



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 11.1.1**

**Halifax Regional Council  
February 3, 2009**

**TO:** Mayor Kelly and Members of Halifax Regional Council

A handwritten signature in cursive script, appearing to read "Dan English".

**SUBMITTED BY:**

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Dan English, Chief Administrative Officer

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Wayne Anstey, Deputy Chief Administrative Officer - Operations

**DATE:** January 8, 2009

**SUBJECT:** Charitable Fundraising on Municipal Streets

**ORIGIN**

Item 11.4.1 raised at the July 8, 2008 meeting of the Halifax Regional Council.

**RECOMMENDATION**

It is recommended that Council not proceed with a by-law permitting fund-raising activities on HRM-owned streets.

## **BACKGROUND**

Moved by Councillor Younger, seconded by Councillor Johns that Halifax Regional Council request a staff report relative to amendments to either the Streets By-Law or Vending By-Law to address the advisability of permitting, through no-fee license, fundraising activities on municipal streets as per the proposed amendments of Section 293 of the Motor Vehicle Act as follows:

**Chapter 293 is further amended by adding immediately after Section 173 the following Section:**

**173A(1) No person, while on a roadway, shall stop, attempt to stop or approach a motor vehicle for the purpose of offering, selling or providing any commodity or service to or soliciting the driver or any other person in the motor vehicle.**

**(2) Subsection (1) does not apply to the offer, sale or provision of towing or repair services or any other commodity or service in an emergency.**

**(3) Subsection (1) does not apply to fundraising activities that are (a) permitted by a by-law of the municipality in which activities are conducted; and (b) approved by the traffic authority responsible for the roadway on which the activities are conducted.**

Councillor Hendsbee requested that the report clearly indicate that along with municipal streets, municipal parking lots, sidewalks and all areas within the municipal right of way be included.

## **DISCUSSION**

Staff is aware of the great importance placed on charitable fundraising activities by various service organizations and supports their efforts. Regardless of the worthiness of the cause, however, HRM leaves itself open to liability for damage claims if it approves activities which have been identified as potentially unsafe. HRM also leaves itself open to a possible Charter challenge of the Streets or Vending By-law from anti-poverty groups if either is amended to allow fundraising activities on municipal streets.

Notwithstanding the recent amendment to the Motor Vehicle Act adding Section 173A prohibiting all on-street solicitation of funds unless permitted by Municipal By-Law, Council approval of roadway fundraising activities could be in conflict with the intent of Section 127(2) of the Motor Vehicle Act and with Part 1 of By-Law N-300.

Section 127 (2) of the Motor Vehicle Act states that “Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent highway.” The intent of the legislation is to ensure that pedestrians stay off of streets and use sidewalks as much as possible. Where sidewalks are not provided, pedestrians are required to walk on the left side of the roadway (or shoulder) facing approaching traffic whenever practicable. When crossing a highway at any point other than a marked or unmarked crosswalk, pedestrians are legally required to yield the right of way

to vehicles. This is a safety measure intended to prevent pedestrians from walking out into traffic wherever they choose.

Part 1, Section 3 of By-Law N-300 states that:

- (1) No person shall create, continue or suffer any nuisance to exist on or near a street.
- (2) For the purpose of this part, nuisance includes:
  - (a) engaging in any activity or pastime which:
    - (i) obstructs any person
    - (ii) creates a disturbance
    - (iii) causes any damage to any structure, sod, plant or tree

Although By-Law N-300 does not specifically prohibit on-street soliciting of funds, the intent is to prohibit activity on a street which obstructs or disturbs. There are some citizens who have stated that they object to being subjected to appeals for money while “captive” in traffic.

It should be noted that Section 173A refers to soliciting “while on a roadway”. The Motor Vehicle Act defines roadway as “that portion of a street or highway between the regularly established curb lines or that part improved and intended to be used for vehicular travel.” Since Section 173A does not apply to sidewalks or other areas of the right of way (such as boulevards, medians) this effectively means that soliciting funds on sidewalks and other areas of the right of way is legally permitted.

It should also be noted that the Provincial Traffic Authority does not support any fund raising activities on any provincially-controlled roadways. Since 173A also requires approval “by the Traffic Authority responsible for the roadway on which the activities are conducted” an HRM by-law could not authorize fund-raising on streets outside the core service area which are owned and maintained by the Province.

There are several areas of concern to staff regarding this issue: public safety, legal liability and delays to traffic. A subsidiary point relates to the matter of precedent; if one charitable organization is allowed to raise funds on city streets, there will inevitably be many more requests from other groups seeking similar permission, and in fairness all have to be treated equally.

### Safety

Those in favour of permitting on-street solicitation of funds would argue that it does not constitute a safety problem because such events have been conducted in the past without incident. Staff is unable to confirm that this is the case because police collision reports are not filed by cause.

Potentially unsafe activities should not be condoned regardless of whether funds are being collected for charity or for personal use. Those collecting funds have been observed walking between queues of stopped vehicles at some of the busiest intersections in the city. It is not hard to conceive of a

situation where a driver's foot accidentally slips off the brake just as a fund-raiser steps between vehicles.

### Legal Liability

Establishing a By-Law that permits fundraising activities in the roadway could expose HRM to legal costs, should an accident occur in which a pedestrian is injured or where two or more vehicles collide as a result of there being pedestrians in the roadway (for example, if one vehicle strikes another while trying to avoid a pedestrian). In such circumstances HRM may be added as a Co-Defendant or a Third Party. The grounds for making a claim against HRM may be that we permitted, and even encouraged, an inherently unsafe activity to occur. Although it is unlikely that HRM would be found liable in such circumstances, there are still significant costs and time that would be involved in defending such actions. Further, there is always a risk, however small, that HRM could be held liable for the injuries or property damage, in whole or in part.

### Delay

Service clubs and other fund-raisers maintain that they do not hinder or interfere with traffic in any way during solicitation of funds. However, the primary interest of such clubs is in the busiest intersections during rush hour. Staff observations are that motorists stopped at a red light are often being approached just as the traffic signal turns green. Time is spent searching pockets or purses for money while holding up traffic. The momentary delay results in several fewer vehicles clearing the intersection on the green light than would normally be the case. Each additional vehicle contributes to the overall congestion of the street system.

### Precedent

It would be discriminatory to allow some organizations to solicit funds on city streets and not grant other groups the same privilege. While there are safety and delay concerns with even a few annual events, these concerns are heightened with the possibility of this becoming a more frequent activity.

### Municipal Property and Private Property

As stated above, Section 173A applies only to roadways (as defined in the Motor Vehicle Act) and does not preclude off-street fundraising in the non-roadway portion of parking lots, whether private or municipal with permission of the owners(s). Areas of parking lots that are "improved and intended to be used for vehicular travel" are "roadways" and thus prohibited for fundraising under Section 173A, but fundraising could still occur on parking lot sidewalks or on areas of parking spaces that are barricaded to prevent vehicles from passing through.

### Summary

Charitable organizations have requested permission to raise funds by soliciting money from motorists stopped in traffic at major intersections. Staff has recommended that such permission not

be granted because of concerns regarding safety and traffic delay. Council approval of on-street fundraising activities is inconsistent with Section 127 (2) of the Motor Vehicle Act and By-Law N-300 and could leave the City vulnerable to legal costs in defence of damage claims. Section 173A of the Motor Vehicle Act does not prevent fundraising activities in the non-roadway portion of parking lots, on sidewalks, or other areas of municipal right of way, providing other options for fundraising.

**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.

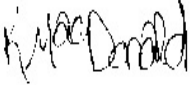
**ALTERNATIVES**

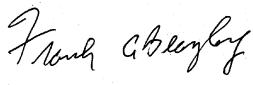
There are no recommended alternatives.


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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