

TO: Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: _____
Jacques Dubé, Chief Administrative Officer

DATE: September 23, 2022

SUBJECT: **Case 22020: A By-law Respecting Hours of Opening of Food Service Businesses in Residential Neighbourhoods in the Regional Centre**

ORIGIN

November 23, 2021 Halifax Regional Council Motion (Item 16.3):

MOVED by Councillor Mason, seconded by Councillor Blackburn

THAT Halifax Regional Council request a staff report on the adoption of a general application by-law to limit the hours of operation for commercial businesses situated within the Regional Centre's Established Residential District.

MOTION PUT AND PASSED UNANIMOUSLY

LEGISLATIVE AUTHORITY

186 (1) Subject to Part VIII, in this Act, the power to
(a) license, includes the power to regulate;
(b) regulate, includes the power to license; and
(c) regulate includes the power to prohibit.

188 (1) The Council may make by-laws, for municipal purposes, respecting
...
(f) businesses, business activities and persons engaged in business;

188 (2) Without restricting the generality of subsection (1) but subject to Part VIII, the Council may,
in any by-law

...
(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;

RECOMMENDATION

It is recommended that Regional Council adopt By-law B-800 Respecting Business Opening Hours in Residential Neighbourhoods as set out in Attachment A of this report.

BACKGROUND

Motion

Council's motion of November 23, 2021 directed staff to prepare a staff report and recommendations with respect to a by-law to limit the hours of operation for commercial businesses situated within the Regional Centre's Established Residential District. Concern by Council was expressed regarding the impact these uses have on established residential communities given their sale of ready-to-eat food and ability to operate late into the evenings.

Zoning Background

The Halifax Peninsula Land Use By-law was repealed upon adoption of the Regional Centre Land Use By-law (RCLUB). The existing food service businesses were permitted as accessory to grocery stores in the RC-1 Zone of the former by-law and can continue to exist as non-conforming uses. They are not permitted by-right in the current RCLUB in the Established Residential Zones. New local commercial uses can be considered by development agreement in those zones, and the development agreement can regulate the hours of operation.

There were 25 properties in the RC-1 Zone of the Halifax Peninsula Land Use By-law. Of those 25 properties, 2 properties are now in a zone which permits a restaurant use, 1 property is subject to a development agreement which limits the hours of operation, and 11 properties are residential with no ability to re-develop as commercial uses except by development agreement. The remaining 11 properties contain a food service use or may have the potential to have a food service use accessory to their existing commercial use. The zone which established these uses no longer exists and the recently adopted RC LUB does not permit new grocery store or food service businesses in Established Residential zones except through a development agreement.

After some of these businesses began operation in the former RC-1 Zone, complaints from neighbours, local Councillors, and Halifax Regional Police have been noted concerning late night hours of operation for food service and the resulting noise, trespass, and littering. Large numbers of consumers patronize some of these neighbourhood stores with operating hours extending past 3:00 AM. Police have responded to disturbances, which have included individuals and groups of people loitering outside of the grocery stores and on surrounding streets and properties. These gatherings tend to be seasonal, occur with warmer weather, and have been ongoing for several years.

In response to resident's concerns, Council passed the above referenced motion in 2021.

Legislative Framework

Business hours of operation can be regulated through a general application by-law as enabled in sections 186 and 188 of the *Charter*. Section 186 grants the authority to regulate including prohibiting; and, section 188 grants the authority to regulate businesses and business activities. Clause 188(2)(b) allows for regulating business operating hours.

DISCUSSION

Food service offered by grocery stores within residential neighbourhoods can often cause nuisances to nearby neighbours.

The decision of small grocery store operators to transition from selling pantry goods to ready-to-eat food can be incompatible with neighbouring residential land uses, particularly when an increase in operating hours results from the new business model.

General Application By-law

As stated earlier in this report; Clause 188(2)(b) of the *Charter* allows for regulating business operating hours provided the regulation is applied to a class of businesses and not specific properties.

In this case, all the businesses are located within the Established Residential zones of the Regional Centre. The proposed by-law (Attachment A) applies to all local commercial uses within the Established Residential Zones of the Regional Centre.

The Regional Centre Plan Area includes all lands within the Circumferential Highway in Dartmouth, therefore the class of business in the proposed by-law would include the Established Residential Zones in Dartmouth as well as Peninsula Halifax. There will be little impact on businesses in Dartmouth as there are no known late night food service businesses in operation. There is however, the potential for a food service use to be developed as accessory to existing local commercial uses and the proposed by-law would apply to those businesses, as well as existing businesses.

The classes of business to be subject to the proposed by-law are a Local Commercial Use and a Restaurant Use, defined as follows in the RC Land Use By-law:

(138) **Local Commercial Use** means commercial premises that: (a) offers goods or products for sale or rent, including food prepared on or off site, but excludes a restaurant use and a grocery store use; or (b) offers personal service uses.

(212) **Restaurant Use** means premises, excluding a catering use, whose primary purpose is to prepare, serve, and sell food and non-alcoholic beverages for consumption on or off the premises. A restaurant use may be licensed to serve alcoholic beverages, but this shall be incidental to the preparation, serving, and selling of food.

Opening Hours is defined in the proposed by-law to be the time of day that a business is open and includes delivery of goods or merchandise to the public (take-out restaurant for example). The definition would prohibit operation of the business outside of those hours.

There is no set formula for establishing opening hours. In other jurisdictions hours of operation appear to be applied in direct response to local land use conflict and not uniform in their application. In this instance the existing food service businesses in established residential neighbourhoods are a relatively recent phenomena. They were created as accessory to grocery and convenience stores in a zone that permitted local commercial uses serving the immediate neighbourhood – the “corner store”. A local commercial use was intended to provide services to residents, primarily within walking distance, without creating a significant impact, whether by traffic, noise or nuisance, on the neighbourhood. The current hours of operation, often into the early morning, no longer meet the intent of the original zone.

It is evident by the activity at these businesses that food service is very much an asset to the business owner. Staff advise that limiting operating hours from 0700 hours to 2300 hours provides a reasonable approach as it would significantly reduce the neighbourhood impact of late night clientele yet allow for evening food service by the businesses.

While the proposed by-law may impact existing businesses by limiting hours of operation, it would help to strike a better balance with integrating them within residential neighbourhoods as they transform from dry goods grocery to hybrid models with ready-to-eat foods served late at night. The objective of the proposed by-law is to remedy unreasonable disturbances by limiting the hours of operation in Established Residential Neighbourhoods.

IMPACT OF REGULATIONS 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 proposed Hours of Operation By-law may cause harm and financial burden to a very specific sector of private business, namely food services in residential neighbourhoods which currently operate beyond the hour of 11 p.m.. Conversely, the regulation proposed will likely provide a significant benefit to the persons living in the established residential neighbourhoods where the food service businesses are located as the majority of nuisance complaints about the patrons of those businesses occur after 11 p.m..

Staff conducted the Business impact Analysis (BIA) and based on staff estimates and limited feedback from impacted firms, finance staff expect two negative impacts to those firms operating during the time interval the By-Law seeks to remedy.

1. Lost efficiency of labour: Staff time being misallocated due to imposing of operations constraints.
2. Operating Revenue Loss: contingent on what share of revenues are generated during this time period. May be as high as 10 per cent of daily revenues.

General commentary:

Limiting hours of operation is a relatively blunt mechanism to address resident concerns of noise pollution or disruption. The costs must be weighed against the behavioural signals sent to firms about resident concerns versus reasonable operation of a business. While the number of firms currently operating during these hours are small (5), it isn't clear that negative externalities are present (substantial pollution, noise etc.).

FINANCIAL IMPLICATIONS

The HRM cost associated with the recommendations within this report can be accommodated with the approved 2022-2023 operating budget.

RISK CONSIDERATION

There are no significant risks associated with the recommendations contained within this report. Council may make by-laws, for municipal purposes, and such decisions may be appealed to the NS Utility and Review Board.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The assessed property owners impacted by this proposed by-law have been contacted through a mail out and asked for input respecting the proposed Opening Hours. Out of the 25 letters sent, no responses were received. There were two responses from the website posting in support of the by-law.

ENVIRONMENTAL IMPLICATIONS

None identified.

ALTERNATIVES

1. Regional Council may choose not to adopt the proposed By-law Respecting Hours of Opening of Food Service Businesses in Residential Neighbourhoods as contained in Attachment A of this report. This is not the recommended alternative as it would result in the status quo and would not resolve the land use conflict between late night food service uses and residential uses in Established Residential Neighbourhoods.
2. Regional Council may direct staff to prepare a supplementary report on a business licensing program inclusive of hours of opening and categories of commercial enterprise. This alternative is not recommended based on the reasons outlined in the report.

ATTACHMENTS

Attachment A: By-law B-800 Respecting Business Opening Hours in Residential Neighbourhoods

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.

Report Prepared by: Andrew Faulkner, Development Officer/Principal Planner, (902) 476-2982

**HALIFAX REGIONAL MUNICIPALITY
BYLAW NUMBER B-800 RESPECTING BUSINESS OPENING
HOURS IN RESIDENTIAL NEIGHBOURHOODS**

BE IT ENACTED by the Council of the Halifax Regional Municipality under the authority of Section 188 of the *Halifax Regional Municipality Charter* as follows:

Short Title

1. This By-law shall be known as By-law B-800 and may be cited as the “Business Opening Hours in Residential Neighbourhoods By-law”.

Definitions

2. In this By-law:
 - (a) "Grocery Store Use" means a retail establishment with a minimum of 200 square metres of floor area that primarily sells food, including the accessory sale of food being prepared on-site, and that may also sell other convenience and household goods, but excludes a farmers' market use.
 - (b) "Local Commercial Use" means commercial premises that: (a) offers goods or products for sale or rent, including food prepared on or off site, but excludes a restaurant use and a grocery store use; or (b) offers personal service uses.
 - (c) "Opening Hours" means the time of day that a business is open and includes delivery of goods or merchandise to the public.
 - (d) "Restaurant Use" means premises, excluding a catering use, whose primary purpose is to prepare, serve, and sell food and non-alcoholic beverages for consumption on or off the premises. A restaurant use may be licensed to serve alcoholic beverages, but this shall be incidental to the preparation, serving, and selling of food.

Business Opening Hours

3. The Opening Hours of a Local Commercial Use and Restaurant Use within the Established Residential 1 Zone, Established Residential 2 Zone, and Established Residential 3 Zone as set out in the Regional Centre Land Use By-law shall be limited to the hours of 0700 hours and 2300 hours, Monday to Sunday inclusive.

Offence and Penalty

4. (a) Any person who violates any provision of this By-law is guilty of an offence punishable on summary conviction by a fine of not less than One Hundred Dollars (\$100) and not more than Ten Thousand Dollars (\$10,000) and in default of payment, to imprisonment for a term of not more than two months.
- (b) Every day during which an offence continues is a separate offence.

MAYOR

**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 the Halifax Regional Council held on, #####

**Iain MacLean, Municipal
Clerk**