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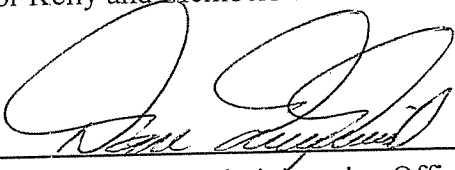


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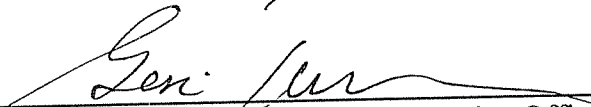
Halifax Regional Council
October 3, 2006

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer



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

DATE: September 27, 2006

SUBJECT: Amendments to MGA

ORIGIN

Legal Services has prepared a list of proposed amendments, as requested by staff and Council, in relation to the *Municipal Government Act* for consideration by the Province at the next sitting of the Legislature.

RECOMMENDATION

1. It is recommended that Halifax Regional Council adopt the proposed amendments to the *Municipal Government Act* and that the amendments be forwarded to the Province of Nova Scotia for consideration and implementation.

BACKGROUND

Over the last year, Legal Services has received various requests from staff and Council for amendments to the *MGA*. Legal Services has compiled these requests and drafted appropriate wording.

DISCUSSION

The following identifies each amendment with a title and provides: an explanation for the legislative change(s), and suggested wording.

I. Entry to Adjoining Property to Repair or Alter Buildings

Rationale:

Access to adjoining property to effect maintenance or repairs is required from time to time in situations of dense urban development. Problems have arisen recently with achieving access to such adjoining property and a mechanism is required to support property owners in their efforts to effect maintenance and repair to their property. The former *Halifax City Charter* provided such a provision and the provision worked well. It is proposed that a similar provision be added to the *MGA*.

Amendment:

- 267A (1) An application may be made to the municipality to permit access to the adjoining land of the applicant to repair or alter a structure and where it appears to the inspector that such repairs or alterations cannot be made without obtaining access to the adjoining property, the inspector may require the owner or the owner and the tenant of the adjoining property, upon such terms and conditions as the inspector shall provide, to permit the applicant to access such adjoining property for the limited purpose of making such repairs or alterations.
- (2) The terms and conditions provided by the inspector may include compensation to the owner or the owner and tenant of the adjoining property for any damage committed by the applicant, its servants, agents, workmen or contractors, and the inspector may require the applicant to provide a guarantee bond for the protection of the owner or the owner and tenant of the adjoining property.
- (3) If the adjoining owner or owner and tenant, after the inspector has required the adjoining owner or owner and tenant to permit the applicant to enter on

its property for any of the purposes set out in subsection (1), refuses to permit the applicant to enter and perform such alterations and repairs, such owner or owner and tenant shall be liable to a penalty not exceeding \$1,000.00, and the applicant may apply to the Supreme Court of Nova Scotia for an order granting such access under the terms and conditions that the court deems just.

(4) A municipality is not liable for any damages caused by or arising from the exercise of the power granted under this section.

(5) In this section:

(a) “inspector” has the same meaning as an inspector within section 2 of the *Building Code Act* R.S.N.S. 1989, c. 46, s. 1; and

(b) “structure” has the same meaning as structure in section 191 (1)(p) of this *Act*.

II. Graffiti

Rationale:

Graffiti has become a significant community issue within the municipality. HRM is developing a sustainable management program which will be effected by the adoption of a graffiti bylaw. To permit the adoption of such a bylaw, enabling provisions are required within the *MGA*.

Amendment:

Section 3 is amended by adding immediately after clause (ak):

(aka) “Graffiti” means any inscription, word, painting, printing, work, figure, marking, symbol, design or other defacement which is written, sprayed, marked, scratched, etched, drawn, engraved, painted or placed with spray paint, liquid paint, ink, chalk, dye, indelible marker, or otherwise applied to any external surface or a public or private building, fence, tree, sidewalk, curb, sign, structure, vehicle, equipment, place, and similar location and thing, regardless of its content or nature and regardless of the nature of the material of that structural component or property, without the expressed prior consent of the owner or person in possession thereof.

Section 3 is further amended by:

1. Deleting the word “or” from the end of clause (r)(x);

2. Adding the word “or” to the end of clause (xi); and
3. Adding immediately after subclause (xi) of clause (r) thereof, the following subclause:

(xii) that contains graffiti.

III. Heritage Incentives

Rationale:

In most provinces, strong demolition control is counterbalanced by financial incentives to encourage maintenance, rehabilitation, or restoration of heritage properties. Most provinces enable municipalities to provide grants, but many enable loans and property tax relief, and state this clearly in their legislation. The *Nova Scotia Heritage Property Act* is less specific than most and clarification would be helpful. Currently section 22 of the *Nova Scotia Heritage Property Act* states:

22(1) The Minister, subject to the approval of the Governor in Council, may provide financial assistance in respect of provincial heritage property and the council may provide financial assistance in respect of municipal heritage property or property located in a conservation district to any person to assist in the restoration or renovations of such property upon such terms and conditions as the Minister or the council, as the case may be, deems fit.

Amendments:

The following amendments were proposed in a report dated January 31, 2006 and submitted to the Nova Scotia Voluntary Planning Strategy Task Force and prepared by HRM Planning and Development Services: Heritage Property Program, wherein it was proposed that the *Heritage Property Act* be amended to provide that:

- 22(2)(a) Such assistance may be in the form of grants, loans, or property tax relief.
- 22(2)(b) Where the Council considers it appropriate, such assistance may be granted on condition that the owner enter into an agreement with the municipality regarding the ongoing maintenance and protection of the property from demolition or substantial alteration.
- 22 (3) The council of a municipality or a municipality may enter into a conservation easement with the owner of a property respecting the use, preservation or protection of a heritage property or property located in a heritage conservation district.

Section 18 is deleted and the following substituted therefor:

- 18 The municipality may establish regulations for demolition or removal of a municipal heritage property, which may include:
- (a) a requirement that any application for demolition or removal shall include a report by an independent consultant regarding the structural condition of the building, with the cost of the study borne by the applicant.
 - (b) a requirement that no building shall be demolished and no permit for demolition shall be granted until the owner has listed the building for sale with a Multiple Listing Service within the municipality for a period of not less than six months, at a market price determined by a qualified appraiser, and no contract has been made for the sale of the property.
 - (c) a requirement that no approval for demolition shall be granted until a permit for a replacement building has been granted, including a time frame for commencement and/or completion of construction.

Add a new section 17(2A) as follows:

- 17(2A) An application for demolition or removal of a municipal heritage property shall be considered at a public hearing.

Add a new section 17(6) as follows:

- 17(6) The granting or refusal or permission or the imposition of conditions pursuant to subsection (5) may be appealed by the owner to the Nova Scotia Utility and Review Board.

IV. Ministerial Approval for Leases

Rationale:

HRM has entered into leases in excess of \$1M for computer equipment. Delays with the execution of such leases arising out of the requirement for ministerial approval for such leases have been incurred. To achieve the objective of section 88, it is proposed that the requirement for approval be changed from \$100,000 to an amount that is a function of the percentage of the total municipal operating budget. In deciding to enter into any capital lease, the amount of liabilities associated with the capital leases will be considered within the framework of the municipality's Debt Policy.

Amendment:

Section 88(4) be amended by deleting the words “one hundred thousand dollars” and replacing it with the words “the greater of one hundred thousand dollars or one half of one percent of the municipality's operating budget”.

V. Vacant Buildings

Rationale:

The *MGA* was recently amended to include section 536C granting the municipality the power to expropriate boarded up vacant buildings; however, a question has arisen as to whether the dangerous and unsightly powers in the *MGA* also apply to vacant buildings.

Amendment:

It is proposed the dangerous and unsightly powers be clarified by adding the following to its definition:

3(r)(xiii) (a) that has been vacant and boarded up for a period of time that exceeds the length of time that it may be boarded up under a by-law made pursuant to subclause 172 (1) (ja) (iii); or

3(r)(ix) that is vacant and derelict.

VI. Street Encroachments

Rationale:

The United Gulf proposal for the former Tex Park property as approved by Council, and as currently designed, intrudes into the street right of way at about the 15 storey height limit. The proposed encroachment will cover from stories 15-22 approximately the entire width of the sidewalk. To facilitate this innovative design it is proposed that the *MGA* be amended to permit this alienation of the street right of way.

Amendment:

314(3) A council may, where an encroachment will be part of the development of an adjoining property, by development agreement or by-law, permit an encroachment upon or over a street subject to such terms as council may impose.

VII. Controlled Access to Streets

Rationale:

The Province has authority to control access to highways under the *Public Highways Act*; however, there is no comparable legislation under the *MGA*. An issue arises when the municipality assumes responsibility for a road to which access has been controlled by the provincial Department of Transportation and Public Works and HRM wishes to continue the controlled access. A legislative change would grant the municipality the power to continue the controlled access.

Amendments:

Section 309 (4) is amended:

1. By replacing the period with a semi colon at the end of (d);
2. By adding a new clause as follows:
 - (e) prohibit access to a controlled access street.

Section 309(6) is added:

- (i) The Engineer may designate a street as a controlled access street.
- (ii) The Engineer may grant a permit to construct access to a controlled access street.
- (iii) The owner of the property may only appeal the Engineer's refusal to permit access to a controlled access street when there is no street access to the property.
- (iv) An appeal under clause (ii) shall be filed with the municipal clerk within seven days of receiving the Engineer's refusal.

Section 309 (10) is added:

- (i) Where the Engineer designates a new access location, the Engineer may close any existing access to a controlled access street.
- (ii) The municipality is not liable for any damages or injurious affection caused or incurred under this section.

VIII. Cultural Policy

Rationale:

There is a growing recognition of the importance of public art in Canada. Public art enhances the beauty of open spaces, provides visual focal points and gathering places, encourages and showcases a broad range of artists, and builds public awareness of art and urban spaces. To foster artistic creations within the municipality, HRM is seeking legislative changes to permit the funding of cultural infrastructure through the development process.

Amendment:

Section 3 (aya) is added:

“Public art” means publically owned or privately owned art that is displayed in a manner that is enabled to be viewed by the public and includes statues, sculptures, monuments, fountains, murals, paintings, drawings, and engravings.

Section 224 A is added as follows:

A council may determine, by by-law, that a public art charge applies in the municipality and the rate of the public art charge, but the rate of the public art charge shall not exceed four percent of the assessed value of the land.

IX. Freedom of Information and Protection of Privacy

Rationale:

The provincial *Freedom of Information and Protection of Privacy Act* and Part XX of the *MGA* are almost identical with the exception of section 485 (5) which has recently caused problems. It is proposed that section 30 of the *FOIPOP Act* be mirrored in section 485 (5) of the *MGA* by adding after research but before the semi colon “and is in accordance with section 485 (4)”.

X. Stillwater Amendment

Rationale:

There is a dangerous traffic access point on Stillwater Lane, at the intersection where Stillwater meets the Hammonds Plains Road. HRM would like to close this dangerous access point while still providing residents a means of egress and access to their property.

Amendment:

Section 536D is added as follows:

- (1) That portion of Stillwater Lane between Earle Retson Road and the Hammonds Plains Road is designated as a public street, as shown on HRM Plan No. _____.
- (2) The Engineer may close the access from Stillwater Lane to the Hammonds Plains Road.
- (3) No compensation shall be payable as a result of the closure of the access to Hammonds Plains Road.
- (4) Until the road meets municipal standards and the maintenance is assumed by the municipality, the properties that have an easement over the said road shall continue to be responsible for any maintenance or improvements to said road.

XI. Tax Cap and System

Rationale:

Property values within HRM are increasing annually. The *MGA* currently permits Council to set minimum tax rates but not maximum rates. With the growth in property values, there is a concern that the tax rate may become excessive and therefore legislative authority is sought to pass a maximum rate. As well, there are no broad powers under the *MGA* to provide HRM with the flexibility to implement a tax system which will respond to the municipality’s unique needs.

Amendment:

The following sections be added to the *MGA*:

- 73(3) The council of Halifax Regional Municipality may, in lieu of levying a tax rate under subsection (2), levy a charge on each of
- (a) a taxable property assessment, or
 - (b) a dwelling unit.
- (4) The council of Halifax Regional Municipality may, in lieu of levying a tax rate under subsection (2), levy a rate or charge on each of

(a) acreage, or,

(b) frontage.

(5) Rates or charges pursuant to subsections (3) or (4) are first liens on the real property and may be collected in the same manner as taxes.

(6) The amount of any charges levied under subsections (2), (3) or (4) may be combined, graduated, restricted, adjusted for the number or amount or otherwise varied in any manner as determined by the council of Halifax Regional Municipality.

Maximum Tax

73A(1) The council of Halifax Regional Municipality may, by policy, prescribe a maximum tax.

(2) The maximum tax applies to any tax, rate or charge, or combination thereof, levied under Section 73.

(3) Where the tax, rate or charge applied to a property pursuant to Section 73 is more than the maximum tax prescribed by the council, the owner of the property shall pay the maximum tax.

(4) The amount of the maximum tax levied pursuant to subsection (1) may be varied for any set of circumstances as determined by the council of Halifax Regional Municipality including, but not limited to

(a) different areas of the municipality,

(b) the number of dwelling units,

(c) the amount of acreage,

(d) frontage,

(e) the taxable assessed value, or

(f) income thresholds provided by the policy.

XII. Transit and Solid Waste Development Charges

Rationale:

Section 81 of the *MGA* currently grants Council the power to impose charges for wastewater facilities and stormwater systems. It is proposed that this power be broadened to permit Council to impose charges for solid-waste facilities, transit facilities and new or expanded streets.

Amendment:

Section 3 is amended by adding the following:

(caa) “Transit facilities” includes buses, bus terminals, bus shelters, bus bays, parking lots, ferries, ferry terminals and docks.

Section 81 is amended by replacing section 81(1)(a) as follows:

(i) wastewater facilities, stormwater systems, solid-waste management facilities, transit facilities, or new or expanded streets,

(ii) the use of wastewater facilities, stormwater systems, solid-waste management facilities, transit facilities or streets, and

(iii) connecting to wastewater facilities or stormwater facilities;

Section 274 (2) is amended by replacing the comma at the end of (e) with a semi colon and by removing “transit bus bays” and replacing it with “or expanded transit facilities”.

Section 274 (2) (f) is added:

(f) new or expanded solid waste facilities;

XIII. Halifax Commons

Rationale:

Section 529 limits the power of the municipality in relation to the Dartmouth Commons. The *MGA* is silent in relation to the power of the municipality concerning the Halifax Commons although the former City of Halifax assumed control of the commons in the 1850's and, the former *Halifax City Charter*, had express language concerning the Halifax Commons.

Amendment:

Section 529 A be added as follows:

529A Subject to section 529, Council may by bylaw provide for the care, management and improvement of the Common of Halifax, the Public Gardens, the Sir Sandford Fleming Park, the Grand Parade, the Fort Needham Memorial Park, and all other parks and gardens owned by or in the care and control of the municipality, except Point Pleasant Park, including the granting of leases or concessions in such parks and gardens for such rental or license fee as Council may determine.

XIV. Extension of Variance Notification Provisions

Rationale:

Public participation is essential component of the development process. Currently, section 236 (1) of the *MGA* requires that the development officer, after granting a variance, to give notice of the granting if the variance, to every assessed owner within thirty metres. To foster greater public participation, it is recommended that the distance be increased to fifty meters. [Council **previously** approved this amendment on September 19, 2006].

Amendment:

Section 236 (1) is amended by replacing “thirty metres” with “fifty metres”.

XV. Management of Solid Waste

Rationale:

Section 325 of the *MGA* authorizes municipalities to make by-laws with respect to the management of solid waste. HRM’s integrated solid waste management strategy calls for HRM to manage all waste streams within its jurisdiction. In order to meet that objective, HRM adopted By-law S-602 in 2002 prohibiting export of solid waste from HRM except where approved by HRM. The Supreme Court recently determined that section 325 did not provide authority for municipalities to prohibit the export of solid waste. It is proposed that section 325 be amended to confer express authority on municipalities to do so.

Amendment:

Section 325 is amended to add the following subclause:

(k) Prohibiting the export of solid waste from the municipality.

BUDGET IMPLICATIONS

At present, there are no budget implications associated with these recommendations.

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

Council could delete any of the proposed amendments.

ATTACHMENTS

None

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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