

Item No. 9.2
Halifax Regional Council

February 27, 2018
March 20, 2018

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: February 20, 2018

SUBJECT: Accountability Framework for Halifax Water

ORIGIN

On April 14, 2015 a Motion of Council was made to:

1. Request that the Province amend the *Halifax Regional Water Commission Act*, Chapter 55 of the Acts of 2007, as amended, to:
 - a. Make Halifax Regional Municipality the sole shareholder of HRWC with authority to
 - i. Approve issuance, purchase, sale, hold, transfer, vote, manage and all dealings with capital stock,
 - ii. Approve wind-up or dissolution, subject to Provincial legislative approval,
 - iii. Appoint the Board of Directors, and,
 - iv. Receive the Annual Report
 - b. Further, define the scope of authority by and accountability to shareholders by allowing the Halifax Regional Municipality to approve and direct:
 - i. New lines of business,
 - ii. Services to new areas outside hRM,
 - iii. Formal partnerships
 - iv. The long-term strategic plan, to ensure alignment with the Regional Plan
 - v. The annual business plan with regards to alignment with HRM's annual priorities. For greater clarity, this does not include the HRWC Budget, and
 - vi. The debt policy and any guarantees
2. Direct staff to develop an Administrative Order outlining:
 - a. Competency Requirements for appointment to the Board of Directors
 - b. The review of annual financial statements
 - c. Required annual performance metrics as agreed between HRWC Board and HRM Council
 - d. The process for review of the annual business plan, including timing of presentation to HRWC Board, UARB, and HRM Council, and defined scope of review and approval to avoid duplication with the HRWC Board and the UARB review and approval.
 - e. The review of the HRWC Employees Pension Plan Financial Statements
 - f. Other matters as required or allowed by the Halifax Water Commission Act.

LEGISLATIVE AUTHORITY

The recommended action is in accordance with Section 59(3) of the Halifax Regional Municipality Charter which states: "in addition to matters specified in this Act, or another Act of the Legislature, the Council may

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adopt policies on any matter that the Council considers conducive to the effective management of the Municipality.”

RECOMMENDATION

It is recommended that Halifax Regional Council adopt Administrative Order 2018-001-ADM, the Halifax Regional Water Commission Administrative Order as set out in Attachment 1 of this report.

BACKGROUND

On April 14, 2015 Halifax Council received a report on Halifax Regional Water Commission Governance and passed a motion to request legislative amendments to the *Halifax Regional Water Commission Act*, and for staff to develop an Administrative Order as noted above. The Minister of Municipal Affairs introduced Bill No. 22 into the Legislature on October 18, 2016, for the purpose of making certain amendments to the Halifax Regional Water Commission Act. Bill No. 22 was debated in the Legislature, voted on by Members of the Legislature on November 8, 2016, given Royal Assent by the Lieutenant Governor on November 10, 2016 and came into force on April 1, 2017.

Each aspect of the requested components of the Administrative Order will be addressed within the Discussion section of this report, and some additional background pertaining to “Other matters as required or allowed by the *HRWC Act*” is provided here.

The *Halifax Regional Water Commission Act*, in Subsection 7(c) provides legislative authority for HRWC to conduct unregulated business activities. Unregulated business activities means those business activities that are ancillary or incidental to HRWC core businesses of water systems, wastewater systems or stormwater systems.

At the March 30, 2017 HRWC Board meeting, the HRWC Board approved an Unregulated Business Process and Authority Guideline. This Guideline, which provides for a process by which Council provides direction and approval for HRWC to enter into contracts to conduct unregulated business, has been incorporated into the attached Administrative Order.

In determining how Council could fulfill the requirement to provide approval and direction, the relationship between the Provincial Government and its Agencies, Boards and Commissions was considered. Provincial departments and corporations are required to submit both a business plan and an accountability report that includes discussion of outcomes and performance measures to the Provincial Government. The relationship between the municipality and HRWC with respect to conduct of unregulated business is modelled on the relationship between the Provincial government and a Provincial Crown Corporation.

It is important to note that this model cannot be applied to the regulated portion of the business as the Public Utilities Act and Nova Scotia Utility and Review Board (NSUARB) ultimately govern the regulated activities of HRWC. As was explained at the Council meeting on April 14th, 2015 by HRM’s then CFO Mr. Greg Keefe, approval of HRWC’s budget for rate regulated activities is excluded so as not to create a conflict with the mandate of the Board of Halifax Water and that of the regulator, NS Utility and Review Board (NSUARB).¹

DISCUSSION

1. Competency requirements for appointment to the Board of Directors are established in cooperation with the Municipal Clerk’s Office, which receives and screens applicants. HRWC will provide input with respect to relative weighting based on the need to ensure all competencies such as Legal,

¹ Page 9, Halifax Regional Council Minutes, April 14, 2015

Financial, Environmental, Utility Industry, and Human Resource are represented within the Board composition. Currently, the HRWC General Manager is part of the screening process for appointments with the Municipal Clerk and CAO of HRM. In addition, the interview committee includes the Chair or Vice Chair of HRWC, a member of HRM's Environment and Sustainability Standing Committee, and the HRM CAO.

2. Review of Annual Financial Statements HRWC's financial statements are consolidated with HRM's Financial statements. HRWC's separate audited Financial Statements are reviewed and approved by the HRWC Board in June, and will be submitted to HRM Council as an information item in July.
3. Annual Performance Metrics HRWC has maintained a Corporate Balanced Scorecard since 2001 with eight Critical Success Factors (CSFs) and supporting performance metrics in the areas of:
 - a. High Quality Drinking Water
 - b. Service Excellence
 - c. Responsible Financial Management
 - d. Effective Asset Management
 - e. Workplace Safety and Security
 - f. Regulatory Compliance
 - g. Environmental Stewardship
 - h. Motivated and Satisfied Employees

There are currently 28 organizational indicators being measured to monitor achievement of the critical success factors noted above.

HRWC's Corporate Balance Scorecard results will be presented to Council in an information report in July of each year, in conjunction with the annual Audited Financial Statements.

HRWC is also participating with HRM in the National Benchmarking initiative and as this matures, further performance benchmarking will be realized.

4. Review of Annual Business Plan – HRWC's annual business plan is approved by the HRWC Board in late January, and will then proceed to Council in February. As a result of Council's April 2015 motion, the annual HRWC business plans for 2016/17 and 2017/18 were presented to Council as information. The format and content for future presentations would contain a similar level of detail.
5. Review of HRWC Employees Pension Plan Financial Statements – The HRWC Employees' Pension Plan Audited Financial Statements are reviewed and approved by the HRWC Board in June, and will be submitted to HRM Council as an information item in July.
6. Other Matters as required or allowed by the Halifax Water Commission Act - Attachment 1 is a proposed Administrative Order to establish an accountability framework for HRWC, and to delegate authority to HRWC in certain cases to conduct unregulated business and regulated business outside of the Municipality. The key terms and conditions with respect to the conduct of unregulated business are outlined below.
 - a. HRWC must present an HRWC Board-approved Business Plan to Halifax Regional Council each year, which includes a section outlining planned unregulated business activities and budgets.
 - b. Within a fixed period after the fiscal year end of March 31st, HRWC must file an Accountability Report and its financial statements with Halifax Regional Council, in the format described within the Administrative Order.
 - c. The direction and approval by Council of HRWC unregulated business activities will be in accordance with the process described in the Administrative Order.

The annual milestones that would be required under the Administrative Order are listed below.

Timing	Milestone
One Month Prior to Fiscal Year End	Annual Business Plan
No Later Than Three Months After Fiscal Year End	Audited HRWC Financial Statements Corporate Balanced Scorecard Results Audited HRWC Employees' Pension Plan Financial Statements Present Accountability Report

Although not specifically requested in the direction to staff regarding the Administrative Order, staff suggest that it would be helpful for Council to receive information on any updates to the HRWC Integrated Resource Plan in pending Regional Plan updates to ensure there is continued congruence and alignment.

FINANCIAL IMPLICATIONS

There are no cost implications to the municipality as a result of this report. It does not affect the amount of dividend (grant in-lieu of taxes) HRWC is required to pay annually. The ability to conduct unregulated business helps the HRWC diversify revenues and mitigate future increases to water, wastewater and stormwater rates.

RISK CONSIDERATION

The proposed Administrative Order protects the municipality from un-knowingly entertaining any incremental financial risk by specifying that any HRWC debt associated with un-regulated business must be covered by a specific guarantee, separate from the blanket guarantee of HRWC debt approved by the Halifax Regional Municipality on September 23, 2014.

COMMUNITY ENGAGEMENT

Community engagement occurs through public consultation, communication and advertising for specific Halifax Water projects or NSUARB applications as they occur.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications. This Administrative Order will not impact the delivery of Water, Wastewater, or Stormwater Services by HRWC.

ALTERNATIVES

1. Regional Council could choose to modify the proposed Administrative Order.

ATTACHMENTS

Attachment 1 – Proposed Administrative Order

A copy of this report can be obtained online at <http://www.halifax.ca> or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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Report Approved by: John W. Traves, Q.C., Director, Legal, Municipal Clerk & External Affairs
Phone 902.490.4219]

**HALIFAX REGIONAL MUNICIPALITY
ADMINISTRATIVE ORDER NUMBER 2018-001-ADM
RESPECTING THE HALIFAX REGIONAL WATER COMMISSION**

BE IT RESOLVED AS AN ADMINISTRATIVE ORDER of the Council of the Halifax Regional Municipality as follows:

Short Title

1. This Administrative Order may be cited as the *Halifax Regional Water Commission Administrative Order*.

Purpose

2. The purpose of this Administrative Order is to ensure the efficient operation of the Commission by providing an accountability framework for the conduct of its business.

Interpretation

3. In this Administrative Order,

- (a) “Act” means the *Halifax Regional Water Commission Act, 2007*, S.N.S., c. 55, as amended;
- (b) “Board Chair” means the Chair of the Halifax Water Board of Commissioners;
- (c) “CAO” means the Chief Administrative Officer of the Regional Municipality;
- (d) “Commission” means the Halifax Regional Water Commission;
- (e) “Commission Board” means the Board of the Commission;
- (f) “Commissioner” means a member of the Commission Board;
- (g) “Council” means the Council of the Regional Municipality;
- (h) “debt policies” and “financial instruments” includes policies and instruments, as the case, may be, respecting the borrowing and investing of money, guarantees and the receipt and issuance of negotiable instruments;
- (i) “Executive Committee” means the Executive Standing Committee of the Regional Municipality;
- (j) “General Manager” means the General Manager of the Commission, as defined in clause 2(1)(f) of the *Act*;
- (k) “municipal body” means a municipal body as defined in section 461 of the *Municipal Government Act*;
- (l) “Regional Municipality” means the Halifax Regional Municipality;
- (m) “Regional Plan” means the Regional Municipality’s long-range, planning policy for growth and development within the Regional Municipality;

(n) “Regulated Business Activity” means, in accordance with Section 7(1)(a) and Section 7(1)(b) of the Act, the provision of water, wastewater and stormwater services located outside of the Regional Municipality;

(o) “Environment and Sustainability Standing Committee” means the Environment and Sustainability Standing Committee of the Regional Municipality; and

(p) “Unregulated Business Activity” means, in accordance with Section 7(1)(c) of the Act, those business activities that are incidental to a Regulated Business Activity and includes the generation of heat or electricity in whole or in part from by-products of providing water systems, wastewater systems or stormwater systems.

Application

4. This *Administrative Order* applies to the conduct of the business of the Commission as well as to:

(a) the appointment of members to the Commission Board;

(b) the approval of contracts for:

(i) a Regulated Business Activity of the Commission that is located outside of the Regional Municipality;

(ii) an Unregulated Business Activity of the Commission that is located inside or outside of the Regional Municipality, including the generation of heat or electricity;

(c) contracts for the provision of a Regulated Business Activity to another municipality, municipal body, a municipal water utility, Government of the Province or of Canada, or a band council pursuant to the *Indian Act*; and

(d) the submission to Council by the Commission respecting

(i) the annual business plan, and

(ii) the long term strategic plan outlining how the Commission will ensure alignment with the municipal strategies of the Municipality.

5. Nothing in this *Administrative Order* shall be construed as to limit or restrict any other Council authority respecting the conduct of the business of the Commission as conferred by the *Act*.

6. Nothing in this *Administrative Order* shall be construed as to interfere or conflict with the authority of the Nova Scotia Utility and Review Board with respect to the regulation of the conduct of the business of the Commission as conferred by the *Public Utilities Act* or the *Act*.

7. The *Public Appointment Policy* of the Regional Municipality shall not apply to appointments made pursuant to this *Administrative Order*.

Requirements for Board of Directors

8. A member of Council may be appointed to the Commission Board providing:
 - (a) there are no more than three (3) other members of Council already appointed to the Commission Board and maintaining their membership;
 - (b) the member to be appointed is a member of Council at the time of the appointment; and,
 - (c) the member completes the application process.

9. A member of the public may be appointed to the Commission Board if, in the opinion of Council, the person:
 - (a) resides within the boundaries of the Regional Municipality;
 - (b) is at least eighteen (18) years of age at the time of the appointment;
 - (c) subject to section 10, the person does not serve concurrently on any other external board or committee of the Regional Municipality;
 - (d) satisfies the competencies that are requested by the Commission Board and referenced in the advertisement in accordance with subsection 14(2); and
 - (e) the person completes the appointment process as set forth in Section 13.

10. Notwithstanding section 9, a member of a Business Improvement District may also be appointed to the Commission Board.

Appointment Process

11. If there are one (1) or more vacancies on the Commission Board, and subject to clause 4(1)(a) of the *Act*, Council shall consider the number of vacancies, if any, that will be filled by a member of Council.

12.
 - (1) If Council decides that one or more members of Council will be appointed to the Commission Board to fill a vacancy, the Office of the Clerk shall send an expression of interest to all members of Council, and such expression shall contain a deadline by which interested members may respond.

 - (2) A response to the expression of interest shall be made to the Office of the Clerk by the date specified in such expression and, in the response, the member must identify any expertise, experience and competencies which would be relevant to the member's involvement with the Commission Board.

 - (3) The Office of the Clerk shall forward all expressions of interest received by the stated deadline to the Executive Committee.

 - (4) The Executive Committee, in accordance with its Terms of Reference as found in Schedule 6 of Administrative Order One, shall review the expression of interests and shall make a report and recommendation to Council respecting which member or members of Council to appoint to the Commission Board.

(5) If there is a vacancy on the Commission Board for the Council member who is nominated by the Environment and Sustainability Committee, then, in accordance with its Terms of Reference as found in Schedule 5 of Administrative Order One, the Environment and Sustainability Committee shall nominate to Council one (1) member of the Environment and Sustainability Committee for appointment to the Commission Board.

13. (1) If one or more members of the public are to be appointed to the Commission Board, the Office of the Clerk shall invite applications through an advertisement to the general public and such advertisement shall contain a deadline by which interested persons may respond and how an application may be submitted.

(2) If certain competencies, as approved by Council during the annual review process, are to be requested for future appointees to the Commission Board, the competencies sought shall be referenced in the advertisement.

(3) In order for the application to be considered complete, a person who responds to the advertisement shall:

- (a) attach a summary of their biographical information;
- (b) identify any expertise, experience and competencies which would be relevant to the
- (c) person's involvement with the Commission Board;
- (d) provide a resume;
- (e) provide a completed, signed application form; and,
- (f) submit the application to the Office of the Clerk.

(4) In accordance with any privacy legislation, all information provided by the applicant will be made public if the applicant is appointed to the Commission Board.

(5) The Office of the Clerk shall forward all completed applications received by the advertised deadline to the Review Committee.

Review Committee

14. (1) There is hereby created a Review Committee and such committee shall be composed of the Municipal Clerk, the CAO or his or her delegate, the General Manager, and the Board Chair or Vice Chair of the Commission Board.

(2) The Review Committee shall convene at such times and at such locations as determined by the CAO or Council.

(3) The Review Committee shall review all completed responses to the advertisement made by applicants.

(4) The Review Committee shall make a report and recommendation to the Executive Committee respecting the applicants.

(5) The Executive Committee shall review the report and recommendation of the Review Committee and make a report and recommendation to Council respecting which applicants to appoint to the Commission Board.

Review of Long Term Strategic Plan

15. (1) In conjunction with the review of the Regional Plan and the Regional Municipality's secondary municipal planning strategies, not less than once every five (5) years, unless directed otherwise by Council, the Commission shall submit to Council a long term, strategic plan of the Commission.

(2) The Commission shall review the long term strategic plan annually with Council during the Commission's annual business plan review process.

(3) The purpose of the long term strategic plan is to ensure the Commission's alignment with the municipal planning strategies of Council.

(4) The contents of the long term strategic plan shall include:

- (a) the vision and mission statement for the Commission;
- (b) the core values of the Commission;
- (c) review of the Commission's strengths, weaknesses, opportunities and threats;
- (d) discussion of the Commission's long term strategic goals and objectives;
- (f) a discussion of how the Commission's long term goals align with the municipal planning strategies of Council, including the extension of Regulated Business Activities;
- (g) the Commissions proposed action plans and initiatives to achieve the long terms goals and objectives; and,
- (h) other requirements as directed by Council.

Review of Annual Business Plan

16. (1) No later than one (1) month prior to the end of each fiscal year, the Commission shall provide its annual business plan, as approved by the Commission Board, to Council and such business plan shall include:

(a) an overview of the services provided by the Commission and details on the operating and capital budgets to support the delivery of those services;

(b) any projected surplus;

(c) any projected deficits and, if a deficit is projected, whether there is means to offset the deficit, such as an operating surplus accumulated over prior years;

(d) the financial changes from the prior fiscal year and the proposed budget for the next fiscal year, which shall show the:

- (a) operating revenues,
- (b) operating expenditures,
- (c) non-operating revenues,
- (d) non-operating expenditures,
- (e) depreciation,

- (f) debt servicing, and
 - (g) debt servicing ratio;
- (e) the percentage of the proposed capital budget allocated to Regulated Business Activities.
- (2) The annual business plan shall also:
- (a) separate Unregulated Business Activities from Regulated Business Activities;
 - (b) identify any new Regulated or Unregulated Business Activities which will commence during the upcoming fiscal year and the budget for such activity;
 - (c) identify any initiatives that are undertaken by the Commission and the Municipality cooperatively;
 - (d) provide an overview of the current composition of the Commission Board, the term remaining for each Commissioner, a plan to address any upcoming vacancies and request competencies, if any, that future Commissioners should possess that may improve the Commission Board's effectiveness; and
 - (e) identify how the Commission will ensure alignment with the annual priorities of the Regional Municipality while taking into consideration the requirements of Nova Scotia's Public Utilities Act.

Review of Accountability Report and Submission of Financial Statements

17. (1) Within three (3) months of the end of each fiscal year, the Commission shall provide Council with an accountability report respecting Regulated and Unregulated Business Activities, and such report shall include:
- (a) an accountability statement;
 - (b) a message from the Board Chair and the General Manager;
 - (c) actions taken by the Commission on strategic objectives during the prior fiscal year; and
 - (d) the corporate balanced scorecard results for the fiscal year showing the Commission's performance and the metrics used to measure such performance and any new or changed measures to be used to measure performance in the upcoming fiscal year.
- (2) After approval by the Commission Board and within three (3) months of the end of each fiscal year, the Commission shall provide Council with:
- (a) copies of its audited, annual financial statements including the auditor's report and such statements shall separate Regulated Business Activities from Unregulated Business Activities;
 - (b) a review of the Commission's debt policies and financial instruments; and
 - (c) the audited financial statements of the Halifax Water Employees' Pension Plan.

Approval Limits for the Provision of Regulated Business Activities

18. (1) With respect to the Commission entering into contracts as contemplated in accordance with Section 7(5) of the Act, Council provides the Commission with approval to enter into the contemplated contracts subject to:

(a) the Commission having presented an overview of the proposed contract to Council during the annual business plan review process; and

(b) the total value of the contract being less than Council’s approval limit, in accordance with the following table, which sets forth the approval limits for these contracts for the General Manager, the Commission and Council:

REGULATED BUSINESS ACTIVITY CONTRACTS	APPROVAL LIMIT GENERAL MANAGER	APPROVAL LIMIT COMMISSION BOARD	APPROVAL LIMIT COUNCIL
Total value of a contract contemplated by Subsection 7(5) of the Halifax Regional Water Commission Act	\$250,000 or less	\$499,999 or less	\$500,000 or greater

(2) If a contract, as contemplated in Subsection(1):

(a) has a total value of greater than \$500,000;

(b) has not been presented to Council during the annual business plan review or reviewed by Council by other means; or

(c) has terms and conditions of a nature which, in the opinion of the Commission, acting reasonably, would require the review of Council,

then, prior to the Commission executing the contract, the contract must be approved by Council.

Approval Limits for Unregulated Business Activities

19. (1) With respect to the Commission engaging in Unregulated Business Activities, Council provides the Commission with approval to engage in the Unregulated Business Activity, subject to:

(a) the Commission having presented an overview of the proposed Unregulated Business Activities to Council during the annual business plan review process; and

(b) the total value of the contract of the Unregulated Business Activity being less than Council’s approval limit, in accordance with the following table, which sets forth the approval limits for Unregulated Business Activities for the General Manager, the Commission and Council:

UNREGULATED BUSINESS ACTIVITY	APPROVAL LIMIT GENERAL MANAGER	APPROVAL LIMIT COMMISSION BOARD	APPROVAL LIMIT COUNCIL
Total contract value of the Unregulated Business Activities.	\$250,000 or less	\$499,999 or less	\$500,000 or greater

(2) If the entering into Unregulated Business Activity, as contemplated in Section 19:

- (a) has the total value of the contract greater than \$500,000;
- (b) has not been presented to Council during the annual business plan review or reviewed by Council by other means;
- (c) has terms and conditions of a nature which, in the opinion of the Commission, acting reasonably, would require the review of Council; or,
- (d) requires the Commission to issue a specific guarantee for issuance of debt

then, before engaging in the Unregulated Business Activity, the Commission shall obtain the approval of Council.

Done and passed in Council this day of A.D. 2018

Mayor

Municipal Clerk