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Item No. 5
Halifax Regional Council
June 18, 2024

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: May 31, 2024

SUBJECT: Traffic Speeds | Parking Lots

INFORMATION REPORT

ORIGIN

May 18, 2023 meeting of the Transportation Standing Committee Item No.15.1.

MOVED by Councillor Lovelace, seconded by Councillor Outhit.

THAT the Transportation Standing Committee request a staff report that outlines the process to request authority from the Province of Nova Scotia to establish and enforce reasonable and consistent traffic speeds in private commercial or public parking lots to prioritize pedestrian safety in HRM.¹

MOTION PUT AND PASSED

LEGISLATIVE AUTHORITY

Motor Vehicle Act, R.S.N.S. 1989, c. 293.

Halifax Regional Municipality Charter, R.S.N.S. 2008, c. 39.

OVERVIEW

Staff's research and analysis indicate that: (a) federal and provincial law applies to the operation of vehicles in parking lots; (b) failure to exercise care and control of a vehicle in a parking lot can result in fines, license revocation, insurance liability or imprisonment;² (c) a *prima facie*/default (unposted) speed limit, set by the *Motor Vehicle Act*, applies to parking lots in HRM; and (d) HRM Traffic Authority capacity to regulate parking lot speeds below 50 km/h requires the consent of the Provincial Traffic Authority.

¹ See Transportation Standing Committee [Minutes](#) (Item No. 15.1 | May 18, 2023).

² Operation of a motor vehicle causing death can result in imprisonment under the [Criminal Code](#) (see Background below).

BACKGROUND

Federal Law | Criminal Code Driving Offences

Regardless of what province or territory in Canada a driver operates a motor vehicle, federal legislation is applicable. The *Criminal Code*, R.S.C. 1985, c. C-46 ([Code](#)) applies to and is enforceable anywhere a motor vehicle is being operated in HRM, including parking lots. While the Code does not impose speed limits, it does regulate driving behaviour.

The Code's dangerous driving³ and criminal negligence⁴ provisions impose a duty of care on motor vehicle operators which is determined with regard to all circumstances of a given situation. If the standard of care is violated,⁵ it will result in a criminal act and will trigger varying penalties upon conviction (fines or imprisonment) which are dependant on the severity of the offence. Unsafe or reckless operation of a motor vehicle is also covered under the Code's impaired driving⁶ and mischief⁷ provisions. Failure to remain at the scene⁸ of an accident is a further Code offence equally applicable to parking lots accidents.

Where warranted, police can lay a driving related charge under the Code. To determine whether someone should be charged, police will typically consider (among other factors): (a) the way the vehicle operator drove, such as speed, weaving, or following too closely to the car ahead, (b) the nature and condition of the place where the offence took place, and (c) the pedestrian and vehicular traffic in the area.

Provincial Law | Driving Offences

Laws vary from province to province, but the road legislation in virtually all jurisdictions applies on privately owned property, including privately owned parking lots. Parking lots are included in the definition of a "highway" in all but three Canadian jurisdictions (see Attachment 1).⁹ Two jurisdictions exclude parking lots from their definitions of highways, but have clauses that specifically cover the operation of motor vehicles in parking lots.¹⁰

In simple terms, this means that the usual provincial rules of the road which drivers are required to follow apply to Canada's parking lots (such as speed, traffic control signs, following too closely, proper turns, signalling and backing). Generally, drivers are subject to the same provincial driving penalties (provided for a violation of any road safety provision) as a person operating a motor vehicle upon any other roadway.

Ontario is an outlier, being the only Canadian jurisdiction where the governing legislation is silent. As such provincial rules of the road aren't enforceable in Ontario's parking lots. Consequently, some Ontario

³ A person commits the offence of dangerous operation when they drive a motor vehicle in a manner that is dangerous to the public, which results in bodily harm, or that causes a death. See sections 320.13(1), 320.13(2) and 320.13(3) of the Criminal Code.

⁴ A person commits the offence of criminal negligence when they do or omit to do anything, showing wanton or reckless disregard for the lives or safety of other persons. See section 219(1) of the Criminal Code.

⁵ For offences that involve objectively dangerous conduct, the accused's actions must be a "marked departure" from the norm. Essentially, the assessment considers whether a reasonably prudent person in the circumstances would have been aware of the risk and would not have undertaken the risky activity.

⁶ A person commits the offence of impaired driving when their ability to drive is impaired to any degree by drugs, alcohol, or a combination of both. See section 320.14(3) of the Criminal Code.

⁷ A person commits the offence of mischief when they willfully destroy, damage, or render property useless or when they interfere with the lawful use or enjoyment of property. Mischief charges can be laid in cases where vehicle operators are engaging in 'stunt driving' and cause property damage. See section 430(1) of the Criminal Code.

⁸ A person commits failure to remain when they are involved in a motor vehicle accident and fail to remain at the scene to provide particulars (name, address, insurance etc.) or to render aid to injured persons. See section 320.16 of the Criminal Code.

⁹ Ontario, Manitoba and Saskatchewan do not include parking lots in their respective definitions of highways. See Attachment 1.

¹⁰ Parking lot specific provisions are included in Manitoba's Highway Traffic Act (s.236(1)) and Saskatchewan's Traffic Safety Act (s.211). See Attachment 1.

municipalities have enacted by-laws that apply to parking lots located in their municipalities.¹¹

DISCUSSION

Governing Motor Vehicle Law

In Nova Scotia, the operation of motor vehicles is governed by the *Motor Vehicle Act*. R.S.N.S., c. 293 ([Motor Vehicle Act](#)). As with most other Canadian jurisdictions, Nova Scotia's legislation defines highways to include parking lots. The relevant provision reads as follows:

s.2(u) "highway" means (i) a public highway, street, lane, road, alley, park, beach or place including the bridges thereon, and (ii) private property that is designed to be and is accessible to the general public for the operation of a motor vehicle.¹²

By virtue of the Act's definition of the term "highway", Nova Scotia's provincially enacted rules of the road apply to publicly accessible parking lots in HRM.

Default (Prima-Facie) Speed Limit

Statutory speed limits are default speed limits set by statute. They apply on highways which do not have posted speed limits. Unless otherwise posted, the maximum speed permitted on any highway in Nova Scotia is 80 km/h. In business and residence districts, the speed limit is 50 km/h.¹³ Consequently, the default speed limit for a parking lot is 50 km/h (assuming the lot is located within a business or residence district).¹⁴ Signage is not required to allow for enforcement of the prima-facie speed limit. Failure to observe the default speed limit is considered prima facie unlawful.¹⁵

Duty to Exercise Care and Control of Vehicle

Whether or not speed-limit signage is posted in a parking lot, drivers in HRM are legally required to exercise care and control and must limit their speed to avoid mishaps. Driver speed must be reasonable and prudent and must consider the traffic, the surface and width of the highway, and all driving conditions existing at the time.¹⁶ Vehicle operators must drive at a speed and in a manner that will not endanger the life, limb, or property of others. Drivers must consider all circumstances including general visibility, the weather, heavy traffic, and whether the road is wet or slippery.¹⁷ As the *Motor Vehicle Act* defines "traffic" to include pedestrians, drivers must be mindful of both vehicles and pedestrians.¹⁸

At Fault Determinations | Insurance Coverage and Liability

Failure to observe the rules of the road opens a driver to being found at fault and facing legal liability if an accident happens in a parking lot.¹⁹ In Nova Scotia, insurance companies use the *Motor Vehicle Act* and fault determination rules, made pursuant to the *Insurance Act* R.S.N.S. 1989, c. 231 ([Insurance Act](#)), to

¹¹ In May 2017, the Province of Ontario amended the Highway Traffic Act to allow cities to prescribe a speed limit that is lower than 50 km/h. [Mississauga's](#) traffic by-law, for example, sets a limit of 20 km/h for parking lots.

¹² See section 2(u) of the *Motor Vehicle Act*.

¹³ See section 102(2) of the *Motor Vehicle Act*.

¹⁴ Business district and residence district are, respectively, defined in sections 2(e) and 2(bc) of the *Motor Vehicle Act*.

¹⁵ See section 102(1) of the *Motor Vehicle Act*.

¹⁶ See section 101 of the *Motor Vehicle Act*.

¹⁷ See Province of Nova Scotia [Rules of the Road](#) manual.

¹⁸ See section 2(bs) of the *Motor Vehicle Act*.

¹⁹ In [Dorie v Williams](#) a driver was found solely liable for causing an accident when backing out of a parking space and colliding with a vehicle driving in the traffic lane. The duty upon a driver in a parking lot who is entering a main thoroughfare from either a parking spot or one of the feeder lanes is to give way to the vehicle which is already travelling along the access route.

determine who is responsible for parking lot collisions.²⁰ As such, insurance-related consequences provide additional incentive for drivers to operate their vehicles responsibly in parking lots.

Authority to Set Speed Limit

Subject to the Motor Vehicle Act's regulations, HRM's Traffic Authority may set a speed limit on a highway under its jurisdiction by placing an official traffic sign that displays the speed limit.²¹ For HRM to post a speed limit below 50 km/h, an application from the HRM Traffic Authority²² must be made to the Provincial Traffic Authority (PTA). Historically, permission to post street-specific speed limits below 50 km/h has been granted (by the PTA) on a case-by-case basis. However, the evaluative criteria, used by the PTA to assess speed limit reductions, cannot be appropriately applied to parking lots.²³

FINANCIAL IMPLICATIONS

No financial implications were identified.

RISK CONSIDERATION

No risk considerations were identified.

COMMUNITY ENGAGEMENT

Community engagement was not conducted.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ATTACHMENTS

Attachment 1 Cross-Jurisdictional Scan | Provincial Highway Traffic Laws

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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²⁰ See [Automobile Insurance Fault Determination Regulations](#).

²¹ See section 104(1) of the Motor Vehicle Act.

²² In this context, Traffic Authority means a person designated or otherwise authorized to be the traffic authority for the highway or to exercise the powers and perform the duties of the Traffic Authority for the highway.

²³ The [Canadian Guidelines for Establishing Residential Speed Limits](#) are published by the [Transportation Association of Canada](#) (TAC). They represent the best engineering judgement of what the reasonable posted speed limit should be.

ATTACHMENT 1

Cross-Jurisdictional Scan | Provincial Highway Traffic Laws

Jurisdiction	Legislation	Definition of Highway	Parking Lot Specific Provision
Alberta	Traffic Safety Act	“highway” means any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestle way or other place or any part of any of them, whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage or parking of vehicles and includes ...	None.
British Columbia	Motor Vehicle Act	"highway" includes (a) every highway within the meaning of the Transportation Act, (b) every road, street, lane or right of way designed or intended for or used by the general public for the passage of vehicles, and (c) every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles , has access or is invited, but does not include an industrial road.	None.
Manitoba	Highway Traffic Act	S 1(1) "highway" means any place or way, including any structure forming part thereof, which or any part of which the public is ordinarily entitled or permitted to use for the passage of vehicles, with or without fee or charge therefor, and includes all the space between the boundary lines thereof; but does not include any area designed or intended, and primarily used, for the parking of vehicles and the necessary passageways thereon.	s. 236(1) Notwithstanding section 74, any person who operates a motor vehicle in any place designed and intended, and primarily used, for the parking of vehicles, including the necessary passageways thereon, has the same rights and duties, and is subject to the same penalties provided for a violation of any provision of this Act, as a person operating a motor vehicle upon a highway.
Newfoundland	Highway Traffic Act	"highway" means a place or way, including a structure forming part of the place or way, designed and intended for, or used by, the public for the passage of traffic or the parking of vehicles and includes all the space between the boundary lines of the place or way.	None.
Northwest Territories	Motor Vehicles Act	s.1 "highway" means a road, place, bridge or structure, whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage of vehicles and includes (a) a privately or publicly owned area that is designed and primarily used for the parking of vehicles , other than the driveway of a private dwelling ...	None.

Nova Scotia	Motor Vehicle Act	s.2(u) "highway" means (i) a public highway, street, lane, road, alley, park, beach or place including the bridges thereon, and (ii) private property that is designed to be and is accessible to the general public for the operation of a motor vehicle.	None.
Nunavut	Traffic Safety Act	"highway" means a road, place, bridge or structure, whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage of vehicles and includes (a) a privately or publicly owned area that is designed and primarily used for the parking of vehicles , other than the driveway of a private dwelling ...	None.
Ontario	Highway Traffic Act	s.1(1) "highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.	None.
Prince Edward Island	Highway Traffic Act	S,1 (h1) "highway" means the entire width between the boundary lines of every road, street, lane, alley, or right-of-way designed or intended for or used by the general public for the passage of vehicles, and includes any bridges over which every such road, street, lane, alley, or right-of-way is laid, and every private place or passage way to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited.	None.
Quebec	Highway Safety Code	s.4 "public highway" means the surface of land or of a structure, the maintenance of which is entrusted to a municipality, a government or one of its agencies, over part of which one or more roadways open to public vehicular traffic and, where such is the case, one or more cycle lanes are laid out, except ...	None.

Saskatchewan	Traffic Safety Act	s.2(1) (k) "highway" means a road, parkway, driveway, square or place designed and intended for or used by the general public for the passage of vehicles, but does not include any area, whether privately or publicly owned, that is primarily intended to be used for the parking of vehicles and the necessary passageways on that area.	s.211 No person shall, in or on any place that is not a highway and that the public is ordinarily permitted to use for the parking of vehicles, do anything that, if done on a highway, would be a contravention of [multiple sections listed].
Yukon	Highways Act	"highway" includes (a) land used as a highway, land surveyed for use as a highway, and land designated by the Commissioner in Executive Council as a road allowance, (b) a bridge or other public improvement incidental to a highway, and (c) an ice road.	None.