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HALIFAX
REGIONAL MUNICIPALITY

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Halifax Regional Council
August 8, 2006

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Wayne Anstey, Acting Chief Administrative Officer

Geri Kaiser, Deputy Chief Administrative Officer

DATE: August 1, 2006

SUBJECT: **Bylaw A-200 - Respecting Automatic Machines-Amendments**

ORIGIN

Bylaw A-200, Respecting Automatic Machines was passed by Regional Council in March 2004. HRM has now had a number of years of administration of the by-law to determine areas of administrative concern. Vendors of bulk machines have expressed concern with the fee schedule, specifically for bulk vending machines, and have requested that staff make recommendations to Regional Council to revise these fees.

RECOMMENDATIONS

It is recommended that Regional Council approve:

1. Proposed By-Law A-201, respecting Automatic Machines and commence the process for giving first reading for the adoption of the amended By-Law A-200.

2. Amendments to Administrative Order 15, Respecting License, Permit and Processing Fees and definitions.

3. Authorize staff to investigate the appropriateness of establishing a licensing fee for banking machines not located in commercial buildings.

BACKGROUND

Bylaw A-200, respecting Automatic Machine Licensing deals with the licensing of vending and amusement machines. These include machines that dispense unpackaged products such as gum balls and nuts; amusement or game machines not licensed by the Province of Nova Scotia; laundry machines; newspaper boxes located on private lands; and vending machines such as those that dispense snacks and beverages. Bylaw A-200 does not include ATM's as they are currently located primarily in establishments that pay a business occupancy tax.

The intents of Bylaw A-200 are several:

1. To ensure equity in the taxation policy between businesses which operate within HRM and pay business occupancy tax and businesses that operate within HRM, such as automatic machine vendors, who would not otherwise pay business tax.

1. To control, through taxation, the proliferation of automatic vending machines within HRM.

2. To offset the administrative costs to HRM of licensing and inspection of the business of automatic machine vending.

At amalgamation, each of the former municipal units had a fee structure for licensing automatic vending machines. Bylaw A-200 represented the rationalization of the fee structure for automatic vending machines under one HRM bylaw.

HRM staff have been asked, by some representatives of the industry, to revisit the fee structure of Bylaw A-200, with a view to achieving clarity regarding how the fee is applied, and specifically to look at reducing the fees for bulk vending machines.

In response to that request staff undertook a process to:

a) review the fees for similar businesses in other Canadian Municipalities;
b) consult with staff from the business units responsible for policy and administration of the by-law, and;
c) receive input from vendors and publishers in HRM.

DISCUSSION

It is the view of staff that the intent and objectives of Bylaw A-200 are being served by the administration and enforcement of the Bylaw.

Canadian Municipalities

The findings of the cross-Canada review were that most municipalities apply a fee or license respecting automatic vending machines. Fees vary based on the taxation approach or administrative structure of the municipality, but generally, HRM's fees are neither at the high end nor the low end of the spectrum.

A more detailed review was conducted regarding three (3) areas of the by-law:

1. the rate charged for bulk machines (at the request of the industry representatives) and specifically to determine if the licensing fee was charged by "stand" or "by mechanism/head";
2. the rate charged for licensing automatic washers and dryers in apartment buildings, specifically in regard to the cost of fire inspections, and;
3. the addition of licensing of newspaper boxes on private property (non-municipal land).

Industry Consultation

Staff met with industry representatives at the commencement of the review process to better understand their concerns.

At the completion of the information gathering stage an information package and discussion paper were mailed out to stakeholders asking for feedback and a meeting with vendors was held. It is the belief of staff that the primary concerns of the industry have been addressed with these amendments.

Council Focus Group

Staff held a focus group for interested member of Council where the proposed changes were outlined and feedback received.

Proposed Amendment

1. That, in response to industry and following the review of fees for similar machines across Canada, the bulk vending machine fee be reduced to $10 "per head", from $25.00 per head.
2. That a specific clarification of a "per mechanism/head" definition be included in the by-law to provide the clarity necessary for both industry and administration.

3. That the rate of licenses for washing machines and dryers in apartment buildings not be increased from the $25.00/annual fee, but classified as a new category.
4. That a new category be added to the by-law to license newspaper boxes outside of the street right-of-way . That newspaper boxes within the street right-of-way be administered under Bylaw C-500 and, that the license fee for newspaper boxes be the same under both bylaws.
5. That a "charitable" license category be established for automatic machines where 100% of the profit is donated to a charitable organization.

Staff feel that the proposed amendments and clarifications:

a) represent a fair balance between industry concerns and tax equity
b) continue to meet the outcomes and objectives of Bylaw A-200
c) result in the clarity required by industry and staff to effectively administer and monitor compliance with the bylaw.

BUDGET IMPLICATIONS

Staff believe that the added revenue from newspaper boxes and newly licensed automatic machines will offset the revenue lost from the lower fee on automatic machines. It will be a priority this year to identify unlicensed automatic machines and newspaper boxes. Revenue may increase over time as the bylaw is more effectively understood and industry compliance audited.

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.

BYLAW RATIONALIZATION COMMITTEE

The proposed bylaw and respective Administrative Orders were reviewed by the Bylaw Rationalization Committee on February 24, 2006. The policy lead Business Unit was modified from Financial Services to Business Planning and Information Management. The documents have also been "approved to form" by Legal Services.

ALTERNATIVES

1. Council can direct staff to maintain the status quo and administer the licensing of automatic machines under the current bylaw structure.

ATTACHMENTS

Appendix "A" - Proposed Bylaw A-201 Automatic Machine Licensing
Appendix "B" - Administrative Order 15 Respecting License, Permit and Processing Fees

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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"Appendix A"

APPROVED AS TO FORM
Municipal Solicitor

HALIFAX REGIONAL MUNICIPALITY
PROPOSED BY-LAW A-201
RESPECTING AUTOMATIC MACHINES

WHEREAS automatic machines are in competition with business establishments that are obligated to pay commercial property and/or 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, juke boxes 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, slug, paper money, debit card, credit card or other such payment device or is designed or normally intended to be so operated and includes vending machines, and amusement machines 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. Each mechanical or electronic device that is operated by its own payment mechanism is an individual automatic machine regardless of how many such devices are attached to the same stand.

(c) "bulk machine" means an automatic machine which dispenses an unpackaged

product such as but not limited to gum ball(s) and nut(s) which is operated by the introduction of a coin, slug, paper money, debit card, credit card or other such payment device;

(d) "Council" means the Regional Council of the Municipality;

(e) "Laundry machine" means a washing or drying machine which is operated by the introduction of a coin, slug, paper money, debit card, credit card or other such payment device;

(f) "License Administrator" means the License Administrator appointed by the Chief Administrative Officer or his designate;

(g) "License Inspector" means the License Inspector appointed by the Chief Administrative Officer or his designate;

(h) "maintain" includes own, maintain, control or have in one's custody or possession or on one's premises for operation by other persons;

(i) "Municipality" means the Halifax Regional Municipality;

(j) "newspaper box" means a box for the purpose of vending newspapers which is operated by the introduction of a coin, slug, paper money, debit card, credit card or other such payment device;

(k) "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;

(l) "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;

(m) "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; and

(n) "vending machine"means an automatic machine which dispenses food, beverages, goods, wares or services.

Automatic Machine's License Required

3. 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.

(1) A licence is not required in the following circumstances:

(a) when the machine 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 services through the operating of automatic machines, proof of which must be provided when requested by the municipality;

(b) any newspaper box that is licenced under By-law C-500, the Commerce and Vending on Municipal Lands By-law; or

(2) A "charitable" licence is required when:

(a) one hundred percent (100%) of the profit of the machine are used in support of:

i) a charitable organization registered under the *Income Tax Act (Canada);*
ii) a not for profit society incorporated under the *Societies Act of Nova Scotia*;
iii) a religious institution; or
iv) a school.

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 the 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 machine 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;

(h) in order to obtain a charitable licence pursuant to section 3(2), the applicant shall provide the following:

(a) written confirmation from the charity that the applicant is permitted to use the charity's name;

(b) income statements for the machine's past use under a "charitable" licence; and

(c) confirmation of the charity's charitable status.

(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) The owner of a machine operating under a "charitable" licence shall ensure that the machine clearly indicates which charity it supports.

(8) 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.

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

(10) 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 Unlicenced 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.

Done and passed this 2nd day of March, 2004

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Mayor

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Acting Municipal Clerk

I, Jan Gibson, Acting Municipal Clerk of the Halifax Regional Municipality, hereby certify that the above-noted by-law was passed at a meeting of the Halifax Regional Council held on March 2, 2004.

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Jan Gibson, Acting Municipal Clerk

Notice of Motion:	February 3, 2004
First Reading:	February 10, 2004
"Notice of Public Hearing" Publication:	February 14, 2004
Second Reading:	March 2, 2004
Approval of Service Nova Scotia and Municipal Affairs:	N/A
Effective Date:	March 6, 2004

"Appendix B"

Amendment to Schedule "A", Administrative Order 15, Respecting License, Permit, and Processing Fees

12.	**By-Law #**	**Short Title**	**Section**	**Fee**
	A-201	Respecting Automatic Machine Licensing		
		- Amusement Machine		$35/annum
		- Bulk Machine (Coin Mechanism)		$10/annum
		- Laundry Machine		$25/annum
		- Vending Machine License (Snack/Beverage)		$55/annum
		- Newspaper Boxes		$55/annum