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Information Item No. 2
Transportation Standing Committee
December 12, 2019

TO: Chair and Members of the Transportation Standing Committee

SUBMITTED BY: -Original Signed-
John Traves, Director of Legal, Municipal Clerk & External Affairs

-Original Signed-
Jacques Dubé, Chief Administrative Officer

DATE: September 27, 2019

SUBJECT: Vehicle Immobilization in HRM

INFORMATION REPORT

ORIGIN

January 15, 2019 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

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;

BACKGROUND

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 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 (also known as car booting) 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 a number of enforcement techniques, including vehicle immobilization devices. The service providers and private lot owners have indicated that the immobilization services provide an additional enforcement option beyond ticketing.

DISCUSSION

Existing Practices of Enforcement of Immobilization by HRM

HRM Parking Enforcement staff do not currently respond to complaints regarding immobilization devices, however staff does respond to illegally parked vehicles on private property. Compliance Officers attend the location and as per Section 149(1) of the *Motor Vehicle Act* a ticket may be issued upon the request of the owner or tenant of the property. The owner of the property is responsible for the cost of the towing should the vehicle be towed.

In addition, some private properties have Special Constables that are permitted to issue municipal parking tickets pursuant to Section 149(1) of the *Motor Vehicle Act* and are responsible to arrange for the towing of

the vehicle. The Special Constable program is administered by the Province of Nova Scotia. Special Constable appointments are discretionary and the issuance is based on a justifiable operational need in relation to parking enforcement. The property owner must show justification for the appointment as a special constable appointment is not issued to private citizens for properties that experience only occasional parking issues.

Options for Regulation of Vehicle Immobilization

HRM currently has the legislative authority to regulate or prohibit businesses and business activities through licensing and enforcement. Pursuant to Section 188 of the *Charter*, Council may make by-laws for municipal purposes respecting the safety and protection of persons, the safety and protection of property, and businesses, business activities, and persons engaged in businesses. Section 188(2)(a) states that Council may, in any by-law, regulate or prohibit.

The motion from Regional Council specifically references the City of Moncton's By-Law T-618, adopted on May 22, 2018. The by-law requires licenses for people or businesses engaged in the practice of vehicle immobilization. It also regulates signage at private parking lots, the business practice of immobilization businesses, enforcement of the by-law, and caps the maximum immobilization fee at \$45.00. Moncton does not have the legislative authority to prohibit the practice of vehicle immobilization.

Review of recent media regarding Moncton's by-law, and a conversation with City of Moncton staff indicate that no companies applied for a license pursuant to the by-law, and the company that was booting vehicles changed its immobilization tactics to towing vehicles to a parking lot outside of the city. The City of Moncton commenced legal action against the company and was successful in receiving an injunction prohibiting the business from immobilization tactics without a license. Media reports indicate that particular business has ceased operation.

There are also many municipalities in British Columbia, such as Burnaby and Victoria, that have by-laws similar to that of Moncton. Other provinces, such as Ontario, have specific legislative authority for vehicle immobilization on private lots.

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 HRM's authority to regulate vehicle immobilization.

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) and has determined that the options for regulation through licensing, enforcement, or prohibition would cause harm and financial burden to a very specific sector of private business. A Business Impact Assessment was not completed as there is not enough data available at this point.

Staff sought feedback from members of the Parking Advisory Committee (PAC) which is comprised of members from the Business Improvement Districts, Institutional Districts, private lot management companies (including One-Shot Parking Solutions) and other levels of government. The majority of feedback from private lot owners that hire booting companies is that they do so primarily to ensure parking availability for their own customers and/or residents and to remove themselves from confrontation and conflict with people that park in their lots without authorization. Feedback also indicated that consistent practices and better education/public awareness is needed to balance the needs of private lot owners and parking availability for local businesses.

The immobilization companies expressed concerns with increased burden of regulation and oversight to their business. One-Shot Parking Solutions issues uniforms which identify employees, conducts background checks on employees and posts consistent signage on their lots.

Summary

HRM has the legislative authority to regulate or prohibit the practice of vehicle immobilization, but the Province may include regulations pursuant to the *Traffic Safety Act*. If Council does not want to wait until the Province has drafted the regulations for the *Traffic Safety Act*, Council may direct staff to draft a by-law either regulating or prohibiting the practice.

FINANCIAL IMPLICATIONS

There are no financial implications.

COMMUNITY ENGAGEMENT

During the drafting of this report surveys were sent to all Business Improvement Districts requesting feedback regarding the issue of parking in private lots, and how regulations would impact their businesses. A similar survey was sent to the significant private lot managers, and staff had a meeting with one of the companies that currently manages several parking lots and engages in the practice of immobilizing vehicles.

ATTACHMENTS

There are no attachments.

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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