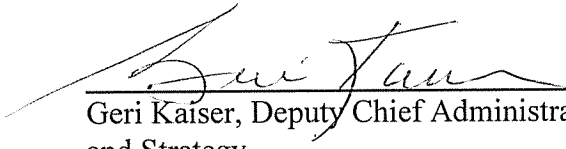


TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer



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

DATE: December 5, 2008

SUBJECT: By-Law to Ban the Sale of Fireworks

ORIGIN

Halifax Regional Council's motion of August 12, 2008 (item #8.11), that staff provide a report on the implementation of a By-law banning the sale of fireworks in HRM

RECOMMENDATION

It is recommended that Council not implement a by-law banning the sale of fireworks in HRM, and instead write the Provincial Government to request that it resume its role as a regulator of fireworks in Nova Scotia.

BACKGROUND

Former Legislation

The former *Halifax City Charter*, S.N.S. 1963, c. 52, provided in section 340(q) that Council could make ordinances for the licencing of “the sale or use, or both, of fireworks, firecrackers, fireballs, squibs, sparklers and any other pyrotechnic device.”

The *Halifax Regional Municipality Act*, S.N.S. 1995, c. 3, provided in section 198(3) that “no person shall, within the Regional Municipality, buy, sell, keep or have any of the articles commonly known as squibs or firecrackers.”

Nova Scotia’s *Fireworks Act* was repealed in 2002. This Act contained a legislative regime for the sale, purchase, and use of fireworks in the province.

Current Legislation

The *Municipal Government Act*, S.N.S. 1998, c. 18 (Charter - once proclaimed) sets out HRM’s powers to make by-laws in section 172. Section 172 does not contain any ability to make by-laws specifically with respect to fireworks as was found in the *Halifax City Charter* and the *HRM Act*. Therefore, any by-law respecting fireworks would have to be related to another grant of by-law powers. HRM does not have the authority to ban the sale of fireworks.

The Town of Truro has a “Public Safety - Firearms and Fireworks Bylaw” that prohibits a person from storing or keeping for sale any fireworks without permission by resolution of council. It also prohibits a person from setting off fire-crackers, rockets, squibs or other fireworks without permission of the mayor. This by-law was approved September 14, 1916, and as such does not change Staff’s opinion on HRM’s power to make a similar by-law under the current *Municipal Government Act* (Charter).

A review of other town and municipal by-laws from across Nova Scotia did not reveal any other prohibitions on the sale of fireworks. Some towns and municipalities have regulated the use of fireworks through their noise by-laws (as has HRM) or their fire prevention by-laws (the Town of Shelburne has included a prohibition on setting fire to any cracker, rocket, or other fireworks in its Fire Prevention By-law). These do not, however, address the sale of fireworks.

This situation is very different from the situation facing municipalities in Ontario. The *Ontario Municipal Act*, S.O. 2001, c. 25, states in section 121:

Without limiting sections 9, 10 and 11, a local municipality may,

- (a) prohibit and regulate the sale of fireworks and the setting off of fireworks;
- (b) prohibit the activities described in clause (a) unless a permit is obtained from the municipality for those activities and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans.

Municipalities in the provinces of Manitoba and Saskatchewan also have explicit powers to pass by-laws relating to the sale and use or setting off of fireworks. The province of Alberta does not give its municipalities that express power, and both the cities of Calgary and Edmonton have used their parks by-laws to prohibit the use of fireworks within parks.

Federal Legislation

The Federal government regulates fireworks under the Explosives Regulations, passed under the *Explosives Act*, R.S., 1985, c. E-17. Fireworks are classed into low hazard and high hazard fireworks. Low hazard fireworks are defined as “fireworks that, in the opinion of the Chief Inspector, are relatively innocuous in themselves and are not liable to explode violently or all at once” and do not require a licence. These low hazard fireworks include fireworks showers, fountains, golden rain, lawn lights, pin wheels, Roman candles, volcanoes, sparklers, Christmas crackers and caps for toy guns.

Section 120(1) of the federal Explosives Regulations states:

- Except as provided in sections 120.1 and 120.2, no person shall knowingly sell any explosive to a person who
- (a) is under 18 years of age; or
 - (b) appears to be under 18 years of age and does not produce evidence that he is 18 years of age or older.

Sections 120.1 and 120.2 lower the age for safety cartridges and model rocket engines. “Explosives” in this section does not include caps for toy guns or pyrotechnic distress signals/lifesaving devices. Section 120.3 also makes it an offence for an individual who is underage to purchase or attempt to purchase those explosives.

Individuals could be prosecuted under either of these offences for actions at the point of sale.

DISCUSSION

HRM does not have the legislative authority to ban the sale of fireworks. The Municipality's current options to regulate the use of firecrackers are limited to the following:

1. N-200, Noise By-law

The Noise By-law makes it an offence to engage in "any activity that unreasonably disturbs or tends to disturb the peace and tranquillity of a neighbourhood." The "detonation of fireworks or explosive devices not used in construction or quarrying" is deemed to unreasonably disturb the peace and tranquillity of a neighbourhood at all times.

2. Nuisance By-law

Part I of the Nuisance By-law makes it an offence to "create, continue or suffer any nuisance to exist on or near a street". A nuisance includes engaging in any activity or pastime which creates a disturbance, or which causes any damage to any structure, object, sod, plant or tree. A street is defined into include sidewalks.

HRM could also use other existing by-laws to regulate the use of firecrackers:

1. P-600, the Municipal Parks By-law

The Parks By-law regulates activities within municipally-owned parks. Council could regulate the use of fireworks within its municipally-owned parks, in a similar manner to its regulation of fire and use of firearms in the parks. This approach has been taken by Edmonton and Calgary.

2. O-103, the Open Air Burning By-law

The Open Air Burning By-law places distance restrictions on permitted fires (15 meters from other combustible material and the adjacent property line), and outdoor wood burning appliances (4.57 meters from other combustible materials). A similar restriction could be placed on the use of fireworks. This is similar to the Town of Shelburne's approach, mentioned above.

The difficulty that has been identified with laying charges under the Noise By-law is identifying those individuals to be charged. Often, by the time enforcement officers arrive on scene, the individuals have departed. Any amendments made to the Open Air Burning By-law and Municipal Parks By-law would present similar issues.

While HRM could request that the Province reinstate its former legislative authority to ban the

sale, use, or setting off of firecrackers, this would not prevent individuals from purchasing them outside of HRM. While their use in HRM would also be illegal, the same enforcement issues arise as set out above. As such, Staff recommends that HRM write the Provincial Government to request that it resume its role as a regulator of fireworks in Nova Scotia and provide a unified provincial approach.

BUDGET IMPLICATIONS

There are no budget implications.

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

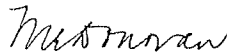
HRM could seek from the Province the reinstatement of its former legislative authority to ban the sale, use, or setting off of firecrackers.

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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