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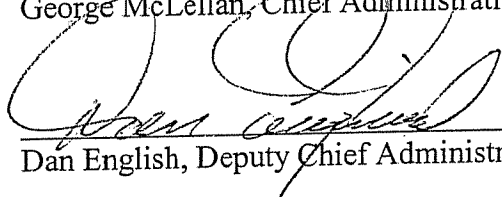
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Halifax Regional Council
February 3, 2004
February 10/04
March 2/04

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer


Dan English, Deputy Chief Administrative Office

DATE: October 24, 2003

SUBJECT: HRM Automatic Machine Licensing By-Law A -200

ORIGIN

Motion of Regional Council March 7, 2000 to:

- consolidate by-laws respecting the licensing of automatic machines;
- standardize the licensing fees for automatic machines throughout the Halifax Regional Municipality; and
- to explore the feasibility of expanding the definition of automatic machines to include bank automatic teller machines (ATM's).

RECOMMENDATION

It is recommended that Regional Council:

- 1) Give first reading to the adoption of HRM By-law Number A- 200 Respecting Automatic Machines;
- 2) Move amendment of Administrative Order 15 to reflect consolidated licensing fees and definitions;
- 3) Authorize staff to request a change to the definition of automatic machine in the MGA to include the introduction of an "electronic card or device" in addition to coin, counter or slug. (If successful, future amendments of the Bylaw will be required.)
- 4) Authorize staff to request the inclusion of penalties levied under the by-law in the Summary Offence Proceedings Act.

BACKGROUND

Since amalgamation the automatic machine licensing by-laws of the former municipal units have been in effect. As detailed below, differences exist in licensing fees, the licensing year and definitions of automatic machine. The existence of four by-laws for HRM creates difficulty for administration and enforcement.

The licensing of automatic machines is generating an average of Net \$75,000 in revenues per year. Appendix A details the current fee structure by municipal unit bylaw. The proposed by-law is recommended for adoption once the current year licenses expire.

DISCUSSION

The Municipal Government Act authorizes the HRM to levy license fees on automatic machines. The license fee is levied in lieu of business occupancy tax for business whose machines are not covered by their business occupancy tax (i.e. coin operated washers/dryers in an apartment building, pop vending machines in a mall.) The license fee is not levied on automatic machines situated in a building where the principal business carried on in that building is the sale of goods or merchandise or the dispensing of service through the operating of automatic machines (i.e. laundromat.)

The definition of an “automatic machine” under the Municipal Government Act has not kept up with technology. Many mechanical and electronic devices may also use debit cards, cash cards or credit cards. The current definition does not provide for this as it limits the licensing to “mechanical or electronic devices that are operated by the introduction of a coin, counter or slug.” It is necessary to seek an update to the definition to include the new technology.

Rationale for Consolidating the By-Laws

The consolidation of the by-laws creates common definitions and standardized licensing fees through-out the HRM. The standardization of licensing fees enables vendors to move automatic machines to different locations without concern for payment of additional licensing fees, simplified administration and enforcement, and equity amongst competitors.

The licensing fees proposed in Administrative Order 15 (Attachment 3) were developed by calculating the weighted average from each former municipal unit’s fee schedule and applying the average percentage increase in small commercial assessment from 1996 to 2003. Current licensing fees levied under the existing bylaws are provided for comparison. The last increase in fees under the former municipal unit bylaws occurred in the former City of Halifax in 1993.

**HRM Automatic Machine Licensing By-Law
Council Report**

Type of Automatic Machine	Proposed HRM Wide	Halifax	Dartmouth	Bedford	County
Juke Box	\$125	\$155	\$100	\$125	\$75
Amusement Machine	\$125	\$155	\$150	\$50	\$75
Bulk Machine (washer/dryer/ gum ball)	\$25	\$10	\$10	\$50	\$25
Vending Machine	\$55	\$40	\$50	\$50	\$25
Mechanical Ride	\$35	\$25	\$25	\$50	\$25

Feasibility of Licensing Automatic Teller Machines (ATM)

Legal Services has examined the issue of licensing bank machines and is of the opinion that while the MGA permits the licensing of automatic machines, neither the definition of automatic machine or the history of the definition, include a banking machine. In fact, the federal government has jurisdiction with regard to banking and machines attached to banking property.

However, examination was also completed on whether the HRM has the constitutional authority to license stand alone cash machines. Legal Services is now satisfied that HRM would not be treading into the federal jurisdiction of banking by licensing private non-bank owned machines. Recommendation #3 authorizes the HRM to pursue the change in definition needed to license these machines as these machines are operated by electronic card, not coin, counter or slug.

BUDGET IMPLICATIONS

The accounting method for license fees will change from the cash to accrual method and result in a one time shortfall of approximately \$61,000 against revenues for the budget year 2003-04. This will be reflected in the 3rd quarter results and is expected to be absorbed within the operating results.

The proposed schedule of licensing fees would continue to generate revenues of approximately Net \$75,000 at the current level of licences for fiscal year 04/05. The revenue stream assumes volumes at the current level of response. Increased response would require additional resources, the cost of which would be offset by the increased revenue stream.

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

**HRM Automatic Machine Licensing By-Law
Council Report**

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utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Council can direct Staff to maintain the status quo and administer the licensing of automatic machines under the current by-law structure.
2. Council can rescind all current by-laws and no longer license automatic machines.

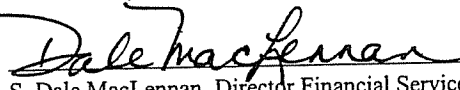
ATTACHMENTS

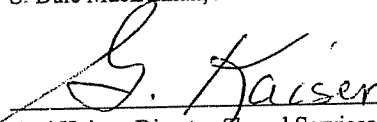
1. Appendix A: Table Detailing Automatic Machine Licensing By-laws in Effect
2. Proposed HRM By-law A-200 Respecting the Automatic Machines
3. Amendment to Administrative Order 15
4. Enforcement Policy

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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Report Approved by:


S. Dale MacLennan, Director Financial Services


Geri Kaiser, Director Shared Services

Appendix A: Table Detailing Automatic Machine Licensing By-laws in Effect
 (as of October 24, 2003)

Former City of Halifax (Ordinance 151) Licenses expire 30 April following date of issue		
Automatic Machine	Any mechanical which is operated by the introduction of a coin and includes an amusement machine, but does not include telephones, gas or electric meters, postage stamp vending machines	As per below
Amusement Machine	Any mechanical, electronic machine, device or game which may be operated and played upon depositing coins, which does not dispense foods, wares or services, but is used as a game - including pinball, electronic games, target games, shuffleboard.	\$155.00
Bulk Machine	Automatic machine which dispenses a single unpackaged product or single service including washers and dryers, gum ball machines.	\$10.00
Juke Box	Any automatic machine which produces music or other sound.	\$155.00
Mechanical Ride	Automatic machines which is designed or intended to entertain or amuse people by physically moving them.	\$25.00
Vending Machine	Automatic Machine which dispenses food, beverages, goods, wares or services.	\$40.00
Former Town of Bedford (By-Law 15100) Licenses expire last day of December following date of issue		
Automatic Machine	Any pinboard and any automatic or slot machine which is operated by the introduction of a coin, but does not include automatic scales, telephone apparatus or electric meters.	
	Laundry Machine	\$50.00
	Vending Machine	\$50.00
Juke Box	Automatic machine which is primarily designed or intended to entertain or intended to entertain by producing music when activated	\$125.00
Mechanical Ride	Automatic machine which is designed or intended to entertain or amuse people by physically moving them	\$50.00
Former Halifax County (By-Law 15) Licences expire last day of December following date of issue.		

Automatic Machine	Any automatic vending machine which dispenses food, wares or services and is operated by the introduction of coins, but does not include amusement machines, scales, telephones, or electric meters.	\$25.00
Amusement Machine	Any mechanical or electronic machine which may be operated by the introduction of coins which does not dispense food, wares or services but is used as a game including pinball machines, shuffle boards	\$75.00
Former City of Dartmouth (By-Law 105) Licenses Expire 1 Jan following date of issue		
Automatic Machine	Any pinboard, pinball or automatic or slot machine operated by the introduction of money, but does not include automatic scales, telephone or electronic meters	\$150.00
Juke Box	Automatic machine which produces music, speech but does not include individual wall boxes	\$100.00
Mechanical Ride	Any stationary apparatus designed to carry and move people for their enjoyment.	\$25.00
Vending Machine	Means a machine that releases goods, wares, food, drink or merchandise upon the deposit of money.	\$50.00

REVISED

10.1.4

**HALIFAX REGIONAL MUNICIPALITY
BYLAW A-200
RESPECTING AUTOMATIC MACHINES**

WHEREAS automatic machines are in competition with business establishments that are obligated to pay commercial property and business occupancy taxes;

AND WHEREAS the Halifax Regional Municipality believes that it should be compensated for providing police, fire and other services to protect these machines

THEREFORE the Council of the Halifax Regional Municipality under the authority vested in it by Section 172(1)(g) of the Municipal Government Act, enacts as follows:

Short Title

1. This Bylaw may be cited as Bylaw A-200, the "Automatic Machines Bylaw".

Interpretation

2. In this Bylaw

- (a) "amusement machine" means an automatic machine which does not dispense foods, wares, or services, but is used as a game, contest of chance or skill, or for amusement whether or not registering a score, including but not limited to electronic or mechanical game machines, electronic video games, skill ball, bowling game machines, horse-racing machines, driving games, target games, pinball machines, shuffleboards, mechanical rides and other similar machines or devices under whatever name they may be indicated, but does not include video gaming devices or video lotteries licensed by the Alcohol and Gaming Authority of the Province of Nova Scotia, nor those things, the use or keeping whereof is prohibited by law;
- (b) "automatic machine" means a mechanical or electronic device that is operated by the introduction of a coin, counter or slug or is designed or normally intended to be so operated and includes a vending machine and an amusement machine but does not include automatic scales, telephone apparatus, gas or electric meters or postage stamp vending machines, or a machine that is licensed by the Province of Nova Scotia or an agency of the Province;
- (c) "Council" means the Regional Council of the Municipality;
- (d) "License Administrator" means the License Administrator appointed by the Chief Administrative Officer or his designate;
- (e) "License Inspector" means the License Inspector appointed by the Chief Administrative Officer or his designate;

- (f) "maintain" includes own, maintain, control or have in one's custody or possession or on one's premises for operation by other persons;
- (g) "Municipality" means the Halifax Regional Municipality;
- (h) "occupier" includes the person entitled to the possession of land, a leaseholder, and a person having or engaging for any way or purpose the use of the land, otherwise than as owner;
- (i) "owner" includes one or a combination of the following:
 - (a) a person who is entitled to possession as a tenant in fee simple, for life, or for a term of not less than twenty (20) years;
 - (b) a mortgagee in possession;
 - (c) where the mortgagee of land is not in possession, the person entitled to the equity of redemption;
 - (d) the person managing or receiving the rent of the land or premises, whether as his own account or as an agent or trustee of any other person; and
 - (e) a person who is assessed for the premises or the Assessment Roll of the Municipality as of the date of an alleged violation; and
- (j) "vending machine" means an automatic machine which dispenses food, beverages, goods, wares or services.

Automatic Machine's License Required

3. (1) Subject to subsection (2), no person shall maintain any automatic machine unless the person has obtained and is in possession of a valid licence from the municipality permitting the person to maintain such automatic machine.

- (2) A license under this By-law shall not be required for any automatic machine when
 - (a) it is situated in a building or premises where the principal business carried on in that building or premises is the sale of goods or merchandise or the dispensing of service through the operating of automatic machines; or
 - (b) it is in support of a charitable organization, registered under the Income Tax Act (Canada), a non-profit society incorporated under the Societies Act of Nova Scotia, a church or a school;

proof of which must be provided when requested by the municipality.

(3) For the purposes of this Section, "principal business" means a business carried on in a building or premises, the gross receipts of which represent seventy-five percent or more of the total receipts of all business carried on in the building or premises.

Procedure For Obtaining License

4. (1) The application for a license pursuant to this By-law shall be made to the License Administrator on the prescribed form obtained from the Municipality and shall be signed by the applicant and accompanied by the appropriate license fee..

(2) Every application for a license shall contain:

- (a) the name, mailing address and telephone number of the owner of the automatic machine;
- (b) the civic number, name of building and location within building where each automatic machine is to be located;
- (c) the name and address of the owner and occupier of the premises on which the automatic machines is to be located;
- (d) number, type and serial number of the automatic machine sought to be licensed;
- (e) a copy of the encroachment license issued pursuant to By-law E-200, the Encroachment By-law, for any automatic machine proposed to be located on a street;
- (f) a declaration that the automatic machine is permitted on the premises on which the automatic machine is to be located pursuant to the provisions of the applicable Land Use By-law; and
- (g) any other information required by the License Administrator to evaluate the application under the terms of this By-law;

(3) An application pursuant to subsection (2) may be for more than one machine and location.

(4) The fee for said license shall be as prescribed from time to time in the License, Permits and Processing Fees Administrative Order.

(5) A license issued under this By-law shall display

- (a) the words "Licensed Automatic Machine";
- (b) the licensing year;
- (c) a description of the type of automatic machine to which the licenses applies;
- (d) a unique license number; and
- (e) the date the license was issued.

(6) The owner shall cause the license issued under this By-law to be affixed in a conspicuous place to the automatic machine to which it applies.

(7) A license issued under this By-law may be used for any automatic machine of the type to which the license applies and may be transferred from one automatic machine to another of the same type on the same premises.

(8) A license issued under this By-law shall expire on the 31st day of March following the date of issue.

(9) It shall be an offence for any person to make any false statement in an application hereunder.

Administrator's Records

5. The License Administrator shall maintain a permanent record of each license issued and record the reports of violation thereon.

Replacement of License Sticker

6. The License Administrator, on payment of the fee of \$5.00, shall replace any license when a licensed owner files a declaration that the said sticker has been lost, stolen or destroyed.

License Transferability

7 (1) A license issued under this By-law shall not be transferable from one owner to another.

(2) A license issued under this By-law to an owner may be transferred from one automatic machine to another of the same type which is owned by the same owner and on the same premises, provided the owner has notified the License Administrator of the change in serial numbers.

(3) A license issued under this By-law in respect of any premises may be transferred to another premises, provided the owner of the machine has notified the License Administrator of the civic number, name of building and location of the new premises in which the automatic machine

is to be located and the name and address of the owner and occupier of the new premises.

License Revocation

8. (1) A license issued under the provisions of this Bylaw may be revoked at any time by the License Inspector if he believes that any provisions of this Bylaw has been violated and upon the holder of the license being notified in writing of such revocation by the License Inspector, such holder shall forthwith cease to permit or suffer any automatic machine in respect of which the license was in force to be operated and such machine shall be immediately removed from the premises stated in the license.

(2) The License Inspector shall immediately notify the License Administrator of the revocation of a license.

Appeal

9. (1) Any person whose application for a license under this Bylaw has been refused by the License Administrator or revoked by the License Inspector may appeal to the Appeals Committee of Council.

(2) An appeal shall be in writing setting forth the grounds for appeal addressed to the Appeals Committee of Council, with a copy to the License Administrator or the License Inspector, as applicable, within fourteen (14) days after receipt by such person of written notice from the License Administrator or the License Inspector of refusal or revocation.

Operation of Unlicensed Machine

10. No person shall permit or suffer to be operated any automatic machine with respect to which there is no license in force under this By-law.

Offenses and Penalties

11. (1) Any person who contravenes or fails to comply with any other provision of this By-law shall be guilty of an offense and liable to a penalty of not less than one hundred dollars (\$100.00) and not exceeding two thousand dollars (\$2,000.00) and in default of payment to imprisonment for a period not exceeding thirty (30) days.

(2) Every day during which such contravention or failure to comply continues shall be deemed to be a new offense.

(3) Where an automatic machine is maintained on any premises for which there is no license in force, the License Inspector may, after ten (10) days notice in writing by personal service or by regular or registered mail to the owner of the premises on which the machine is located, enter the premises and seize and/or remove the automatic machine and all expenses incurred by the License Inspector in seizing, removing and storing the machine may be recovered as a debt due from the owner of the premises from which the machine was removed and the License Inspector may sell

the machine to recover the expenses of its seizure, removal, storage and sale and the such expenses shall be a first lien on the property of the owner from which the machine was removed.

Inspections

12. The License Inspector may enter upon any land or premises at a reasonable time without a warrant to determine whether an automatic machine is licensed and the provisions of subsection (3) of Section 503 of the Municipal Government Act shall apply to such inspection.

Repeal

13. Section 2 through 13 of Bylaw A-501 of the former City of Dartmouth as amended, Ordinance 151 of the former City of Halifax, Section 2(a) and (d) and Section 9, of By-law 15 of the former Halifax County Municipality and Sections 2(a) and 9 of the former Town of Bedford Bylaw 15100 are hereby repealed.