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Item No. 5

Halifax Regional Council
July 8, 2008

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: M. E. Donovan
M.E. Donovan, Director, Legal Services & Risk Management

DATE: June 26, 2008

SUBJECT: Legislation at the Spring 2008 Session of the Legislature

INFORMATION REPORT

ORIGIN

Legal Services has also added information in relation to a number of Bills that were passed in the Spring 2008 session of the Legislature that impact on the municipality.

BACKGROUND

At the Spring 2008 session of the House of Assembly, the Government introduced Bill 179, the *Halifax Regional Municipality Charter* ("Charter"), Bill 181, the HRM By Design Act and Bill 182 amending the *Heritage Property Act*. These Bills did not receive Second Reading before the House recessed.

The Government passed the following Bills impacting the municipality: Bill 135 - *The Municipal Elections Act* (Amended), Bill 138 - *The Municipal Government Act* (Amended), Bill 146 - *The Motor Vehicle Act* (Amended), Bill 157 - *The Financial Measures Act*, and Bill 158 - *Tourist Accommodation Act* (Repealed).

In addition to the Government Bills, the following Private Member Bills were passed impacting the municipality: Bill 121 - *Assessment Act* (Amended), Bill 162 - *The Municipal Government Act* (Amended), and Bill 170 - *The Motor Vehicle Act* (Amended).

While not referred back to the House for Third Reading, Bill 129 - *The Trade Union Act* (Amended), did proceed to Law Amendments where it remains.

DISCUSSION

I. Bill 179 - *Halifax Regional Municipality Charter*

On September 11, 2007, Halifax Regional Council approved a Discussion Paper outlining the need for a *Charter* and directed staff to work towards obtaining a new legislative relationship between the Province and HRM. The Discussion Paper, as approved by Regional Council, advocated using the *MGA* as a template, with no substantive changes, except to:

- clarify that general powers are not limited by specific powers, a provision to this effect being included in section 196 of the *Charter*;
- reduce the need for province wide consultations for legislative amendments, section 391 of the *Charter* requiring consultations between the Minister and HRM; and
- grant Regional Council the power to provide greater notice of variances beyond the legislated 30 metres, the power being granted in section 260(1) of the *Charter*.

On May 23, 2008, the Province gave First Reading to Bill 179, the *Halifax Regional Municipality Charter* ("*Charter*"), in response to Regional Council's September 11, 2007.

With the exception of District Council, discussed in a report before Regional Council at the June 10, 2008 Regional Council meeting, and the Auditor General, discussed in a report before Regional Council at the June 17, 2008 Regional Council meeting, the *Charter* is essentially the *MGA* with some non substantive changes. The changes previously discussed with Regional Council relate to:

- updating language for drafting purposes, including changing "shall" to "must" and "if" to "where";
- adding "administrative orders" to the definition of "policies" since it is the practise of Regional Council to describe its policies as "Administrative Orders";
- adding the changes in Bill 138, the *Municipal Government Act* (Amended), Bill 138 being discussed below;
- responding to a prior request of Regional Council to increase the dollar amount for Ministerial approval for lease and lease purchase agreements, section 120(5) of the *Charter* increasing the dollar amount from \$100,000 to \$500,000;
- renumbering and reorganizing the sections so the HRM only provisions of the current *MGA* are located in the appropriate sections of the *Charter*; and
- adding specific preamble language about HRM.

A number of Parts of the *MGA* will continue to apply to HRM, these being: FOIPOP, Boundaries, and Municipal Affairs.

MGA changes regarding the supplementary funding sections and a correction in the civic numbers power were inadvertently not incorporated in the *Charter*. These changes were passed by the Province in Bill 41 on December 10, 2007 but not proclaimed until February 26, 2008, after the *MGA* had been converted to the *Charter*. The Province intends to address them in the Fall Session of the Legislature.

II. Bill 138 - *Municipal Government Act* (Amended)

Bill 138 amending the *MGA* allows Regional Council to exempt from taxation, by policy rather than by by-law, a registered charity. This amendment grants greater efficiency by eliminating the need to amend By-law T-200 to add the name of new taxed exempt charities or non-profit. Rather, Regional Council may now create an Administrative Order and only have to amend that Order. This is an alternative to a request from Regional Council in May, 2007.

Bill 138 also clarifies that specific powers conferred on a municipality under the *Municipal Government Act* are not limited by general powers conferred under that *Act*. This amendment is in response to Regional Council's request for such a provision to be included in the *Charter*. Bill 138 also provides that a municipality may make a by-law requiring that existing trees or vegetation be retained or removed pursuant to a municipal permit. This is in response to Regional Council's request for such a provision in 2001 and 2007.

In relation to planning,

- where a municipal planning strategy so provides, a land use by-law may now regulate or prohibit development in areas near airports in excess of thirty noise exposure forecast or 30 noise exposure projections as set out on maps produced by an airport authority and reviewed by Transport Canada, in response to an HRM request;
- the notification distance for variances and site plan approvals may be increased by Regional Council, by a land use by-law or policy, to a distance greater than the required statutory thirty meters, in response to Regional Council's request;
- there are now legislated time frames for planning appeals, and further to the Regional Council briefing on May 2, 2008:
 - i) the 14 days period for filing an appeal record was changed from "calendar days" to "business days" and the fourteen day period now commences when the municipality is notified by the Board of appeal, not when the appeal is served on the Board, this being consistent with Regional Council's instructions on this matter;
 - ii) the power to award costs when any time line was missed was extended to apply to any party, not only the municipality; however, there are now legislated matters the Board must consider when awarding such costs; specifically, the conduct of the party during the appeal and the party's ability to pay;

iii) a hearing must begin within forty-five days from the filing of the appeal record unless the Board determines otherwise or all the parties agree that the hearing may begin at some later time;

iv) the Board is required to render its decision within sixty days after the close of submissions by the parties, unless the Board otherwise states at the close of the hearing or unless it is necessary for the interests of justice; and

v) where the Board directs the filing of post-hearing written submissions, such submissions must be filed with the Board within fourteen days after the close of the hearing.

Bill 138 allows the Minister to appoint a Municipal Auditor General, the discretion for the Minister to appoint an Auditor General now occurring only after consulting UNSM, a change from the Bill as introduced at First Reading.

Bill 138 also makes a housekeeping amendment by correcting a typo to the Freedom of Information part of the *MGA* to mirror the provincial *Freedom of Information and Protection of Privacy Act*. This is in response to Regional Council's request.

There were also a number of things removed from Bill 138 in response to public submissions. The by-law enabling power relating to "restricted dogs" was removed. As well, the power to award a site plan approval or a variance for the external appearance of a structure was removed; however, it is currently still in the *Charter* as it is one of the enabling provisions required for HRM by Design. Lastly, the power for the Utility and Review Board to impose costs in planning related appeals was removed with the exception of the timeline cost power referred to above.

III. Bill 162 - Municipal Government Act (Amended)

Bill 162, a private member opposition bill, amends the *MGA* to allow the Province to create regulations respecting the refunding of municipal taxes paid in error or overpaid.

IV. Bill 181 - HRM By Design

Bill 181 received First Reading on May 23, 2008 and was not called for Second Reading. It contains the amendments necessary for HRM to implement HRM by Design. The Bill:

- provides for the creation of incentive or bonus zoning agreements to allow ongoing enforceability after a building is constructed;
- allows Regional Council to delegate the authority to enter into an incentive or bonus zoning agreement to Community Council or a development officer, with the exception that where an incentive or bonus zoning agreement entered into by a community council or a development officer purports to commit the municipality to an expenditure, the commitment having no force or effect until approved by Regional Council;

- provides for the mechanism to create and discharge an incentive or bonus zoning agreement; and
- broadly defines the term “external appearance of structures”.

The Bill grants Regional Council the power to:

- create a design review committee for the Halifax Peninsula;
- delegate some or all of the power of the development officer to the design review committee, with the exception of the power to issue permits, a power retained by the development officer; and
- determine the composition, the duties, and the matters the committee may consider when reviewing the external appearance of structures for a development.

The Bill also sets timelines for a decision and allows an appeal to Council, identical to the variance appeal procedure.

HRM by Design project staff in consultation with the Urban Design Task Force, are currently reviewing the implications of this deferral on the adoption schedule for the Downtown Halifax Plan. It is anticipated that a report will come forward to Regional Council before its summer recess addressing the go-forward work plan for the project. Although the deferral affects the timing of Regional Council's adoption of the Downtown Plan, it does not undermine the overall urban design vision and program for Downtown Halifax, which have received widespread public support.

V. Bill 160 - Heritage Property Act (Amended)
Bill 182 - Heritage Property Act (Amended)

Bill 182 received First Reading on May 23, 2008 and was not called for Second Reading. The Bill amends the *Heritage Property Act* to increase, from one year to two years, the waiting period before the owner of a municipal heritage property may substantially alter the exterior appearance of or demolish the property without the approval of the municipality. The change only applies until September 1, 2009. This is an amendment necessary for HRM to implement HRM by Design.

Bill 160, a private member's bill, amends the *Heritage Property Act* to:

- require a municipal heritage advisory committee to meet at least quarterly;
- repeal Section 18 of the Act which permits the owner of a municipal heritage property to alter or demolish the property one year after the date of the application to alter or demolish the property; and

- add protection for the interior of a commercial or public building.

VI. Bill 135 - *Municipal Election Act* (Amended)

On January 22, 2008, Regional Council approved the awarding of an RFP to enable internet and telephone voting for the 2008 municipal election. The RFP, as awarded, was conditional on legislation being in place to enable the successful implementation of electronic voting. In response, the Province accepted the municipality's request to expressly permit Regional Council to, by by-law:

- allow additional hours and days for voting at an advance poll beyond those times prescribed the *Municipal Elections Act* including permitting voting 24 hours per day over a period of days;
- provide for the method of recounting the ballots or votes for alternative voting if a recount occurs;
- provide for matters dealing with proxy voting, friend voting and certificates of eligibility for alternative voting; and
- create offences for violations related to electronic voting. For example, Regional Council may now create an offence of unlawfully using another elector's personal identification number to vote. Due to the importance of deterring such activities, the Bill expressly provides that the *Remission of Penalties Act* does not apply to a conviction for such an offence and increases the time limit to charge an accused from six months to 2 years.

In addition to additional by-law powers, the Bill clarifies that:

- it is an offence to contravene both the *Act* and the by-law where no penalty is otherwise provided; and
- a judge cannot declare an election invalid for non-compliance with both the *Act* and the by-law if it appears to the judge that the irregularity, failure, non-compliance or mistake did not affect the results of the election.

**VII. Bill 146 - *Motor Vehicle Act* (Amended)
Bill 150 - *Motor Vehicle Act* (Amended)
Bill 170 - *Motor Vehicle Act* (Amended)**

Bill 150, a private member's bill, amends the *Motor Vehicle Act* requiring that a sign be posted in or approaching a temporary work area advising drivers that the fines for speeding in a temporary work area are double.

Bill 170, a private member's bill, amends the *Motor Vehicle Act* to provide that where two lanes merge, the vehicle on the right has the right of way.

Bill 146, a government bill, amends the *Motor Vehicle Act* allowing a peace officer to seize and impound a motor vehicle if the:

- driver of the vehicle has committed an offence;
- seizure would prevent the continuation of an offence;
- owner or driver of the vehicle has any outstanding defaulted fine imposed by the *Motor Vehicle Act* or a section of the *Criminal Code* dealing with motor vehicles;
- driver of the vehicle does not have a valid driver's license;
- driver's license of the owner or driver of the vehicle is suspended or revoked;
- vehicle was used during the commission of an offence under the *Criminal Code*;
- driver breached the Act and has three or more convictions under the Act; or
- vehicle is abandoned.

The statute protects the peace officer from liability provided the seizure is done in good faith.

The owner may provide a bond and recover the vehicle. The exception is where the vehicle is needed for evidence in a criminal proceeding. The Bill reduces the period of days the motor vehicle must be impounded before it sold from 30 to 15 days.

VIII. Bill 157 - Financial Measures Act

Bill 157 implements the terms of an MOU with the UNSM to phase out municipal funding to Corrections over the next seven years. The reduction is as follows:

- commencing April 1, 2010, eighty per cent of the contribution for the fiscal year commencing April 1, 2009;
- for the fiscal year commencing April 1, 2011, sixty per cent of the contribution for the fiscal year commencing April 1, 2009;
- for the fiscal year commencing April 1, 2012, forty per cent of the contribution for the fiscal year commencing April 1, 2009;
- for the fiscal year commencing April 1, 2013, twenty per cent of the contribution for the fiscal year commencing April 1, 2009; and
- for the fiscal year commencing April 1, 2014, and subsequent fiscal years, nil.

The *Act* also implements the terms of another MOU with the UNSM to restrict the increase in the minimum municipal contribution to education costs to no greater than the increase in the cost of living as measured by the percentage increase in the Consumer Price Index for Nova Scotia for the preceding calendar year. The limitation applies on April 1, 2008, up to and including the fiscal year commencing April 1, 2014.

Municipal funding to public housing is phased out over a two-year period beginning April 1, 2010.

Lastly, the *Act* implements a tax credit for public transit for the purchase of a transit pass similar to the federal tax credit.

IX. Bill 121 Assessment Act (Amended)

Bill 121, a private member's bill, extends the assessment caps, effective for the 2009-2010 taxation years, to housing co-operatives where the majority of occupants are ordinarily resident in the Province.

X. Bill 129 - Trade Union Act (Amended)

Bill 129, a private member's bill, amends the *Trade Union Act* to remove the limitation on interest arbitration for police to the items listed in the Schedule to Part I of the Act. The Bill did not receive Third Reading and remains before the Law Amendments Committee. Regional Council has been briefed on this Bill and HRM appeared at Law Amendments and spoke against this Bill.

XI. Bill 151 - Tourist Accommodation Act (Repealed)

Bill 151 only received First Reading. The Bill will repeal the *Tourist Accommodation Act*. To ensure this does not negatively affect HRM, the Bill contains consequential amendments to the *Halifax Regional Municipality Marketing Levy Act* to ensure HRM's levy would continue unchanged.

BUDGET IMPLICATIONS

Bill 121, extending the assessment cap to housing co-operatives, will put some upward pressure on tax rates because the assessment base will grow more slowly. This is similar to the affect which the assessment cap had on other residential properties, although on a much smaller scale.

There are budget implications with the implementation of the planning appeal time lines, the UARB now being required to award costs against HRM when the 14 business day legislated timeline for filing the appeal record is missed. The legislation is silent in relation to the amount of costs, the amount of the costs being left to the discretion of the UARB.

Bill 157, the *Financial Measures Act*, will have positive financial implications for HRM. The elimination, by 2014, of municipal funding to Corrections and Public Housing will save HRM significant money. For example, if municipal funding for corrections and public housing was fully implemented for the 2008-2009 fiscal year, HRM would save 10.3 million this year. The cap in Bill 157 on mandatory education to the increase in the CPI will also have significant positive financial implications to HRM. If this measure was in effect starting with the 2007-2008 fiscal year, the increase to mandatory education for the 2007-2008 fiscal year would have been 2.0% or about \$1.7 million instead of 8.5% or about \$7.1 million, a savings to HRM of approximately \$5.4 million.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

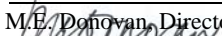
This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

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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