who had organized that community's flood fighting effort. The actions of a few people who were unprepared to act had the effect of placing the whole community at risk.

In the time since the flood much has been accomplished to facilitate a faster, more coherent response to a future event as a result of the lessons learned in 1997. Federal/Provincial funding has been used to enhance the secondary dyking system; a Secondary Dyking By-law has been enacted, a computerized flood manual has been prepared; a new City Charter has been put in place which contains broader authority for the City to act in emergencies; and local committees such as the Elm Park Flood Committee continue to work with government to shed light on local problems.

Existing Secondary Dike By-law 7600/2000:

The Secondary Dyke By-law was developed to protect secondary dikes from being removed or altered; and to regulate construction that would be detrimental either to the timely and secure construction of dykes, or to the augmentation of existing secondary dykes. The By-law addresses concerns about buildings, trees and other objects placed on the secondary dyke.

Proposed By-law Amendments:

Under the old City of Winnipeg Act the primary mechanism available to allow the City to mandate flood preparation action to occur on private property was through the declaration of a state of emergency. Once the City declared a state of emergency, the proper authorities could order that the flood preparations take place but in 1997, this declaration occurred too late in the process to be useful for preemptive flood fighting activities. Despite the City's authority under the new City of Winnipeg Charter to act in emergencies, concerns remain that the existing By-law 7600/2000 needs amendment to clearly identify the property owners' obligation to prepare for a flood before an emergency has developed. These concerns were highlighted in dialogue that occurred after 1997 with representatives of the Elm Park Flood Committee. This Committee has been involved in the development of the recommended by-law amendment through on-going input with representatives of the Water and Waste Department and the Legal Services Division of the Corporate Services Department.

Summaries of the By-law amendments are as follows:

Obligation of Property Owners:

The proposed amendments to the Secondary Dyke By-law No. 7600/2000 imposes on owners and occupants of properties on which a secondary dyke is located a general obligation to prepare for and construct temporary dykes to the extent that is necessary to prevent flooding.

Publishing of Notice(s):

More specifically, the amendments provide that, where the Director of Water and Waste (or designate) has reason to believe that there is a significant risk of flooding in areas protected by secondary dykes, he or she may publish a notice requiring owners and occupants of properties on which secondary dykes are located to take specific steps to prevent flooding. This may include: clearing the secondary dyke of snow, removing obstacles to the creation of a sandbag dyke, building and maintaining a sandbag dyke, complying with orders given by designated employees and taking other steps to prevent flooding. Taking advantage of new provisions in the City Charter, the proposed amendments further allow a public notice to be published concerning entries to properties on which secondary dykes are located; thereafter, specified employees would have an extraordinary power to enter these properties to enforce the By-law without further notice to the property owner or occupant.

Provision for Appeal of Orders:

As required by the City Charter, the proposed amendments provide for an appeal of decisions or orders issued by the Director or designated employees. However, unlike appeals of decisions or orders made in the ordinary course of enforcing the by-law (which are heard by the Standing Policy Committee on Public Works) a body of at least three senior civic administrators, selected from the list provided in the By-law, will hear appeals of orders made under these provisions. This body can be assembled on very short notice to hear and deal with concerns that the orders issued are unreasonable. In the event of a pending flood event, appeals will need to be dealt with promptly such that required flood preparations are not impeded.

A communication plan is under development that will provide details of the by-law changes and the property owners' obligations to affected properties subsequent and subject to Council's approval.

FINANCIAL IMPACT:

The following financial impact statement for this project has been prepared in accordance with the recommendation adopted by Council on December 13, 2000.

Financial Impact Statement **Date: February 18, 2005**

Project Name:
A By-law to Amend The City of Winnipeg Secondary Dyke By-law No. 7600/2000

COMMENTS:

As this report is recommending amendments to an existing By-law to facilitate and clarify enforcement activities for flood protection provided by secondary dikes, there is no financial impact.

Moira L. Geer C.A.
Manager of Finance & Administration

IN PREPARING THIS REPORT THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

Legal Services Division of the Corporate Services Department

THIS REPORT SUBMITTED BY:

Water and Waste Department
Engineering Division
Prepared by: M. A. Shkolny, P. Eng.
File No. 020-08-09-11-01

APPENDIX "A"

THE CITY OF WINNIPEG

BY-LAW NO.

A By-law of the City of Winnipeg to amend the Secondary Dyke By-law No. 7600/2000 to require owners and occupants of properties on which a secondary dyke is located to prepare for and construct temporary dykes when necessary to prevent flooding.

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

1. The Secondary Dyke By-law No. 7600/2000 is amended by this By-law.

(a) Section 2 of the By-law is amended by adding the following definition in alphabetical order:

"Director" *means the Director or Acting Director of Water and Waste for the City of Winnipeg.*

3. Sections 8 to 17 of the Secondary Dyke By-law are repealed and the following is substituted:

DUTY TO PREVENT FLOODING

8(1) Every owner and occupant of property on which a secondary dyke corridor or secondary dyke is located must take reasonable actions at his or her cost to prevent flooding on his or her property and to ensure that the secondary dyke or secondary dyke corridor on the property is effective as a flood control work in preventing flooding in the city of Winnipeg.

OBLIGATION TO CONSTRUCT TEMPORARY DYKES

8(2) Without restricting the generality of subsection (1), where the Director or designate publishes a notice pursuant to section 9, every owner and occupant of property on which a secondary dyke corridor or secondary dyke is located must comply with the instructions and directions set out in the notice within period of time specified in the notice or, if none is specified, within a reasonable period of time following publication of the notice.

DIRECTOR MAY PUBLISH NOTICE

9(1) Where the Director or designate has reason to believe that there is a significant risk of flooding in the area protected by secondary dykes, he or she may issue a notice in a newspaper having general circulation in the city requiring owners and occupants of property on which a secondary dyke corridor or secondary dyke is located to take specific action at his or her cost to comply with section 8, including any or all of the following measures:

(a) to remove snow and ice from the secondary dyke or secondary dyke corridor on his or her property;

(b) to remove any or all buildings, structures, trees and other obstacles, whether or not they have been authorized by section 4 or 6 of this By-law, from the secondary dyke or secondary dyke corridor on his or her property;

(c) to comply with the directions of a designated employee concerning the removal or retention of specific obstacles on the secondary dyke or secondary dyke corridor on his or her property;

(d) to construct a temporary dyke on the secondary dyke or secondary dyke corridor on his or her property linked to dykes constructed on adjacent properties in accordance with directions from a designated employee; and

(e) to comply with the directions of a designated employee concerning the construction of a temporary dyke and the maintenance, repairs or improvements to a temporary dyke once constructed;

(f) to take other measures necessary to prepare the secondary dyke or secondary dyke corridor to serve as a barrier to flooding and to permit accessibility to the remainder of the secondary dyke or the secondary dyke corridor;

(g) to take other reasonable measures to construct and maintain the temporary dyke as a barrier to flooding.

CONTENTS OF NOTICE

9(2) A notice issued pursuant to subsection (2) may set out directions and instructions concerning the matters set out in subsection 9(1) or other matters necessary to ensure that owners and occupants comply with section 8, including matters such as the materials which may or must be used in the construction of secondary dykes, the style of construction that must be used and the height to which the dykes must be constructed.

END OF OBLIGATION UNDER SUBSECTION 8(2)

9(3) Where the Director or designate concludes that there is no longer a substantial risk of flooding in the areas protected by secondary dykes, he or she may issue a notice in a newspaper having general circulation in the city advising that a substantial risk of flooding no longer exists and the obligation of owners and occupants of property on which a secondary dyke corridor or secondary dyke is located to comply with subsection 8(2) ceases upon publication of such a notice.

OBLIGATION TO REMOVE TEMPORARY DYKES

9(4) Where the Director or designate publishes a notice pursuant to subsection (3), every owner and occupant of property on which a secondary dyke corridor or secondary dyke is located must, within a period of time specified in the notice or, if no period of time is specified, within a reasonable period of time following publication of the notice, remove sandbags and other elements of a temporary dyke that has been constructed on the secondary dyke or secondary dyke on his or her property.

POWERS OF DESIGNATED EMPLOYEE

10(1) A designated employee 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, has the powers of a designated employee under The City of Winnipeg Charter.

INSPECTION PROGRAMS CONDUCTED BY PUBLIC NOTICE

10(2) In order to determine whether this By-law is being complied with, the Director or designate may conduct an inspection program by public notice in accordance with The City of Winnipeg Charter.

EMPLOYEES DESIGNATED TO CONDUCT INSPECTION PROGRAM BY PUBLIC NOTICE

10(3) Employees of the City of Winnipeg who hold the following positions within the Water and Waste Department and the Public Works Department during the period of one year after the coming into force of this By-law are hereby appointed as designated employees for the purpose of entering on and inspecting land on which is located secondary dykes or secondary dyke corridors between the first day of February and the thirty-first day of May in accordance with a public notice of an inspection to determine whether this By-law is being complied with:

- *(b) the Director;*
- *(c) the Manager of Engineering;*
- *(d) the Land Drainage and Flood Protection Planning Engineer;*
- *(e) the Design and Construction Engineer;*
- *(f) the Construction Services Coordinator;*
- *(g) the Customer Technical Services Coordinator;*

(h) all Professional Engineers;
(i) all Engineering Technicians and Technologists.

DESIGNATED EMPLOYEE MAY ISSUE ORDERS

11. Without restricting the generality of section 10, a designated employee who finds that any provision of this By-law is being contravened may, by written order, require the person responsible for the contravention to remedy it.

ORDERS

12. Any order to remedy a contravention of this By-law must be issued in accordance with The City of Winnipeg Charter.[1]

ADDRESS FOR SERVICE

13. Where an address for service must be determined, it shall be done as follows:

(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; and

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

(c) if the document to be served relates to a permit for which the person to be served has applied, the address provided by the person in the application.

APPEALS PURSUANT TO SECTIONS 3 TO 7

14. An appeal from an order or decision of a designated employee in respect of sections 3 to 7 of this By-law may be made in accordance with The City of Winnipeg Charter to the Standing Policy Committee on Public Works.

APPEALS PURSUANT TO SECTIONS 8 TO 11

15(1) An appeal from an order or decision of a designated employee in respect of sections 8 to 11 of this By-law may be made in accordance with The City of Winnipeg Charter to a hearing body consisting of the following individuals or their delegates:

(a) the Chief Administrative Officer of the City;
(b) the Chief Financial Officer of the City;
(c) the Chief Information Officer of the City;
(d) the Chief of Human Resources and Corporate Services of the City;
(e) the Director of Planning, Property and Development;

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[1] See sections 184 to 188 of *The City of Winnipeg Charter*, reproduced in Attachment "B".

(f) the Director of Community Services;
(g) the Director of Public Works.

CHAIR AND VICE-CHAIR OF HEARING BODY

15(2) The Chief Administrative Officer of the City or his/her designate shall serve as the chairperson of the hearing body referred to in subsection (1) and the Chief Financial Officer of the City or his/her designate shall be the vice-chairperson.

PANELS AUTHORIZED

15(3) The hearing body referred to in subsection (1) may sit in panels of three or more members selected by the chairperson.

RULES OF PRACTICE AND PROCEDURE

15(4) Sections 54.10 and 54.11 of the Procedure By-law apply to hearings conducted under this section and the hearing body referred to in subsection (1) may adopt other rules of practice and procedure.

DONE AND PASSED, in Council assembled, this day of , 2005.

_____
Mayor

_____
City Clerk

Approved as to content:

_____
Director of Water and Waste

Certified as to form:

_____
for City Solicitor/Manager of
Legal Services