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Item No.
Appeals Standing Committee
January 8, 2015

TO: Chair and Members of the Appeals Standing Committee

Original Signed

SUBMITTED BY:

John Traves, Q.C., Director: Legal, Insurance & Risk Management Services

DATE: November 26, 2014

SUBJECT: Issuance of Orders to Remedy to Federal or Provincial Properties

INFORMATION REPORT

ORIGIN

On October 9, 2014, the Appeals Standing Committee approved a motion requesting a staff report outlining what authority or purpose the Municipality has to serve any Order to Remedy to Federal and/or Provincial properties.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, 2008, c.39, section 356(1)

Where a property is dangerous or unsightly, the Council may order the owner to remedy the condition by removal, demolition or repair, specifying in the order what is required to be done.

BACKGROUND

In 2014, Municipal Compliance issued 4 Order(s) to Remedy to senior levels of government with respect to dangerous or unsightly violations and 23 Order(s) to Remove improperly placed curbside solid waste violations. It is standard practice for staff to contact the department which is in violation through telephone and e-mail to advise of the violation. In the event the department fails to correct the violation, HRM has proceeded to complete the work and issue an invoice.

DISCUSSION

An Order to Remedy serves as a notification document outlining the violation and indicating a date for compliance. The Order also states additional enforcement action may be taken, as required, such as issuance of a summary offense ticket.

The request to review HRM's authority regarding issuance of Orders to other levels of government arose from two cases this past summer where Orders were issued to the Provincial Government for dangerous or unsightly violations. The cases were:

1. 78 Sherwood Street, Cole Harbour, case #229293, and
2. Cross Road -West Jeddore, case #229127

In the first situation, the Officer spoke directly with a representative who indicated the work would not be completed. The decision was made for HRM to enter the property to complete the cleanup. The parcel of land was a vacant lot in a residential area situated close to an elementary school.

The second situation was a result of a complaint received on April 24, 2014. The Order to Remedy was issued on June 18, 2014 and the Officer has conducted multiple site inspections. The most recent inspection took place on October 1, 2014 and the Officer noted the property was still in violation. The decision was made for HRM to monitor the situation as the representative advised the work would be completed before the winter season begins.

The two other Orders issued to the Province this past year resulted in the work being completed and the files were closed owner compliance.

Compliance Officers respond to complaints received by the public. Property owners are expected to maintain their land as not to be dangerous or unsightly. Officers make contact with property owners to advise if there are violations and provide time for the owners to voluntarily comply. There are approximately 2000 Orders issued annually and of these cases, there have been 218 cases in 2014 which resulted in HRM completing a remedy. The other cases were closed as owner compliance.

Staff understand that there is no ability to enforce Orders to Remedy against provincial or federal lands.

Neither the Provincial Government of Nova Scotia, nor the Federal Government of Canada are subject to the *Halifax Regional Municipality Charter*.

The Nova Scotia *Interpretation Act*, R.S., c. 235, section 14 states:

No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner unless it is expressly stated therein that Her Majesty is bound thereby.

Section 7(1)(i) states:

"Her Majesty", "His Majesty", "the Queen", "the King" or "the Crown" means the Sovereign of the United Kingdom, Canada and Her other realms and territories and Head of the Commonwealth.

The HRM Charter does not expressly bind Her Majesty. The Provincial and Federal Governments act on behalf of Her Majesty. The HRM Charter is, therefore, of no force and effect in regard to Provincially or Federally owned land. HRM cannot enforce Orders to Remedy in regard to these lands.

HRM can provide other levels of government with a Notice in regard to the situation and request a time line for remediating the property. An unsatisfactory response can result in staff raising the issue with senior officials within the government department.

In conjunction with the above, The HRM CAO may raise the issue with government officials in an attempt to resolve the problem.

Depending on the specific circumstances, the provincially or federally owned property will be subject to the following provincial legislation:

Fire Safety Act. 2002, c. 6

Occupational Health and Safety Act. 1996, c.7; and

Environment Act. 1994-95, c.1

HRM may forward a complaint to the appropriate regulatory authority in respect of matters arising under these legislative provisions which are binding on the Province.

FINANCIAL IMPLICATIONS

In situations where the other levels of government do not comply, HRM has entered the property, completed a remedy and absorbed the invoice. In 2014, HRM invoiced \$1110.59, of this amount \$503.15 has been paid and \$607.44 remains unpaid.

COMMUNITY ENGAGEMENT

NA

ATTACHMENTS

NA

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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