



Halifax Regional Council
November 26, 2002

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer


Dan English, Deputy Chief Administrative Officer

DATE: November 21, 2002

SUBJECT: Smoke Free Places Bylaw (By-Law S-202)

ORIGIN

At the November 19, 2002 Council session:

- the public hearing to consider repealing the HRM Smoking By-Law (Bylaw S-200) was deferred; and
- Councillor Harvey gave Notice of Motion that at the November 26, 2002 Council session he would introduce First Reading of a By-Law to make HRM 100% smoke free inside public places.

RECOMMENDATION

It is recommended that Regional Council:

- Approve first reading of By-Law S-202, a By-Law to provide for smoke free places in Halifax Regional Municipality, attached as Appendix "A" of this report; and
- Set a date for a public hearing.

BACKGROUND

- The Nova Scotia Smoke Free Places Act comes into effect January 1, 2003. The smoking restrictions specified in this Act generally exceed those in HRM's existing Smoking By-Law (By-Law S-200). Compliance with the Provincial Act therefore guarantees compliance with HRM's current Smoking By-Law, making the current By-Law redundant.
- HRM's Smoking By-Law needs to be either repealed entirely to avoid redundancy or its scope needs to be expanded to address issues which the Provincial Act does not address.
- Both the Smoke Free Places Act and the Municipal Government Act permit municipalities to adopt smoking By-Laws which exceed the Province's minimum smoking standards. The Municipal Government Act permits the adoption of municipal By-Laws for the "*the health, well being, safety and protection of persons.*" In addition, The N.S. Smoke Free Places Act further emphasizes municipal authority by stating that "*Nothing in this Act affects any other authority to regulate, restrict or prohibit smoking*" and "*Where there is a conflict between this Act and any other authority . . . the more restrictive authority prevails.*"

DISCUSSION

Comparison of Smoke Free Places Act and Proposed By-Law

The Smoke Free Places Act:

- generally bans smoking in *enclosed public places*;
- allows limited permission to smoke in some public places if the area is *enclosed and separately vented* from the non-smoking area; and
- includes limited *smoking restrictions outdoors* (restaurant patios and school grounds).

The Proposed HRM Smoking By-Law:

- *extends the Province's smoking ban to all enclosed places with the exception of private dwellings and a few minor exceptions noted below*;
- *does not allow enclosed and separately vented smoking areas; and*
- *does not increase the Province's outdoor smoking restrictions, but these restrictions will remain in effect because as stated above "the more restrictive authority prevails."*

Proposed By-Law

Enclosed Places: The proposed By-Law prohibits smoking in enclosed places. These include private clubs, licensed establishments, the casino, restaurants, office buildings, malls, food courts, community centres, bingo halls, bowling alleys, pool halls, laundromats, retail operations, government offices, lobbies and hallways of multi-residential buildings, public washrooms of commercial buildings, etc.

In addition, the proposed By-Law prohibits smoking in vehicles such as taxis, ferries and ferry terminals, buses and bus shelters and vehicles used in the course of employment while carrying two or more passengers. These restrictions are the same as those in the Provincial Act.

Exclusions: The only enclosed places which are exempted in the proposed By-Law are private dwellings, hospitals, nursing homes, residential care facilities, detox centres, homes for the aged or disabled and veterans facilities. These are also exempted in the Provincial Act.

Educational Facilities: School buildings are an enclosed place and therefore included in HRM's proposed By-Law. School grounds are not included in HRM's proposed By-Law since the By-Law does not attempt to regulate the effects of second hand smoke outdoors. The Provincial Act however includes school grounds in its restrictions because of a concern for youth smoking rather than the issue of second hand smoke. Since the Provincial Act is more restrictive it will prevail in this case and smoking on school grounds will be prohibited.

Proprietors: Proprietors will be responsible for enforcing HRM's smoke free regulations on their premises, ensuring that ashtrays are not provided, and posting advisory signs at the entrances to their premises. These requirements are consistent with the Provincial Act.

Penalties: The penalties in the Proposed HRM By-Law are identical to those in the Provincial Act.

Enforcement: A full ban on smoking in enclosed places is simpler to enforce than one that has numerous exceptions or partial restrictions (e.g., floor area measurements and percentages). To date HRM has not actively enforced its existing Smoking By-Law. There are no additional resources or funds available at this time to dedicate to the proposed Smoking By-Law. In addition, there are priorities for enforcement of other By-Laws which makes it difficult to reassign significant resources to this By-Law.

Timing of the Public Hearing

The Smoke Free Places Act comes into effect on January 1, 2003. After that date smoking in most enclosed public spaces will be prohibited until enclosed and ventilated smoking rooms are installed. The situation everyone wants to avoid is Council adoption of the proposed By-Law after enclosed rooms and ventilation has been installed. This suggests that Council must hold a public hearing before January 1, 2003. While this is possible, it may not be necessary. In addition, Council is also concerned about whether a public hearing in late December is an appropriate time of year for adequate public participation.

There are a few factors to consider before selecting a public hearing date. It may be reasonable to have the public hearing in January, without running the risk of smoking room renovations having been undertaken before the hearing. The following are a few points for consideration.

- The Province has not yet announced its regulations for smoking rooms and ventilation. As a result it's unlikely that design, equipment orders, installation, testing and approval can be granted before January.
- If Council advertises in early December that it intends to hold a January public hearing to consider extending the smoking ban, then all building owners and businesses will have been given fair warning not to invest in vented rooms prematurely. In addition to media coverage of the issue, staff could also notify businesses through their relevant business associations. Of course it should be noted that if the Province announces its "venting" regulations in

December and Council does not approve the proposed By-Law in January that valuable time will have been lost to install these rooms and equipment in a timely fashion.

If Council approves First Reading of the proposed Smoking By-Law on November 26, 2002, staff can:

- advertise a public hearing for December 17, 2002; or
- advertise a public hearing for January 14, 2003, with additional notifications to the appropriate associations.

BUDGET IMPLICATIONS

There are no budget implications at this time. If Council wishes to increase enforcement levels for the proposed By-Law, this can be considered during the 2003/04 business planning and budget process.

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

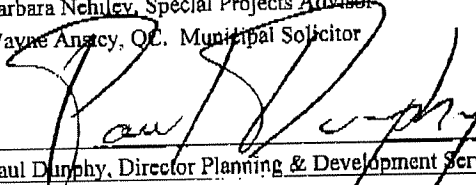
Council may choose to:

- Reject a full smoking ban and provide staff with clear direction on a revised By-Law amendment that is less onerous; or
- Reject entirely any amendments to expand the scope of the current By-Law. In this case Council could either leave the current By-Law in place recognizing that it is redundant or it could reconvene the November 19, 2002 Public Hearing to consider repealing HRM's current Smoking By-Law.

ATTACHMENTS

APPENDIX A: By-law Amendment S-202 Respecting Smoke Free Places.

ATTACHMENT 1: Comparison Old HRM BY-law S-200, Provincial Smoke Free Places Act, Proposed By-law Amendment S-202

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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HALIFAX REGIONAL MUNICIPALITY
By-Law NUMBER S-202
RESPECTING SMOKE FREE PLACES

WHEREAS the Regional Council of the Halifax Regional Municipal has the authority to pass by-laws, for municipal purposes respecting the health, well being, safety and protection of persons pursuant to Section 172(1)(a) of the *Municipal Government Act*, Stats. N. S. 1998, C. 18;

AND WHEREAS it has been determined that second hand tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars and pipes) is a health hazard to persons exposed to it;

THEREFORE BE IT ENACTED by the Council of the Halifax Regional Municipality as follows:

Short Title

1. This By-law shall be known as By-law S-202 and may be cited as the Smoke Free Places By-law.

Definitions

2. In this By-law:

- (r) "ashtray" means any receptacle for tobacco ashes and for cigar and cigarette butts whether originally designed for that purpose or not;
- (s) "enclosed place" means the inside or other enclosed part of a building or structure or other indoor space but does not include
 - (i) a private residence or accessory building associated therewith; or
 - (ii) a facility designated under Section clause (g) and (h) of the *Smoke-free Places Act*;
- (c) "Inspector" means a person appointed by the Chief Administrative Officer of the Municipality to administer this By-law;
- (d) "Municipality" means the Halifax Regional Municipality;
- (e) "private residence" includes the dwelling unit areas of a multi-residential building but does not include the corridors, lobbies, stairwells, elevators, escalators, laundry rooms, storage rooms or any other parts of such buildings accessible by the public or more than one tenant;
- (f) "proprietor" means the person who controls, governs or directs the activity carried on within the kinds of premises referred to in this By-law and includes the person who

is actually in charge thereof at any particular time and the person who is the assessed owner or the occupant of the premises as shown on the Assessment Roll for the Halifax Regional Municipality;

- (g) "smoke" or "smoking" includes the carrying of a lighted cigar, cigarette, pipe or any other ignited tobacco smoking equipment.

Prohibition

3. (1) No person shall smoke in
- (a) any enclosed place;
 - (b) a ferry, taxi, limousine, bus or other vehicle carrying passengers for hire;
 - (c) a bus shelter or taxi shelter;
 - (d) a vehicle used in the course of employment while carrying two or more employees

in the Halifax Regional Municipality.

(2) No proprietor of a place referred to in subsection (1) shall permit smoking in that place.

(3) The proprietor of a place referred to in subsection (1) shall ensure that no ashtrays are placed or allowed to remain in that place.

Signage

4. (1) The proprietor of a place referred to in subsection (1) of Section 3 shall affix to all entrance doors of the place at a height of 1.25 to 1.75 metres from the floor a sign which is clearly visible from the outside of the place indicating that the place is smoke-free and that smoking is not permitted in the place pursuant to HRM By-law S-202 and the sign may be in keeping with the architectural character of the place.

(2) Any sign prohibiting smoking that refers to a previous by-law of the Municipality or of a previous municipality is deemed to be referring to this by-law.

Enforcement

5. Where an Inspector finds that a proprietor is not complying with a provision of this By-law, the Inspector may order the proprietor to comply with the provision and may require the order to be carried out within such period of time as the Inspector specifies.

Offense and Penalty

6. (1) Any person, other than a proprietor, who contravenes any section of this By-law is guilty of an offence and liable on summary conviction is liable to a fine of not less than fifty dollars (\$50.00) and not more than two thousand dollars (\$2000.00).

(2) Any proprietor who contravenes any section of this By-law or fails to comply with an order made pursuant to Section 5 of this By-law is guilty of an offence and liable on summary conviction for a first offence to a fine of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00), for a second offence to a fine of not less than five hundred dollars (\$500.00) and not more than five thousand dollars (\$5,000.00) and for a third or subsequent offence to a fine of not less than one thousand dollars (\$1,000.00) and not more than ten thousand dollars (\$10,000.00).

Repeal

7. Halifax Regional By-law S-200, the Smoking By-law is hereby repealed.

ATTACHMENT 1:

Comparison of Provincial and Municipal Legislation

Interest area	HRM By-law S-200	NS Smoke Free Places Act	Proposed By-law Amendment S-202
Prohibition	No person shall smoke in areas designated non smoking or smoke free.	No person shall smoke in any enclosed facility as prescribed under section 5(1), and a manager of any enclosed facility shall not permit smoking referred to in subsection (1) except as permitted by Section (6) - section 5(3) Smoke Free Places.	Individuals shall not smoke in designated smoke free places. As well Proprietor of a place must not permit smoking and shall ensure that no ashtrays are placed or allowed in that place.
Open indoor spaces, malls, retail, eating areas	100% smoke free	100% smoke free	100 % smoke free
Place of employment	not specified	100% smoke free except under section 6 which allows restaurants, bars and beverages rooms, a private club, a cabaret or other licensed facility, or as set out by the regulations where there is a separately enclosed and separately vented area and no one under 19 years of age is permitted. Designated smoking rooms must meet specifications of regulations.	100 % smoke free no separate and vented smoking rooms. No exceptions but for those facilities described under section (g), (h) of NS Smoke Free Places Act.
Employee protection	not specified	No employer can discharge or layoff any employee because employee refuses to work in part of an enclosed place or outdoor area where smoking is permitted.	Not in by-law. Employees have recourse through provincial act.
Under age of 19 years	not covered	Not allowed in any enclosed area where smoking is allowed or in an outdoor area where under 19 years is not permitted. Manager is required to enforce this restriction.	No age is specified in the by-law. All ages protected. Under age issues are handled by the provincial act.

ATTACHMENT 1:

Interest area	HRM By-law S-200	NS Smoke Free Places Act	Proposed By-law Amendment S-202
Confiscation of smoking materials from under 19 years of age	not covered	Peace officer can with reasonable grounds may search and confiscate any tobacco in that persons possession. Also and reversal and appeal process.	Not covered by HRM by-law. Peace officers can use the provincial act.
Schools, day cares, hospitals, libraries, cinema, theater, pool hall, video arcade	not specified	100% smoke free	100% smoke free
Restaurants	50% non smoking, no separate room or ventilation required.	100% smoke free - except for allowed smoke rooms separately vented, restricted to over 19 years and cannot take up more than 25% of available table space.	100 % smoke free no separate and vented smoking rooms.
Private functions	excluded because considered private not public	Excluded under section 5 and 6 for private function where no one under the age of 19 permitted.	100 % smoke free no separate and vented smoking rooms.
Bingos	25% non smoking area	100% smoke free except for separately vented smoke room.	100 % smoke free no separate and vented smoking rooms.
Bars, beverage rooms, cabarets	25% non smoking area	100% smoke free between 6 AM and 9PM except for allowed smoke rooms separately vented, restricted to over 19 years cannot take up more than 25% of available space.	100 % smoke free no separate and vented smoking rooms.
Private clubs	not covered, limited by HRM Act	100% smoke free except where no one under 19 years of age is permitted and is separately enclosed and separately vented, as prescribed by regulations.	100 % smoke free, no age limits, no separate and vented smoking rooms.

ATTACHMENT 1:

Interest area	HRM By-law S-200	NS Smoke Free Places Act	Proposed By-law Amendment S-202
Casinos	By-law pre-dated Casino would go under licensed establishment 25% of seating area, open food courts.	not specified	100 % smoke free no separate and vented smoking rooms.
Outdoor patios	Not covered, under HRM Act, possible in MGA.	50% smoking area where under 19 years prohibited.	Not covered, defer to provincial Act.
Ferries, buses, taxis and limousines	Buses, bus shelters, taxi stands 100% smoke free, taxis excluded.	taxis and limousines, and shelters 100% smoke free	100 % smoke free, no separate and vented smoking rooms.
Community, multi recreation, multi service centres	Smoke free, except where specific use allows smoking, ie., bingo but only for duration of event.	100% smoke free	100 % smoke free
Bowling alleys	Not more 50% floor space designated smoking area	100% smoke free	100 % smoke free
Residential group homes, d-tox centre, health facilities, nursing home, residential care facility, home for the aged, or disabled person, part of health care facilities that cares for veterans	General coverage if public, residential group facilities and hospitals not specifically mentioned.	100% smoke free except in area that no person under age of 19 years is allowed and is separately closed and separately vented, as prescribed by the regulations under section 6(1) (g) and (h).	Exception, deferred to provincial legislation.
Offices of provincial, municipal government, villages school boards and related agencies	100% smoke-free public buildings	100% smoke free	100 % smoke free no separate and vented smoking rooms.
Common areas of commercial buildings and residential	100% smoke free	100% smoke free	100 % smoke free

ATTACHMENT I:

Interest area	HRM By-law S-200	NS Smoke Free Places Act	Proposed By-law Amendment S-202
buildings, elevators, escalators, stairwells			
Public spaces in malls, eating places 100% smoke free	100% smoke free	100% smoke free	100 % smoke free no separate and vented smoking rooms.
Grounds of school	not specified	100% smoke free	Excluded. Left outdoor space to province and school board.
Penalty and fines	Individual upon summary conviction receives a penalty of \$200 and a corporation a fine of \$500. Individuals can also pay \$50 ticket.	Every manager and employee who contravenes the Act is guilty of an offense and is liable on summary conviction of a fine of not more than \$2000; on second offence to a fine not more than \$5,000; and for a third and subsequent offenses a fine of not more than ten thousand dollars. also possible suspension or cancellation of any permits and licenses.	Individual guilty of an offense not less than fifty dollars (\$50.00) and not more than two thousand dollars (\$2000.00). Proprietors(managers) not permit smoking or allow ashtrays on premises. for a first offence to a fine of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00), for a second offence to a fine of not less than five hundred dollars (\$500.00) and not more than five thousand dollars (\$5,000.00) and for a third or subsequent offence to a fine of not less than one thousand dollars (\$1,000.00) and not more than ten thousand dollars (\$10,000.00).
Enforcement	by-law enforcement officers	Manager of facilities shall not permit smoking.	Proprietor of place must not permit smoking or allow presence of ashtrays or will be penalized.