

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Wayne Anstey, Acting Chief Administrative Officer



Geri Kaiser, Deputy Chief Administrative Officer . Corporate Services
and Strategy

DATE: June 10, 2008

SUBJECT: Legislation Amendments

ORIGIN

Legal Services has prepared a list of proposed amendments, as requested by Regional Council and staff, in relation to provincial legislation for consideration by the Province of Nova Scotia at the Fall 2008 sitting of the Legislature.

RECOMMENDATION

- 1. It is recommended that Halifax Regional Council approve the recommended amendments to the *Municipal Government Act* and related legislation and that the recommended amendments be forwarded to the Province of Nova Scotia for consideration.**

BACKGROUND

Since the last report to Regional Council on May 29, 2007, Legal Services has received various requests for amendments to the *Municipal Government Act* (“MGA”).

MGA amendments have been drafted, as this is the current enabling legislation of Regional Council. However, staff anticipates that the *Halifax Regional Municipality Charter* (“Charter”) will be passed in the fall session of the House of Assembly and will replace the *MGA* as the primary authority under which Regional Council operates. The section numbers of the recommended amendments to the *MGA* will not correspond with the section numbering of the *Charter* and accordingly staff have placed in brackets the corresponding *Charter* sections.

Unless there is a new session of the House of Assembly, any Bill that was not passed by the House during its most recent sitting, may be considered when the House resumes in the Fall, without needing to be reintroduced.

DISCUSSION

I. Spending Power for Special Events

Rationale:

The *MGA* permits Regional Council to spend money on advertising opportunities for the municipality for business, industrial and tourism purposes and to promote and attract institutions, industries and businesses. For greater clarity, it is recommended that the *MGA* be amended to clarify that Regional Council may expend funds on special events.

Amendment:

Subsection 57(1) [80(1)] be amended by adding “and” at the end of clause “d” and by adding:

(e) expend money or pay grants to any person for the purpose of contributing to, promoting, advertising, or hosting any festival, including cultural, musical, social, recreation or sporting events.

II. Acceptance of Public Streets

Rationale:

The *MGA* currently provides that a road, or an allowance for a road, does not become a public street until either: (1) council formally accepts the road or allowance, or (2) the road or allowance is vested in the municipality “according to law”. The provincial *Public Highway Act* provides that a road, or an allowance for a road, does not become a public highway until the Minister formally accepts the road or allowance. Similar to the *Public Highway Act*, it is recommended the *MGA* be clarified that a road or an allowance for a road does not become a public street until it is formally accepted by the municipality unless the road is part of a subdivision.

Amendment:

Subsection 308 (3) [327(3)] be amended by striking out “law” and replacing it with “ by virtue of final subdivision approval”.

III. In Camera Discussions of Intergovernmental Matters

Rationale:

The *MGA* does not permit Council and Committees of Council to have closed meetings to discuss proposals to or from either the provincial or federal governments prior to the matter becoming public. The *MGA* does not facilitate In Camera discussions of such initiatives prior to the public announcement. It is recommended that the *MGA* be amended to expressly allow an In Camera meeting for matters relating to intergovernmental affairs that are not yet public.

Amendments:

Subsection 22 (2) be amended by:

- (i) striking out the period at the end of subclause 22(2)(h) [19(2)(h)] and adding “; ” ; and
- (ii) adding clause 22 (2)(i) [19(2)(i)] as follows: “intergovernmental relations”.

IV. Local Improvement Charges

Rationale:

The *Nova Scotia Privatization Act* exempts the power company from “taxation by a municipality, other than deed transfer tax.”. Although NSPI has been paying LICs, there is a question concerning whether the reference to “taxation” in the *Nova Scotia Privatization Act* includes local improvement charges. It is recommended that the *MGA* be amended to clarify that local improvement charges may be imposed.

Amendment:

Section 81A [113A] is added as follows:

81A [113A] Notwithstanding the *Nova Scotia Power Privatization Act*, Nova Scotia Power Incorporated must pay any charges prescribed, imposed or fixed by sections 79 and 81 of this *Act*.

V. Limitation Period for Land Use By-law Prosecutions

Rationale:

The *MGA* requires a charge of breach of a land use by-law or development agreement be laid within 6 months of the date of the offence. In comparison, the *Building Code Act* imposes a two year limitation period for violating the *Act*. To mirror the *Building Code Act* provision, it is

recommended that the time limit for laying a charge be increased from 6 months to two years.

Amendment:

Section 505A be added as follows:

505A [378A] The limitation period for the prosecution of an offence under a land use by-law or development agreement is two years from the date of the offence.

VI. Amounts Owed

Rationale:

To achieve more effective enforcement, it is critical that any fines imposed by a provincial court are enforced. Currently there are weaknesses in HRM's ability to collect fines.

There are fines owed to HRM which relate to a specific property. Since these fines are not "taxes", they cannot be collected by the tax sale provisions. It is recommended that: (1) the *MGA* be amended so that fines relating to specific properties are first liens against real property and may be collected in the same manner as taxes, (2) that fines relating to two or more convictions for noise violations are first liens against the property from where the noisy activity originates, and (3) that the *Summary Proceedings Act* be amended to provide that a fine, whether relating to a specific property or otherwise, be deemed a judgment of the Supreme Court of Nova Scotia so it may be collected in the same manner as any other judgment of the Supreme Court.

Amendments:

Sections 506A and B of the *MGA* be added as follows:

506A [379A] Subject to 506C[379C], fines levied by the provincial court are a first lien on any real property of the person against whom the fine has been imposed and may be collected by the Municipality in the same manner as real property taxes.

506B[379C] A second and subsequent fine levied by the provincial court for breach of a noise by-law enacted pursuant to 172(1)(d) [197(1)(d)] are a first lien on the real property where the offence occurred and may be collected by the Municipality in the same manner as real property taxes.

Section 4 of the *Summary Proceedings Act* is renumbered 4(1) and subsection 4(2) is added as follows:

Any fines levied by the provincial court are deemed a judgment of the Nova Scotia Supreme Court, collectible in the same manner as judgment of that court.

VII. Community Council

Rationale:

Subsection 527(4) states that where Regional Council so provides, a Community Council “stands in the place and stead of the council with respect to minor variances and site-plan approvals”. The former *Planning Act* used the term “minor variance”. The *MGA* planning provisions do not mention “minor variances”, rather, the *MGA* only mentions “variances”, with the exception of this Community Council provision. As a housekeeping amendment, it is recommended that the word “minor” be deleted.

Amendment:

Subsection 527(4) [30(4)] be amended by striking out “minor” after “term” and before “variances”.

VIII. Charge for Future Benefit

Rationale:

Regional Council may impose charges (LIC) for the provision of services for persons who use or benefit from the service. Regional Council approves the services and spends the money providing the service. The cost of the improvement is then charged back to the benefited property owners. At times, there are properties whose future access to services, typically, water and sewer, is facilitated by the project, but those properties cannot connect until the infrastructure is further extended.

It is recommended that the *MGA* be clarified that Regional Council may impose charges to persons who benefit, in the future, from a service.

Amendments:

Subsection 75(1) [105(1)] be amended by adding “or potential future benefit” after “benefit”.

Section 79 [111] be amended by adding “or who potentially may use or benefit ” after “benefit”.

Clause 81(3) (da) [113(3)(da)] be added as follows:

(da) that the charges are payable by persons who may potentially use or benefit from the matter for which the charge is imposed or fixed;

IX. Summary Offence Tickets

Rationale:

Currently, for approved wording to be used by HRM to lay a Summary Offence Ticket, HRM must send the wording to the Province for review. Once reviewed, it is added by Cabinet to the main schedule of offences by Regulation. The process can be lengthy. It is recommended that Regional Council be granted the authority to designate the wording for an offence under a by-law to expedite the process.

Amendment:

Section 506C [379C] be added as follows:

Council may provide that an information may be laid and a summons issued by means of a ticket in accordance with section 8 of the Summary Proceeding Act including:

- i) designating offences under provisions of a municipal by-law; and
- ii) authorizing the use on a ticket of any word or expression to designate an offence under any provision of a municipal by-law.

X. Fences Obstructing Safe Traffic Flow

Rationale:

The *MGA* allows the Engineer to require an owner or occupant of land adjoining a street to remove or trim a tree, bush, shrub, hedge or other vegetation that, in the opinion of the Engineer, is a source of danger to traffic on the street. The Engineer does not have the power to require the removal of a fence that creates a traffic hazard by impeding the visibility of the operator of a motor vehicle. It is recommended that the Engineer be able to order a fence that obstructs visibility be removed from properties abutting a street.

Amendments:

Subsection 320 (1) [339(1)] be amendment by adding “fence” after “a” and before “sign”.

Subsection 320(2) [339(2)] be amendment by adding “fence” after “remove” and before “sign”.

XI. Search Warrants

Rationale:

Under the *Summary Proceedings Act*, a Justice of the Peace may issue a search warrant to a peace officer investigating a probable offence under the *MGA*. However, the *MGA* specifically requires an investigator, inspector, and administrator to apply to a judge of the Supreme Court of Nova Scotia for a search warrant rather than a Justice of the Peace. These two provisions are inconsistent. It is recommended the *MGA* be amended granting an investigator, inspector, and administrator the option to apply to a Justice of the Peace for a search warrant.

Amendments:

Subsection 267(4) is amended by adding “or a justice of the peace “ after “a judge” and before “is satisfied,”

Subsection 352(3) is amended by adding “justice of the peace or a” after “a” and before “a judge”, and

Clause 503(3)(c) be amended by adding “justice of the peace or a” after “a” and before “a judge”.

BUDGET IMPLICATIONS

Enhancement of HRM's fine collection provisions should improve HRM's fine collection rate.

Proposed provisions with respect to LICs would reduce the risk of non-collection from NSPI and ensure that property owners who could derive a future benefit pay an appropriate share of the cost of the improvement.

At present, there are no further budget implications associated with these recommendations.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

Regional Council could delete any of the proposed amendments.

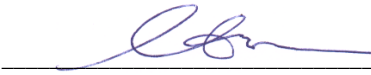
ATTACHMENTS

None.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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