

Legislative Amendments Requested for Fall 2009

- 1) **Heritage Property Act** (Bill 182, 1st reading May 23, 2008)
 - a) Strengthen municipal authority to control demolition, either by:
 - providing the same level of protection to individually registered heritage properties that is currently enabled for properties in heritage conservation districts, whereby a municipality may refuse demolition or approve demolition with conditions, both subject to the right of appeal; or
 - extending the current one-year demolition delay to two years;
 - b) Clarify and confirm municipal authority to provide financial assistance to registered heritage properties and properties in heritage districts in the form of grants, loans, and property tax relief (The Act is presently ambiguous about the range of incentives that may be provided);
 - c) Clarify and confirm that financial assistance may be conditional on an agreement respecting ongoing maintenance and protection from demolition;
 - d) Provide that registration could be overturned because of a matter of form or procedural irregularity;
 - e) Provide that an application to quash a registration be made within three months of the registration; and
 - f) Provide that all heritage properties listed on the Provincial Registry of Heritage Property or on a municipal registry of heritage properties as of the date of the amendments are, and are deemed to be, registered heritage properties to preserve registration status quo while awaiting the task force report.

2) Public Utilities Act – in Support of Geo-Thermal Projects

An amendment to the Public Utilities Act regarding geothermal systems:

- a) In order to facilitate the development and growth of geothermal projects, HRM is asking that UARB oversight be limited to geothermal or energy services being provided to more than ten customers, or at least ten megawatts in size.

3) General Legislative Amendment Requests 2009

a) Hydrological Assessments

There is currently no requirement in respect of by-right developments to test an area for long-term sustainable water yield, impact or quality. The province currently requires assessment for individual drilled wells. This is not adequate to ensure that as-of-right subdivisions have adequate water quantity and quality. Council has the ability to require a hydrological assessment through the development agreement process; however, Council does not in respect of a subdivision for a by-right development. It is therefore,

recommended that Council seek the enabling legislation to require hydrological assessments in the case of all subdivisions not just those through development agreements.

b) Surveys for Expropriations

The *Expropriation Act* does not require that a survey be included in a request for expropriation of land. In the case of the provincial expropriations, it is only optional that a survey be obtained. For consistency, it is proposed that the authority to expropriate land in the HRM Charter be amended so that the requirement to obtain a survey of land is also optional.

c) Exemption for Capital Projects

Currently, any capital expenditures over \$25,000 by a utility, including the Water Commission, require UARB approval. This threshold amount was last increased in 2001 when it was \$5,000. The exemption for capital expenditures in the *Public Utilities Act* at \$25,000 is too low which requires an unnecessary approval process for small projects. It is recommended that this be adjusted to \$250,000.

d) Cutting of Trees

Pursuant to an earlier amendment, the *HRM Charter* now requires that existing trees or vegetation can be retained or removed only with a municipal permit excepting where land is capable of being subdivided into three or fewer lots in serviced areas, or in 10 or fewer lots in unserviced areas. Staff are noting that the exemptions are inconsistent with the HRM objective to better manage the denuding of lots being readied for development. These exceptions create planning holes which may contrast with HRMs comprehensive yet evolving green strategy that requires the ability to manage all green spaces in the HRM area. It is therefore recommended that the Charter be amended to provide more flexibility in the development of an HRM by-law by limiting the exemption from the application of the by-law solely to lands used for agricultural or forestry purposes.

e) Density Bonus Zoning

The HRM Charter currently limits the application of the HRM by Design provisions to “in the HRM by Design Downtown Plan Area” and therefore prevents incentive or bonus zoning anywhere outside the HRM by Design Downtown Plan Area, and, is more restrictive than the current MGA which allows incentive or bonus zoning anywhere in the municipality. Staff are recommending that this restriction be removed from the HRM Charter. Staff are also recommending that HRM should have the authority to accept cash in lieu dedications to facilitate the development of a capital reserve for general public realm improvements.

f) External Appearance of Buildings

HRM has the authority in section 235 of the *HRM Charter* to regulate the external appearance of structures in the HRM; however, HRM can not regulate the external appearance of structures in site plans other than in the HRM By Design Planning Area. Staff are recommending that the *HRM Charter* be made internally consistent thereby allowing HRM to regulate the external appearance of buildings anywhere in the HRM consistent with the MGA.

g) **Community Council Authority to Amend Municipal Planning Strategies**
The *HRM Charter* currently authorizes Regional Council to delegate to Community Councils the adoption of land use by-law amendments. In other discussions concerning improvements to response to planning applications, Regional Council has directed staff to request an amendment to the legislation to allow Regional Council to also delegate to Community Councils their authority to make decisions concerning amendments to the various Municipal Planning Strategies when they are of a local, site-specific nature.

4) Feeding of Waterfowl and Pigeons

The rationale for this provision is based on the negative impact that the feeding of waterfowl and pigeons can have on both humans and waterfowl. Examples of these are highlighted below:

- an increase in waterfowl populations concentrated in small areas will decrease water quality and diminish the surrounding landscapes due to the high levels of fecal coliform and nitrogen found in waterfowl waste.
- artificial feeding of waterfowl can impact their diets resulting in malnourishment, choking, and an increased susceptibility to disease, disrupt their migratory instincts, and decrease their fear of humans causing them to become a nuisance and danger.

5) Invasive Species – Yellow Floating Heart

HRM to request that Province pass legislation banning the sale of the Yellow Floating Heart lily, as it is an invasive species encroaching on natural habitats.

6) General Legislative Amendment Requests 2008

a) **Spending Power for Special Events**

Clarify HRM may spend money for events on the Commons.

b) **Acceptance of Public Streets**

Clarify that a street does not become a public street until accepted by Council or as part of an approved subdivision.

c) **In-Camera Discussions of Intergovernmental Matters**

Facilitate In-Camera discussions of government initiatives prior to public announcement.

d) **Local Improvement Charges Relating to Nova Scotia Power**

Clarify they may be charged against NSPI.

e) **Limitation Period for Land Use By-law Prosecutions**

Increase from 6 months to 2 years to mirror *Building Code Act*.

f) **Amounts Owed**

I. Amend MGA to make fines:

- (1) relating to specific properties first liens against real property and collectable in the same manner as taxes,

- (2) relating to two or more convictions for noise violations first liens against the property from where the noisy activity originates.
 - II. Amend Summary Proceedings Act so a fine imposed by a court is deemed a judgment of the NSSC.
- g) Charge for Future Benefit
Allow Council to impose charges against persons who will benefit, in the future, from a service (i.e., water & sewer)
 - h) Summary Offence Tickets
Grant Regional Council the authority to designate wording to make an offence SOTable.
 - i) Fences Obstructing Safe Traffic Flow
Permit Engineer to order fences removed that obstruct visibility of a driver.
 - j) Search Warrants
Allow a Justice of the Peace to issue a search warrant under the MGA.
- 9) General Legislative Amendment Requests 2007**
- a) Noise
 - I. Address excessive noise and make the owner responsible for the noise of an occupier after a first correction of the tenant.
 - II. Empower peace officer to demand from the owner, within 48 hours, the name and the address of the person occupying the premises or a copy of the lease.
 - III. Provide landlord redress for noisy tenants
 - b) Obstructions on Streets
Clarify that the owner is required to pay for the costs of remedying an obstruction on a street. For example, private fencing obstructing a public street.
 - c) Active Transportation
Seek power to impose active transportation capital cost charges at the development and subdivision stages.
 - d) Enforcement Remedies
Amend *MGA* to allow a charge of contempt of court rather than failure to comply with a court order.
 - e) Notice of Claim
Add a 21 day limitation period in the *MGA* for transit and snow and ice claims to allow gathering and preservation of the necessary evidence.
 - f) Accident Benefits and Unidentified Motorist Payments on Metro Transit Buses
Priority for payment be sought requiring an occupant of a bus, who is insured under his or her own automobile insurance to claim, in the first instance, section B and section D benefits against his or her own policy rather than against HRM. This still allows recovery from HRM if the occupant does not have his or her own insurance.

g) Maximum and Minimum Bylaw Provisions

Remove the words “minimums” and “maximums” from the LUB provisions found in s. 220(4) to improve flexibility. For example, to permit the regulation of both minimum and maximum frontage rather than only minimum frontage.

h) Increasing Building Construction Standards near Nuisances

To facilitate greater proximity of residential uses to commercial and industrial developments, allow HRM to impose more stringent construction standards for residential development near nuisances than are contained in the N.S. *Building Code Act*.

i) Senior Citizen Housing

There is a demand for seniors’ housing. It is recommend the Province of Nova Scotia remove barriers to senior housing in the *MGA* and *Human Rights Act*.

10) Smoke Free Places Act

HRM has requested an amendment to the Provincial smoking legislation to allow the placement of cigarette butt receptacles within the service zone of the sidewalks in HRM.

11) General Legislative Amendment Requests 2006

a) Heritage Incentives

In most provinces strong demolition control is counterbalanced by financial incentives to encourage maintenance, rehabilitation or restoration of heritage properties. 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. HRM is asking to amend the Heritage Property Act so that financial incentives for maintenance, rehabilitation or restoration of heritage properties is clarified. It is also requesting enhanced municipal regulations around demolition of heritage properties.

b) Vacant Buildings

There is a question as to whether the dangerous and unsightly powers in the MGA also apply to vacant buildings. IT is proposed this 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 it is vacant and derelict.

c) Maximum Tax Rate & Flexibility

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, such as levying a charge on a taxable property assessment, dwelling unit, frontage or acreage.

12) Administrative Improvements

a) Summary Proceedings Act

- I. The current arraignment process for SOTS will be replaced with a process whereby a not guilty plea requires a notice of intention to defend to be filed. This then moves the arraignment process out of the courtroom and into a purely administrative process which will be handled by courthouse administrative staff. This is comparable to the process employed in Ontario for the last 10 or more years.
- II. At the present time, where an individual fails to appear on a SOT as required, an in-absence conviction is entered by the court. However, this can be set aside on application to the court, and a practice has developed by the courts of almost always automatically approving all such applications with few exceptions. This practice has resulted in a lack of respect for the original summons to appear. In order to better effect the original intent to protect those from an inadvertent failure to appear, and at the same time reduce the administrative burden this has placed on the court administration, applications made within the first 60 days will be automatically granted without a court appearance. Where the application is made after 60 days from conviction, but within one year, the application may be granted subject to meeting certain conditions. If the conviction is more than a year old, no application to set aside the conviction can be made by the provincial court. And in all cases there would now be an application fee.

b) Remission of Penalties Act

The intention is to establish new standards for securing a remission of a penalty, such as financial hardship. In addition, a remission of penalties will not be available for certain serious motor vehicle offences to be determined by cabinet, such as driving without insurance.

c) Supplementary Funding & Civic Addressing

Amend the MGA/Charter to implement Supplementary Funding Agreement with the School Boards

d) Section Numbering

Update the section numbers in Bill 179 HRM Charter so that they are accurate.

e) Service on Clerk

In keeping with the 2008 requirement change in the Civil Procedure Rules, require legal motions served on a municipality to be served on the municipal clerk as the appropriate point of contact.