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Cape Breton Regulatory Modernization Pilot: By-law Modernization Initiative

Action Plan for the Cape Breton Regional Municipality

DATE

September 17, 2020

SUBMITTED BY

PORTSIDE LAW LLP

**Cape Breton Regulatory Modernization Pilot
By-Law Inventory Initiative: Executive Summary**

Cape Breton Regional Municipality (“CBRM”)

Background

In the spring of 2019, the Province of Nova Scotia, through the Office of Regulatory Affairs and Service Effectiveness, and the five municipalities on Cape Breton Island entered into a pilot partnership to improve the regulatory environment to make operation and expansion easier for Island Businesses. Regulatory reform and modernization play a key role in the province’s broader economic growth strategy. Together, the parties agreed to a workplan that reflects the input provided by the business community during stakeholder engagement sessions in Port Hawkesbury, Glace Bay, Sydney, Baddeck, Inverness and Cheticamp.

One of the first initiatives the parties undertook was to produce an updated inventory of By-laws on municipal websites to alleviate confusion around compliance requirements for business. This initiative was in direct response to stakeholder input heard throughout the engagement sessions. Businesses identified that finding, learning and complying with different municipal By-laws as one of the challenges posed by operating across the Island. Upon completion of this project, that objective will be met.

Once the parties began work in this area it became readily apparent than there were substantial issues with a number of municipal By-laws in addition to their accessibility online. Portside Law LLP was engaged to review all the By-laws of the Cape Breton Regional Municipality, the Municipalities of the Counties of Richmond, Inverness and Victoria, and the Town of Port Hawkesbury, for issues of clarity, relevance and enforceability. The following is an action plan based on the findings made in our Final Report with respect to that work.

It is important to note that there is still much work to be done in terms of using this work to meet the objectives of the Cape Breton Regulatory Modernization Pilot. To that end, we added, for your consideration, a section where we consider areas of both similarity and difference between your municipality and your Island neighbours and partners in the pilot. There may, be opportunities for further regulatory alignment if you wish to pursue them.

Executive Summary

The following is a condensed version of the work plan set out in our Final Report, which was delivered on September 17, 2020. The purpose of this document is to give concise actionable items for your municipality to review and consider.

In our analysis, we have identified the following By-laws that, in our opinion, require urgent attention. Included as well below is a brief explanation of our rationale for identifying these By-laws, although we would advise reviewing Appendix B to our Final Report for a more fulsome analysis when time permits:

1. Dog By-Law – our review indicated that there were typographical and formatting errors which negatively impacted the clarity of the By-law. There is also internal inconsistency within the By-law in terms of penalties;
2. Heritage Conservation District North End By-Law – our review indicated that there was no clear link between this By-Law and the broader Heritage Property By-Law. There is significant crossover in terms of subject matter but no explicit legislative provision(s) connecting the two;
3. Penalties By-Law – our review of this By-law and the other current By-laws of the CBRM creates a concern that this By-law may create something of a regulatory muddle in terms of penalties as members of the public would have to review multiple By-laws to see what, if any, penalties may apply to them;
4. Taxis By-Law – our review indicated that this By-law contained a number of typographical and formatting issues which negatively impacted its clarity; and
5. Wastewater Discharge By-Law – our review indicated that this By-law contained a number of typographical and formatting issues which negatively impacted its clarity. This By-law was also missing an enactment clause.

We also have identified a significant number of By-laws that would benefit from minor revisions. This would include editing for grammar, punctuation, formatting, numbering and the inclusion of certain recitals and certifications.

We recommend that, as part of the review process, Council adopt a standard format for its By-laws and maintain that format on a go-forward basis.

Consideration will also have to be given the repeal of a large number of pre-amalgamation By-laws, as identified at pages 6-8 and Appendix D of the Final Report. In our assessment, with some exceptions identified therein, the vast majority of the pre-amalgamation By-laws can and should be repealed.

The revision each of these By-laws may be addressed by way of an omnibus by-law, the contents of which we can provide in template format once it is determined how, after review and consideration, your municipality wishes to proceed.

As such, our first recommendation is that the necessary members of your municipality's government and legal advisers review both this executive summary and our Final Report. You will see in Appendix B of that Report, that we have identified a number of By-laws that will require review in the medium to long- term range once the By-laws identified herein as requiring more urgent review have been reviewed by your municipality.

In undertaking the review of these By-laws, it is perhaps helpful to consider what regulatory subject matters have been covered solely by your municipality and which have been covered by a variety of other municipalities. We believe consideration of other municipalities' By-laws can help inform both current re-drafting of existing By-laws in the short term and possibly drafting of new By-laws in the longer term. Reference can be made to Appendix C of our Final Report, which provides a table of the subject matters covered within the By-laws of the various municipalities. A synopsis of this table for the purposes of your municipality is as follows:

By-Law(s) found only in CBRM: Sidewalks

By-Law(s) found in all other municipalities except CBRM: Deed Transfer Tax, Installment Billing

By-Law(s) found in all municipalities, including CBRM: Solid waste