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Halifax Regional Council
March 5, 2002

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

George McLellan, Chief Administrative Officer

DATE: February 26, 2002

SUBJECT: Appeals Process-Winter Parking Tickets

SUPPLEMENTARY REPORT

ORIGIN

At the January 22, 2002 Council Meeting, during discussion of Item 13.3 - Appeals Process - Winter Parking Tickets, Council requested that staff prepare a supplementary report in response to the following questions:

- 1) Why the adjudication and review process detailed on the back of the winter parking ticket is not followed for winter parking ban? Why the form can't be filled out and taken through the process from the Customer Service Centre? Can this process be followed?
- 2) Staff to bring forward guidelines for issuance of parking tickets under Section 139, as there currently are none.
- 3) Can residents use the parking meters during a storm during the day under Section 139?

BACKGROUND

In the report to Council, dated January 13, 2002, Wayne Anstey, Director of Administrative Services, responded to Council's request that staff establish an appeal process for tickets issued to cars parked on the street during snow/ice maintenance operations and to establish an information line to advise residents when they are permitted to park on HRM Streets when storms are forecast.

In response to this request, the informal ticket resolution process currently provided by the HRM

Ticket Office was briefly described and Mr. Anstey confirmed that there are no guidelines for issuing tickets other than the wording of Section 139 of the *Motor Vehicle Act*.

Staff also advised of the implementation of the new HRM 490-SNOW line to assist residents in determining whether or not vehicles should be left on the street during winter conditions. This information is also available on the HRM Web page <http://www.region.halifax.ns.ca>. However, it should be noted that both the Winter Parking Information Hotline and the HRM Website (Winter Parking) are not intended to replace the good judgement of citizens, who are ultimately responsible for removing their vehicles from the streets when winter conditions warrant. These information tools are provided only as a means to assist residents in making those decisions, when necessary. The Motor Vehicle Act, section 139, places that responsibility clearly with the vehicle owner.

DISCUSSION

1. *Ticket Review Process:*

The parking ticket review process, in its current form, has been offered as a service to the public for more than 25 years. When responsibility for the administration of the parking ticket office was transferred from Police Services to Financial Services in 1997, service to the public was expanded to provide improved payment options and better access to the ticket review process. However, the ticket review process, as established under Police Services, was not altered.

Under normal circumstances, the acceptance of a ticket review for a specific violation is predicated on the fact that had the enforcement officer been aware of the additional information at the time the ticket was issued, he or she might not have issued the ticket. An example of this would be a ticket issued for a "loading zone" violation. The enforcement officer may not be aware that the delivery person who parked the vehicle in the loading zone was actually making a delivery on the 14th floor. A ticket review is taken, along with proof of delivery (date, time) and the ticket is withdrawn. This practice has been confirmed by the Courts as sufficient proof and any ticket that bypasses the ticket review process is usually quashed or withdrawn in Court because of this evidence.

If there are extenuating or emergency circumstances, a ticket review form is also accepted. For example, as a rule, "no stopping" violations are not reviewed. However, should the vehicle owner be able to provide proof that the vehicle had broken down and was removed (towing certificate), the ticket would probably be withdrawn. This is based on the assumption that if the enforcement officer had been advised at the time he or she wrote the ticket (and accepted the information as truth) the ticket would probably have not been issued, unless the owner took no steps to move the vehicle immediately.

With the issuance of a "winter parking violation" the vehicle owner must be able to demonstrate that the vehicle was unable to be moved, as in the previous example, or that there were extenuating

circumstances e.g. an emergency situation. Outside of these parameters, accepting a ticket review form would create unrealistic expectations of a withdrawal and possible legal action against the civilian who may withdraw the ticket inappropriately.

Tickets are written by sworn officers of the Crown. Civilians have no authority to withdraw a valid ticket (on its face) without the officer or prosecutor's permission. The ticket review guidelines were developed and approved by Police Services and encompass those situations which the officer would not consider taking legal action (charges of obstruction of justice) against a civilian who withdrew a ticket outside of the Court process. As a result of the ongoing Court process, we are also often made aware of situations whereby the Court deemed that under the circumstances, the ticket was issued in error. This information is used to adjust the review process accordingly.

The Court process is the most appropriate avenue for appeal as it is a judicial function to determine the reasonableness of the issuance of the ticket under the *Motor Vehicle Act*. To clarify for the public the availability of the voluntary, non-binding ticket review process, staff will amend the wording on the back of the ticket at the next printing. It is proposed that the new wording would read:

Ticket Review Process

“If you wish to dispute a ticket, a review form may be accepted, for certain circumstances, at one of the Customer Service Centres listed above. Results of the review will be available seven (7) working days from submission. For further information, please contact the Parking Ticket Enforcement Office at (902)490-4000 or Toll Free 1-800-835-6428 (in N.S.).

There are over 90 potential parking violations under the *Motor Vehicle Act*. A total of 50 of the more commonly observed violations are printed on the face of the parking infraction ticket. Of these, approximately 10 parking violations have been identified as potential candidates, under normal circumstances, for the HRM voluntary ticket review process. As stated previously, a ticket review form may be accepted for any violation where there is an extenuating or emergency situation.

2. *Guidelines for Issuing Tickets under The Motor Vehicle Act (MVA) Section 139:*

The *Motor Vehicle Act* is a provincial Statute. Section 139 of the Act provides authority for ticketing and/or towing of vehicles left standing on the roadway where they “might interfere with snow removal or winter maintenance.” This section of the regulation can be enforced 24 hours a day, seven days a week, 12 months a year and has been in the Act for at least the last 25 years.

The *Motor Vehicle Act* also gives the authority under which the HRM Traffic Authority is authorized to invoke a “winter ban.” At the suggestion of Council that the “winter ban” may not be the most appropriate method of controlling vehicular parking during winter conditions, the Traffic Authority, Mr. David McCusker, chose not to invoke the “winter ban” which restricted parking on the street,

seven days a week from November to March of each year, between the hours of 1:00 a.m. and 7:00 a.m. Instead, the MVA regulations are considered the appropriate enforcement tool to ensure for the public's safety.

As a result, Public Works crews are no longer able to rely on the "winter ban" period to carry out most of the heaviest and intensive snow removal and winter maintenance activities. They must now rely more heavily on the public to adhere to the provisions of the Motor Vehicle Act and to avoid parking on roadways where they might interfere with snow/ice removal or regular winter maintenance.

When weather conditions are forecast to include rain, freezing rain and/or snow and when the Public Works Winter Maintenance Program has been put into effect, enforcement officers are advised and, using this information, they assess the need to invoke Section 139 of the MVA. This information is also provided to the general public through the establishment of the HRM SNOW line (490-SNOW) and through the HRM Web site and numerous Public Service Announcements issued at appropriate times.

The winter parking regulation has broad application in that a vehicle does not have to be parked and directly interfering with snow removal or winter maintenance - only that it might. The intention of the regulation is to enable enforcement officers to act to ensure for the public's safety. Roadways are designed primarily to move vehicles along and secondly, to offer limited parking opportunities. The decision to issue a ticket rests with the enforcement officer who has been provided with appropriate information on which to base that decision. Given all the facts of an individual situation, confirming whether a ticket was issued appropriately, correctly rests with the Provincial Court System.

Staff will also make application to the Provincial Government at the next sitting of the Legislature to change the Regulation regarding the wording used on the face of the ticket from "Obstructing Snow Removal" to "Winter Parking" to assist citizens in understanding the application of Section 139 to mean both snow removal and winter maintenance.

3. *Use of Parking Meters during a Storm and Section 139 of the MVA:*

Section 139 of the *Motor Vehicle Act* states that a vehicle is subject to ticketing and/or towing if left standing on the roadway where they might interfere with snow removal or winter maintenance. Legal Services advises that, under the correct conditions, Section 139 can override all signage and any bylaw issued by the municipality which restricts or authorizes parking on the street. This does include short term parking opportunities at meters where the vehicle might interfere with snow removal or winter maintenance.

During storm conditions, the HRM snow and ice control standards require those primary roadways (main arteries, hills, bus routes) be kept as bare as possible and that within 12 hours following the end

of a storm that the roads be cleared back to the curb. Secondary roads (residential streets, non-hills, etc) are to be maintained as much as is possible and cleared back to the curb within 24 hours after the end of a storm. Winter maintenance includes salting and sanding. Generally, this occurs at the start of a storm that has been forecast, during any period of rain or freezing rain (depending on volume), after a storm has ended and at any other time when conditions warrant. Redeployment of enforcement officers and extended shifts are used to meet the safety needs during winter conditions.

BUDGET IMPLICATIONS

N/A

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation

ALTERNATIVES

N/A

ATTACHMENTS

N/A

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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