

HALIFAX

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Item No. 2
Halifax Regional Council
October 26, 2021

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Kelly Denty, Executive Director Planning and Development

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: September 28, 2021

SUBJECT: **By-law M-200, Respecting Standards for Residential Occupancies**

INFORMATION REPORT

ORIGIN

On December 1, 2020, the following motion of Regional Council regarding Item 14.1 was put and passed:

“THAT Halifax Regional Council requests the pending Rental Bylaw report include options for strong penalties up to and including the maximum statutory amount, and rapid respond to remediate any unit where, in the opinion of the municipality, a landlord has deliberately made a unit uninhabitable and/or non-compliant.”

LEGISLATIVE AUTHORITY

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

Clauses 188(1)(a), (b) and (c):

188(1) The Council may make by-laws, for municipal purposes, respecting

(a) the health, well being, safety and protection of persons;

(b) the safety and protection of property;

(c) persons, activities and things in, on or near a public place or place that is open to the public;

Subsection 199(1), Setting out Regional Council's power to create a Minimum Standards By-law;

199 (1) Without limiting the generality of Section 188, the Council may make by-laws

- (a) prescribing minimum standards of sanitation, plumbing, water supply, lighting, wiring, ventilation, heating, access, maintenance, appearance, construction and material for buildings, or parts thereof, occupied for residential purposes, whether the building, or part thereof, is erected, constructed or converted to residential purposes before or after the date of the making of the by-law;
- (b) limiting the number of persons who may reside in a building or part thereof;
- (c) imposing on the owner, tenant or occupant, or any one or more of them, the responsibility for complying with the by-law;
- (d) providing for notice to an owner, occupant or tenant, or any one or more of them, to discontinue the residential use of a building, or part thereof, in contravention of the by-law; and
- (e) prescribing penalties for such residential use after notice to discontinue the use is given.

(7) The standards of a by-law passed pursuant to this Section shall be consistent with the standards prescribed pursuant to the *Building Code Act* and regulations.

Building Code Act, R.S.N.S, c. 46;
Fire Safety Act, 2002, c.6, section 5; and,
Building Code Regulations, N.S. Reg 26/2017

BACKGROUND

With a focus on “Safe, Warm, Dry” living conditions, the M-200 By-law - “Standards for Residential Occupancies”¹ - intends to raise the living standards in HRM by specifying minimum standards for residential occupancy. The established compliance program is reactive and based on complaints received by an occupant regarding their current living conditions.

In situations where an investigation confirms there is non-compliance, the building owner is advised of the issues and provided an opportunity to correct the violations. If the violations are not affecting life safety, a **Notice of Violation** is issued, detailing the non-compliance and a reasonable time is provided to correct the issues. If the owner fails to correct the violations an **Order to Comply** is issued. If any of the violations are life-safety related, the Building Official issues an **Order to Comply** and specifies the timeframe to remedy the situation. Should the owner fail to correct all the violations in the Order, HRM has the authority to secure contractors to complete the required work. The cost of these repairs is then billed back to the property owner and forms a lien against the property.

Failure to comply with an Order under by-law M-200 is an offence and subject to charges before the courts. Anyone found guilty of an offence can be fined from \$150 up to \$10,000 and every day that the offence continues may be deemed a separate offence. Typically, HRM prosecutes cases where the owner refuses to comply with an Order. The laying of charges is separate from the remedy process. The Municipality may determine prosecution is appropriate or they may determine due to the nature of the violation that it should hire contractors to remedy the violation, complete the work and lien the property. Laying of charges by way of longform prosecution has also been undertaken in the past without the remedy process. There are typically situations where no life safety issues exist, and the owner has unreasonably delayed correcting deficiencies.

¹ By-law M-200 is available online at <https://www.halifax.ca/sites/default/files/documents/city-hall/legislation-by-laws/By-lawM-200.pdf>

DISCUSSION

In response to the Council motion, staff have determined that the request is best addressed through a process change to how staff enforce the M-200 By-law. Changes to the existing process are proposed that would enhance enforcement and include stricter punitive measures when it appears that an owner deliberately creates a non-compliant condition in the building.

When responding to an M-200 complaint, if the Building Official suspects deliberate acts have been taken to make a residence uninhabitable or less habitable, they will immediately begin to gather evidence. The owner will be given, by **Order**, a strict timeline to bring the issue(s) into compliance. The prosecution process will also be initiated immediately. The prosecution may continue even if compliance is achieved before the matter is heard by the court. The court will determine the severity of the offence and impose the penalty.

Longform prosecutions are more appropriate for securing a more substantial penalty. The By-law currently allows that each day an offence occurs can be considered as a separate offence. It also allows escalating fines, each with its maximum being \$10,000.00 (the maximum allowed under the HRM Charter). Longform prosecution would allow presentation of offences that continued to occur and accumulate over a period of time. The penalty could be based on several offences and the courts could interpret the ongoing offence as a more severe hazard/offence, thus handing down a greater penalty. Having a range of penalties allows the prosecutor to plead the seriousness of the offence and the recommended penalty, with an option of settling for a lesser penalty if necessary.

The ability to lay charges and seek larger fines already exist in By-law M-200. Where it is determined to be appropriate, staff will proceed with longform prosecutions to achieve compliance, provide punitive measures and serve as a deterrent.

Staff reviewed other options to address Council's motion and determined that the above process changes would be the most effective way to achieve rapid enforcement. Laying a charge by way of long form prosecution is preferred over Summary Offence tickets for the following reasons:

1. The NS Justice list of Summary Offences for which a ticket can be issued has not been updated to include the M-200 By-law (M-100 is still on record). Past experience for HRM Solicitors suggests that it can take up to a year to update the list. Summary Offence Tickets (SOT) are usually intended for smaller offences thus, when a SOT is issued, it would typically be for the lower end penalty plus court costs. A M-200 SOT for a first offense would be \$295.00.
2. Penalties allowable under the By-law would have to be increased substantially in order to create an adequate deterrent. To increase the penalty for M-200 offences would require an amendment to the By-law and for the NS Justice list of Summary Offences and penalties to be updated.
3. Should an SOT with a large fine be issued, it would likely be disputed, not paid. The matter would then be referred to the courts. SOTs require as much evidence as does a longform prosecution and if disputed, must still be proven in court. This negates the immediacy of the response.

FINANCIAL IMPLICATIONS

The rapid enforcement of the existing penalties can be achieved through existing resources and budgets. However, if the number of prosecutions increases, additional prosecution staff may be required.

COMMUNITY ENGAGEMENT

No community engagement was required.

ATTACHMENTS

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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