



INFORMATION REPORT

Meeting Date: 2024-12-09

Title: Information Report re: De-icer By-law

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Department: Building and Planning

Report Number: Building & Planning-2024-029

Background:

A delegation was made to Council on June 10, 2024 by an owner of a shoreline property located on Thunder Lake. From that delegation, Council directed staff to research the concerns expressed by the delegation and by the owner of the de-icer in question and respond with more information or if determined, a recommendation. On September 23, 2024, Staff proposed a de-icer regulation by-law for Councils consideration along with the research information found. Council discussed the matter and directed Staff to prepare a prohibition by-law instead.

On October 28, 2024, Staff presented the prohibition by-law to Council. Council again discussed the matter resulting in a decision being deferred pending a legal opinion on municipal jurisdiction.

On November 25th, 2024, Staff presented a legal opinion received from Borden Ladner Gervais Law Firm (BLG), Ottawa, Ontario, from their review of both the regulation and prohibition by-laws in regards to the Municipalities authority in regard to de-icers.

Discussion:

In summary the legal opinion determined that the Municipality has jurisdiction to impose a by-law regarding de-icers. Additionally, for relevant consideration, both Staff and BLG have included the following provision from the *Criminal Code* in their reports to Council.

Duty to safeguard opening in ice

263 (1) Every one who makes or causes to be made an opening in ice that is open to or frequented by the public is under a legal duty to guard it in a manner that is adequate to prevent persons from falling in by accident and is adequate to warn them that the opening exists.

Offences

(3) Every one who fails to perform a duty imposed by subsection (1) ... is guilty of

- (a) manslaughter, if the death of any person results therefrom;*
- (b) an offence under section 269, if bodily harm to any person results therefrom; or*
- (c) an offence punishable on summary conviction.*

Included in the legal response by BLG was the following statement:

'We do not believe that the above (Criminal Code Section) would remove jurisdiction from the municipality to regulate the use of de-icers to the extent that they are creating public safety hazards.

Further to the above and irrespective of jurisdiction, it should be noted that any by-law can be challenged in court. There is a higher likelihood of a challenge to the by-law in the event that the prohibition by-law is adopted as opposed to the regulation by-law. This challenge could be either from an owner of the equipment or from sellers or manufacturers.'

Based on this review, Council directed staff to bring a council report forward with the above information so that Council could further consider enactment of a by-law to regulate or prohibit de-icers and to also now consider enacting no such by-laws as the Criminal Code provides sufficient protections should safety concerns arise from the use of de-icers.

Financial Implications:

Current Budget Allocation:

Account #:

Attachments (Reference Material):

