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Item No. 10.4.1

Halifax Regional Council

February 12, 2013

February 26, 2013

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

SUBMITTED BY: _____
Brad Anguish, Director, Community and Recreation Services

DATE: January 22, 2013

SUBJECT: Dust Nuisance

INFORMATION REPORT

ORIGIN

June 19, 2012 motion of Halifax Regional Council (item 11.1) requesting a staff report “to amend By-Law N-300, Respecting Nuisances to include “dust” from, but not limited to, construction sites and areas of in-filling as a Nuisance under the By-Law.”

LEGISLATIVE AUTHORITY

Dust control measures are currently managed from By-law S-300, Respecting Streets; By-law B-201, Respecting the Building Code; and various Land Use By-laws.

BACKGROUND

Council requested staff provide a report addressing how HRM, the Province of Nova Scotia, and the construction industry minimize dust nuisance and what actions are taken by these parties in response to residents' concerns relating to the generation of construction related dust.

Questions were also posed regarding impacts of dust when caused by the municipality, and further how a by-law change may affect the municipality regarding maintenance to gravel roads. When HRM staff and or contractors of Halifax Regional Municipality create dust nuisance, staff manage the application of watering and pressure washing of buildings where required. The expectation of HRM's regulatory staff is that the construction industry takes similar steps when issued a permit by HRM to complete work which results in dust nuisance.

Measures to mitigate dust are currently regulated through land use legislation, the National Building Code, and By-law S-300, Respecting Streets. Maintenance conducted on gravel roads would not fall under the current legislation. The Streets By-law (excerpt attached as Appendix A) addresses activity from abutters which create a dust nuisance on the street surface. Transportation and Public Works' staff enforce the provisions of By-law S-300.

Municipal Compliance and Development Approvals' staff in C&RS and Municipal Operations' staff in TPW, are all involved in addressing complaints relating to the creation and control of dust. When a complaint is received, a site inspection is conducted and the respective company/individual is asked to take action to reduce dust concerns. HRM and its subcontractors are expected to comply with the provisions of all by-law requirements.

Regardless of the amount of dust, staff investigate the complaint and attempt to address the concern within a reasonable timeframe. In most situations, the issue is addressed immediately and a follow up inspection takes place to confirm the dust nuisance is reduced or removed. HRM manages approximately 15 - 20 complaints per year in total.

Council requested a review of other land uses with respect to the management of dust and options for remediation. The National Building Code, the Streets By-law, and Land Use By-laws apply to commercial, industrial and other zones, and provide similar provisions for remediation including prosecution.

DISCUSSION

The Nova Scotia Department of Environment advised they respond to dust complaints on industrial properties where they have issued approvals to undertake environmental remediation. Dust issues on residential or commercial properties in HRM would be redirected by the Department of Environment to the Municipality for response.

Research has taken place to review legislation and best practices followed by other Canadian cities such as Moncton, Calgary, Edmonton, Brampton and Mississauga. HRM has similar legislation and business practices to address dust generated by construction. These practices

include consultation with industry, permit requirements or conditions for dust control, site management plans, and response to inquiries/complaints by Municipal Inspectors.

Staff has consulted the Construction Industry and the Nova Scotia Road Builders Association to advise of Council's request. There have been discussions, a meeting and correspondence between the parties to ensure every effort is made to maintain work sites and have plans in place to reduce dust impacts on neighbouring properties.

The Nuisance By-law currently focuses on shopping carts, cats and activity in the streets. As dust control is currently addressed in three separate pieces of legislation, it would not appear necessary to include a further section in the Nuisance By-law to deal with dust.

Staff conclude that in those instances where interventions are required, tools exist (i.e., land use by-laws, streets by-law, tendered work specifications, construction and demolition regulations, etc.) to effectively manage concerns of citizens that arise from time to time.

FNANCIAL IMPLICATIONS

There are no financial implications.

COMMUNITY ENGAGEMENT

On Tuesday, December 4, 2012, staff met with industry representatives to discuss concerns. Industry representatives provided follow up correspondence committing to educate and continue to work with their members on current legislative requirements.

ATTACHMENTS

Appendix A: By-law S-300, Respecting Streets excerpt
Appendix B: Part 8 National Building Code and CSA.S350 excerpt
Appendix C: Land Use By-law excerpts

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.

Report Prepared by: Tanya Phillips, Manager By-law Standards, 490-4491

Original Signed

Report Approved by: _____
Jim Donovan, Manager, Municipal Compliance, 490-6224

APPENDIX A

BY-LAW NUMBER S – 300, Respecting Streets

PART IV - STREETS & SERVICES PERMIT

Permit Conditions

(e) the applicant shall ensure that the street is kept free from nuisance, dirt, and dust;

PART V - DRIVEWAY ACCESS

Driveway Drainage

40. Driveways shall be constructed and maintained so as to prevent surface drainage, dirt or dust from private property such as to constitute a nuisance or hazard or in such amount as will enter the public sewer system, from being carried onto the street or sidewalk by means of the surface of a driveway.

GENERAL PROVISIONS

Dirt and Other Nuisances

43. No person shall place, permit to be placed, or permit to escape from an abutting property dirt, dust, or other nuisance onto the street surface.

APPENDIX B

Part 8 National Building Code

8.2.5. Waste Material

8.2.5.1. Control of Waste Material

1) Waste material or other material shall not be permitted to fall freely from one *storey* to another.

8.2.5.2. Removal of Waste Material

- 1) Waste material shall be removed as quickly as possible by means of
- appropriate containers,
 - an enclosed shaft or chute conforming to Sentence 8.2.5.4.(1), or
 - a hoisting apparatus if large pieces or objects are involved.

8.2.5.3. Enclosures for Waste Material

- 1) Waste material cleared as provided in Sentence 8.2.5.2.(1) shall be deposited in an enclosure
- so arranged as to prevent waste material from being projected beyond the confines of the enclosure, and
 - not accessible to the public.

8.2.5.4. Chutes for Waste Material

1) The chute described in Clause 8.2.5.2.(1)(b) shall be closed if it is inclined more than 45° to the horizontal.

S350-M1980 Code of Practice for Safety in Demolition of Structures

3.2.1.6.5 Where required, temporary protection from weather, debris, and dust shall be provided to adjacent properties. All openings in party walls shall be sealed. Waterproofing shall be applied where necessary. Foundations and services of adjacent structures shall be protected against frost action as required.

3.2.6.2 When necessary and practical, demolition works shall be sprayed periodically with water to reduce dust."

3.2.6.7 When necessary to prevent discharge of materials onto roads or highways, trucks removing demolition material from the site shall be properly covered.

APPENDIX C

A sample of Land Use legislation regarding definitions of “Obnoxious Use”

Planning District 5 (Chebucto Peninsula) Land Use By-law

2.44 OBNOXIOUS USE means a use which, by its nature or operation creates a nuisance or is offensive by the creation of noise or vibration, or by reason of toxicity, the emission of gas, fumes, dust, oil or objectionable odour, or by reason of the unsightly storage of goods, wares, merchandise, salvage, refuse matter, waste or other materials and shall include operations which produce effluent which cannot be disposed of by means of an on-site sewage disposal system or operations which involve, as the primary function, the processing, production or warehousing of dangerous goods or hazardous wastes.

Eastern Passage/Cow Bay Land Use By-law

2.43 OBNOXIOUS USE means a use which, from its nature or operation creates a nuisance or is offensive by the creation of noise or vibration, or by reason of the emission of gas, fumes, dust, oil or objectionable odour, or by reason of the unsightly storage of goods, wares, merchandise, salvage, refuse matter, waste or other materials.

Timberlea/Lakeside/Beechville Land Use By-law

2.42 OBNOXIOUS USE means a use which, from its nature or operation creates a nuisance or is offensive by the creation of noise or vibration, or by reason of the emission of gas, fumes, dust, oil or objectionable odour, or by reason of the unsightly storage of goods, wares, merchandise, salvage, refuse matter, waste or other materials.

Cole Harbour/Westphal Land Use By-law

2.44 OBNOXIOUS USE means a use which, from its nature or operation creates a nuisance or is offensive by the creation of noise or vibration, or by reason of the emission of gas, fumes, dust, oil or objectionable odour, or by reason of the unsightly storage of goods, wares, merchandise, salvage, refuse matter, waste or other materials.

Dartmouth Land Use By-law

Section 1 Definitions

1 (ab) OBNOXIOUS USE - means a use which, from its nature or operation, creates a nuisance or is offensive by the creation of noise, vibration, glare, electrical interference, fire explosion hazard or by reasons of the emission of gas, fumes, dust, oil, or objectionable odor, or by reason of the unsightly storage of goods, wares, merchandise, salvage, refuse matter, waste or other material. (As amended by By-law C-514, Feb 15/84)