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Item No. 12.1.3
Transportation Standing Committee
June 24, 2021

TO: Chair and Members of Transportation Standing Committee

SUBMITTED BY: - Original Signed -

Brad Anguish, P.Eng., Executive Director, Transportation and Public Works

- Original Signed -

Jacques Dubé, Chief Administrative Officer

DATE: May 28, 2021

SUBJECT: Proposed By-law for Parking and Immobilization on Private Property

ORIGIN

January 15, 2019 Halifax Regional Council Motion:

THAT Halifax Regional Council request a staff report on the authority for and options to regulate vehicle immobilization (also known as booting/wheel-clamping) on private property - similar to the City of Moncton's By-Law T-618 Respecting the Immobilization of Vehicles in the City of Moncton - to address concerns brought forward by residents as follows:

- the cost of having a vehicle freed from immobilization/booting/wheel-clamping
- uncertainty of identity of person requesting payment
- option to pay credit/debit rather than cash
- timeframe for having vehicle freed ("boot/wheel-clamp") removed

January 23, 2020 Transportation Standing Committee Information Report

February 27, 2020 Transportation Standing Committee Motion:

THAT the Transportation Standing Committee request a staff report on developing a bylaw for parking and immobilization on private property that analyzes possible licensing; setting reasonable maximum fees; timelines for removal of immobilizing devices; uniforms and identification of employees; appropriate signage on vehicles; signage on property; convenient payments options including cash, debit, credit online and on-site; and other related regulations. Also, the staff report should investigate the possibility of these private parking enforcement companies partnering with the municipality in writing parking tickets on private property similar to Ottawa.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter:

Power to make by-laws

- 188 (1) The Council may make by-laws, for municipal purposes, respecting ...
(b) the safety and protection of property; ...
(f) businesses, business activities and persons engaged in business;
- (2) Without restricting the generality of subsection (1) but subject to Part VIII, the Council may, in any by-law
(a) regulate or prohibit;
(b) regulate any development, activity, industry, business, animal or thing in different ways, divide each of them into classes and deal with each class in different ways;
- ...
- (e) provide for a system of licences, permits or approvals, including any or all of (i) establishing fees for licences, permits or approvals, including fees for licences, permits and approvals that may be in the nature of a reasonable tax for the activity authorized or for the purpose of raising revenue, which fees may be set or altered by policy,
(ii) prohibiting any development, activity, industry, business or thing until a licence, permit or approval is granted,
(iii) providing that terms and conditions may be imposed on a licence, permit or approval, the nature of the terms and conditions and who may impose them,
(iv) setting out the conditions that must be met before a licence, permit or approval is granted or renewed, the nature of the conditions and who may impose them,
(v) providing for the duration of licences, permits and approvals and their suspension or cancellation for failure to comply with a term or condition or the by-law or for any other reason specified in the by-law;

RECOMMENDATION

It is recommended that the Transportation Standing Committee recommend that Halifax Regional Council adopt By-law V-200, the *Vehicle Immobilization By-law*, as set out in Attachment A to this report.

BACKGROUND

A January 15, 2019 Regional Council motion asked that Regional Council request a staff report on the authority for and options to regulate vehicle immobilization on private property. The January 23, 2020 information report¹ addressed the legality of vehicle immobilization (also known as vehicle booting) on private property and resulted in the motion requesting a by-law to provide a regulatory framework for the oversight and administration of such activity.

Private parking lots are an integral part of the parking supply across the Halifax Regional Municipality. Private lot owners are responsible for the management of their parking facilities. These facilities range from gated, multi-level parking structures to monitored and unmonitored surface parking lots. Halifax Regional Municipality is responsible for the management and enforcement of parking in the street right of way and

¹ <https://www.halifax.ca/sites/default/files/documents/city-hall/standing-committees/200123tsc111.pdf>

provides limited enforcement support to private lots. Currently, private lot owners can call 311 and enforcement staff will respond.

There are two companies in the area that provide vehicle immobilization services as part of their enforcement offerings to private lot owners: One-Shot Parking Solutions Limited and RFM Parking. Vehicle immobilization is a mechanism (usually a tire clamp) to prevent a vehicle from being moved. The mechanism is placed and locked until such time as the fee is paid and the vehicle is released. Between One-Shot Parking Solutions Limited and RFM Parking there are more than 50 private lots that are managed using several enforcement techniques, including vehicle immobilization devices. The service providers and private lot owners have indicated that the immobilization services provide an effective additional enforcement option beyond ticketing.

DISCUSSION

Staff recommends that Halifax Regional Council adopt the draft by-law attached to this report as Attachment A. This draft by-law requires that staff of vehicle immobilization businesses be appointed special constables by the Province of Nova Scotia in accordance with the *Police Act*. The draft by-law also addresses maximum fees for removal of vehicle immobilization devices, timelines for removal of vehicle immobilization devices, uniforms and identification of employees, appropriate signage on vehicles, appropriate signage on property, and convenient payment options. The body of this report brings forward options for licensing and explores the approach taken by the City of Ottawa, as requested by Council.

Licensing

In considering licensing options staff reviewed the following three options:

Option 1 – Require the Vehicle Immobilization Businesses employees be appointed as Special Constables

The current draft by-law is written with this option. The Nova Scotia Special Constable Program is administered by the Province of Nova Scotia in accordance with the *Police Act* and associated regulations. By requiring that all employees carrying out immobilization activities on behalf of the vehicle immobilization businesses be appointed as Special Constables, there are the following benefits:

- A Special Constable can issue parking infraction tickets in accordance with the *Summary Proceedings Act* for private property violations. If the vehicle owner arrives before staff have a chance to immobilize the vehicle, at least the vehicle owner has a ticket for the violation and provides added benefit to the company business model by offering more options to clients.
- Any parking infraction tickets issued by the Special Constables could result in increased revenue for the Municipality.
- During the application for Special Constable status, the Province consults HRM staff and HRM staff have an ability to audit applicants and request the Province approve or deny the application.
- The application process requires the vehicle immobilization business consent for them to be Special Constables, private property owners consent for them to act on their behalf, and a list of all the properties they are working at.
- Special Constables must adhere to the requirements of the *Police Act* and associated regulations including:
 - be at least 19 years old;
 - a good character;
 - the ability to carry out the services required of them as a Special Constable;
 - the ability to meet the minimum training standards; and
 - a person must consent to criminal and background checks and have an acceptable result.
- Vehicle immobilization businesses will be held accountable for their actions and their staff actions under this by-law, under section 88(4) of the *Police Act*, and by the court system.

- There is no cost to the companies for Special Constable appointments.

Option 2 – License Vehicle Immobilization Business through By-Law

Should Council wish to establish a licence program for the vehicle immobilization businesses themselves, a rewrite of the current draft by-law would be required. Such a program could offer the following:

- The vehicle immobilization companies would be licensed by HRM through the by-law.
- HRM would know the licensed companies and could enforce compliance through the licensing process.
- Some of the features available through licensing as a Special Constable (option 1) would be duplicated in this process.
- The Municipality would charge an annual licensing fee.

Potential negative points to consider:

- Adds additional burden to industry by charging a fee to operate.
- Adds additional administrative burden to the Municipality with the introduction of a new license type.

Option 3 – Appointing of Special Constables and introduction of a Cost Share model

This option would adopt option 1 but introduce a cost-sharing model to further incentivize vehicle immobilization companies to participate, similar to the model used by the City of Ottawa.

Other benefits include:

- Vehicle immobilization businesses have an incentive to issue parking infraction tickets with cost sharing by the Municipality.
- Any parking tickets issued by the Special Constables could result in an increased revenue for the vehicle immobilization business and for the Municipality.

Potential negative points to consider:

- Could encourage bad faith parking tickets to be issued to citizens.
- Additional Municipal resources would be required to administer a cost sharing program and tracking of invoices.

Considering there are only two vehicle immobilization companies currently operating in the Municipality, staff do not recommend options two or three. If more companies were to enter the market in the future, staff could review and reassess. Instead, staff are recommending option 1, that all individuals administering vehicle immobilization devices become appointed as Special Constables with the Province. This option places the least amount of burden on industry and the Municipality but achieves the intent of the original motion to better regulate and monitor operations of vehicle immobilization businesses.

Signage, Uniforms and Identification

Staff propose signage indicating conditions on which motor vehicles may be parked or left on private property be clearly displayed, visible, and conform with the applicable Land Use By-law.

Staff also propose uniforms identifying the vehicle immobilization business, photo identification cards and that vehicles used for vehicle immobilizing business be clearly identified with company name and contact number affixed to the vehicle.

Fees and Payment Options

The by-law proposes that within 30 minutes of having been requested by phone, an attendant will come to remove the vehicle immobilization device and that payment may be accepted by cash, credit or debit card and that a receipt be provided.

A jurisdictional scan was conducted on vehicle immobilization fees as regulated by comparable cities and municipalities:

City	Booting Release Fee
Burnaby (By-Law)	\$35
Moncton (By-Law)	\$45
Victoria (By-Law)	\$85
Sudbury (By-Law)	\$75
Halifax (Private Company)	\$115

Based on the jurisdictional scan, staff recommend a fee of \$60 for the removal of the vehicle immobilization device.

Review of the Ottawa Model

Staff participated on a call with representatives from the City of Ottawa to learn more about their approach for appointing deputy constables and oversight of private property.

Applications for deputizing special constables on private lots is managed at the municipal level and can be received from property owners themselves or their agents. At the time of our discussions in the Fall of 2020 the City of Ottawa had approximately 150 companies registered under their program.

Once appointed and trained, approved companies may issue City of Ottawa parking tickets under three infractions:

- Parking on private property
- Parking in a Fire Lane
- Parking in an accessible space without an appropriate permit

Deputization does not provide the right to tow, although they have started a pilot program where some of the larger operators can, after having issued a third City ticket to the same vehicle (multiple infractions), contact a by-law enforcement to have a city-contracted tow truck collect the car.

City of Ottawa tickets for unauthorized parking on private property are \$95 (\$75 if paid within 15 days). If an authorized company issues more than 2,400 tickets in a 12 month period, they are eligible to enter into a cost-recovery agreement with the City in which they split any fees collected on tickets they issue 50/50 with the City. If prosecution of a ticket in court is not successful, the company does not receive any fees. The remaining licensed companies are typically companies/multi-unit residential buildings who monitor their own lots and have just 1-2 employees deputized to issue tickets. While they do not qualify for cost recovery, they benefit from the fact that they do not need to invoice and collect payment for privately issued tickets.

The City maintains a list of agencies and approved personnel as part of their existing parking by-law. All licences expire annually on the same date and require Council approval. Ottawa does not specifically regulate booting as the intent is that the program provides enough benefit to the lot owners that they do not need to rely on the revenue.

Staff do not recommend adopting this model as none of the private properties operating in HRM would likely reach a threshold of tickets issued that would justify the additional administrative burden to manage

such a program. Ottawa has a full-time equivalent position dedicated to managing the roster of approved agencies, training, compliance, by-law amendments and cost recovery.

The *Motor Vehicle Act* and Incoming *Traffic Safety Act*

The current *Motor Vehicle Act* in Nova Scotia does not address vehicle immobilization, only removal of vehicles. Section 149(1) of the *Act* states that no person shall leave a vehicle standing on property of which he is not the owner or tenant without the consent of the owner or tenant of the property. If a vehicle is left on private property for over an hour, section 149(2) permits a peace officer, on the request of the owner or tenant of the property, to remove and detain the vehicle.

Section 64 of the incoming *Traffic Safety Act* states, "Where a peace officer is satisfied that a vehicle or other conveyance has been left standing on private property for longer than one hour without the consent of an owner or tenant of the property, the peace officer may, on the request of an owner or tenant of the property, seize the vehicle or other conveyance and impound or immobilize it in accordance with the regulations". The *Traffic Safety Act* is not yet in force and will not be proclaimed until the regulations are complete. Regulations addressing this issue have not been drafted, but it is the intent of the Province that there will be regulations addressing vehicle immobilization on private property. Until those regulations are drafted it is not known what, if any, impact the regulations could have on the *Vehicle Immobilization By-law*.

Impact of Regulation on Local Businesses

The Charter of Governing Principles for Regulation – Administrative Order Number 2017-002-ADM (Charter of Governing Principles) helps to guide the design, adoption, implementation, evaluation and revision of the Municipality's general application by-laws to meet core principles for better regulation. The Charter of Governing Principles is used to help determine whether regulation is the best policy instrument compared to other non-regulatory options.

Staff conducted the Regulatory Impact Assessment – Stage 1 Screening Tool (RIA) for the previous staff report on vehicle immobilization and determined that the options for regulation through licensing, and enforcement would cause harm and financial burden to a very specific sector of private business.

FINANCIAL IMPLICATIONS

The introduction of the vehicle immobilization by-law will add to the existing responsibilities for parking by-law compliance officers (CO1s). However, given the number of lots and proximity to existing officer foot patrol routes, staff feel that this program can be added without negative financial impacts on staffing.

Any parking infraction tickets issued by the special constables could result in a nominal amount of increased revenue (estimated at approximately \$16,000.00) for the Municipality.

RISK CONSIDERATION

There is a risk that the by-law will negatively impact select business and private property owners. This risk is considered moderate and has been mitigated by proposing a fair market average for a vehicle immobilization maximum charge.

There is a risk of resources within the municipality to meet demand stemming from this by-law. This risk is considered low given the number of lots that administer vehicle immobilization and the current number of parking enforcement staff.

COMMUNITY ENGAGEMENT

Feedback on this report was sought from the Parking Advisory Committee which is comprised of Private Lot owners, Local Business Improvement Districts and other levels of government.

ENVIRONMENTAL IMPLICATIONS

There are no environmental impacts directly associated with this report.

ALTERNATIVES

1. The Transportation Standing Committee could recommend that Regional Council not adopt By-law V-200, the *Vehicle Immobilization By-law*, as set out in Attachment A to this report, and maintain status quo in recognition of the Regulatory Impact Assessment findings.
2. The Transportation Standing Committee could recommend that Regional Council adopt this by-law with amendments. Depending on the nature of any proposed amendments, a supplementary staff report may be required.
3. The Transportation Standing Committee could direct staff to develop a by-law centered around the Ottawa model and implement a cost sharing agreement with private lot owners.

ATTACHMENTS

- A. Proposed By-law V-200

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

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HALIFAX REGIONAL MUNICIPALITY

BY-LAW

RESPECTING IMMOBILIZATION OF VEHICLES ON PRIVATE PROPERTY

WHEREAS vehicles are being parked or left on private property without the consent of the owner or operator of such property;

AND WHEREAS the owner or operator of such property have engaged individuals or business to immobilize vehicles left parked on the property without consent;

AND WHEREAS Council for the Halifax Regional Municipality considers it necessary and desirable to establish a by-law regulating the activity of vehicle immobilization;

AND WHEREAS section 188 of the *Halifax Regional Municipality Charter*, 2008, c.39 permits Halifax Regional Council to establish by-laws respecting the safety and protection of property, and businesses, business activities, and persons engaged in business;

BE IT ENACTED by the Council of the Halifax Regional Municipality pursuant to the *Halifax Regional Charter* as follows:

Short Title

1. This By-law may be cited as By-Law V-200, the *Vehicle Immobilization By-law*.

Interpretation

2. In this By-law:
 - (a) "Council" means the Halifax Regional Council;
 - (b) "HRM" means Halifax Regional Municipality;
 - (c) "immobilize", with respect to a vehicle, means to detain using an immobilizing device;
 - (d) "immobilizing device" means a wheel locking device, a Denver boot, or other device designed to be attached or affixed to a parked vehicle to immobilize the vehicle;
 - (e) "Municipality" means Halifax Regional Municipality; and
 - (f) "vehicle immobilization business" means any person who carries on the business of immobilizing vehicles.

Application of this By-law

3. This By-law applies throughout the Halifax Regional Municipality.

Compliance with By-law

4. No person shall carry-on, engage in, or operate, or cause to carry-on, engage in, or operate a vehicle immobilization business unless that person complies with the provisions of this By-law.

Signage

5. Where an owner or an occupant of property affected by this By-law has posted signs stating conditions on which motor vehicles may be parked or left on the property, or prohibiting the parking or leaving of a vehicle on the property, a motor vehicle parked or left on the property contrary to such conditions or prohibition shall be deemed to have been parked or left without consent.
6. No person shall immobilize or cause to immobilize a vehicle in a parking lot unless there is signage displayed in the parking lot meeting the following requirements:
 - (a) any sign must conform with the applicable Land Use By-law;
 - (b) signs must be clearly visible and legible at all times;
 - (c) text of the signs must contain:
 - (i) a warning to the effect that improperly or unlawfully parked vehicles will be immobilized at the owner's expense;
 - (ii) the name and telephone number of the vehicle immobilization business; and
 - (iii) the immobilizing fees that will apply.

Vehicle Immobilization

7. Every person carrying on, engaging in, or operating or causing the carrying on, engaging in, or operating a vehicle immobilization business shall:
 - (a) be appointed a special constable in accordance with the *Police Act*, SNS 2004, c. 31;
 - (b) maintain a list of all employees, and produce same to the Municipality at any time upon request;
 - (c) have the written authority of the owner or occupant of the property to engage in vehicle immobilization on the property;
 - (d) maintain a written record of all vehicles which that person or any person in that person's employ has immobilized, identifying each vehicle by make, colour, and license plate number and the times when the vehicle was immobilized and released from immobilization, and make such record available to the Municipality upon request;
 - (e) prior to immobilizing a vehicle, place a written notice on the windshield of the vehicle, setting out the reasons and authority for the immobilization as prescribed in Schedule B;
 - (f) at all times have a person either present at each parking lot where a vehicle has been immobilized or available to be contacted by telephone for the purpose of immediately attending at the parking lot to remove the vehicle immobilizing device;
 - (g) within 30 minutes of having been requested by telephone to do so, attend at a parking lot for the purpose of removing a vehicle immobilizing device;
 - (h) remove the immobilizing device immediately after accepting payment of the prescribed fee, not to exceed the amount prescribed in Schedule A; and

- (i) accept payment by either cash, credit, or debit card, and offer the same level of service and response time regardless of the method of payment selected.
8. A person carrying on, engaged in, or operating a vehicle immobilization business must issue a written receipt, including the following information, to a person who pays immobilizing fees:
- (a) the name, or identification numbered issued by the vehicle immobilization business, of the person who immobilized the vehicle;
 - (b) the time when the vehicle was immobilized;
 - (c) the location where the vehicle was immobilized; and
 - (d) the fees for removing the immobilizing device.
9. Without restricting the foregoing, no person carrying on, engaged in, or operating a vehicle immobilization business shall:
- (a) immobilize a vehicle parked in a parking stall or area designated as being for the use of mobility-disabled persons, or in a designated fire lane;
 - (b) immobilize a vehicle with mobility handicapped person identification permits or plates;
 - (c) without lawful authority, immobilize a validly parked vehicle on a parking lot;
 - (d) immobilize a vehicle on a parking lot for failure to obtain a parking ticket from a ticket dispenser unless the ticket dispenser is in sound working order and supplied with parking tickets;
 - (e) immobilize a vehicle on a parking lot for failure to purchase sufficient parking time from a parking meter unless the meter is in sound working order;
 - (f) immobilize a vehicle on a parking lot when the purchased parking time has expired unless at least 15 minutes have elapsed since the time of expiry; or
 - (g) immobilize a vehicle due to the failure of the owner or operator to pay the total charges for the previous removal of an immobilizing device from a vehicle.

Restrictions on Advertising

10. No person carrying on, engaged in, or operating a vehicle immobilization business shall display on their vehicles, premises, advertising, or any other place a statement that states or implies that their business is anyway endorsed by the Halifax Regional Municipality.

Uniform and Vehicle

11. Every person carrying on or operating a vehicle immobilizing business shall wear a uniform that meets the following conditions:
- a) a professional appearing uniform identifying the vehicle immobilization business that is standardized with other employees of the vehicle immobilization business;
 - b) uniforms must not include wording referencing Halifax Regional Municipality, Halifax Regional Police, police, or parking enforcement; and

Iain MacLean, Municipal Clerk

I, Iain MacLean, Municipal Clerk for the Halifax Regional Municipality, hereby certify that the above-noted By-law was passed at a meeting of Halifax Regional Council on _____, 2021.

Iain MacLean, Municipal Clerk

Schedule A

Fees

Maximum Immobilization Fee	\$60.00
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Schedule "B"

VEHICLE IMMOBILIZATION NOTICE

THE PARKING LOT LOCATED AT _____

MOTOR-VEHICLE DESCRIPTION: Make _____ Model _____

Colour _____ Licence No. _____

Date _____ Time _____ A.M. P.M.

PARKING TICKET NUMBER: _____

REASON FOR IMMOBILIZATION

No permission to occupy

No contract of occupancy

Vehicle is hazard

No meter ticket

Vehicle is obstruction

Meter ticket expired

Other

THIS IMMOBILIZATION NOTICE ISSUED BY: _____
(Print name)

(Signature)

TO BE COMPLETED BY WHEEL-LOCKING DEVICE OPERATOR:

OPERATOR NO. _____

IMMOBILIZATION DATE _____ IMMOBILIZATION TIME _____

COMPANY NAME, NUMBER

ORIGINAL - IMMOBILIZING OPERATOR 2ND COPY - LEAVE ON VEHICLE FOR OWNER
3RD COPY - TO BE RETAINED BY ISSUER