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**Item No.**  
**Community Planning and Economic Development**  
**July 28, 2016**

**TO:** Chair and Members of Community Planning and Economic Development  
Standing Committee

**SUBMITTED BY:** Original Signed by  

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Bob Bjerke, Chief Planner & Director, Planning and Development, 902.490.1627

**DATE:** June 17, 2016

**SUBJECT:** Charter Amendment to Enable Interim Development Controls

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**ORIGIN**

On May 24, 2016, Regional Council approved the following motion.

*MOVED by Councillor Watts, seconded by Councillor Mason*

*That Halifax Regional Council request a staff report on the following:*

*A request to the Province to amend the HRM Charter to enable Council to implement an Interim Development Control for an area, and that the amendment includes:*

- a) That Council may, by resolution, suspend or limit subdivision, development, or certain classes of subdivision or development in an identified area;*
- b) The maximum length a time the resolution may stay in effect;*
- c) That a resolution suspending or limiting may be different for different areas of the Municipality and for different periods of time providing the maximum time is not exceeded for any given area; and*
- d) That no permit or approval of any kind may be issued that is contrary to the resolution establishing the area.*

*MOTION PUT AND PASSED.*

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter (HRM Charter), Part XIX, Section 382, as follows:*

- 382 (1) The Minister shall consult with the Municipality respecting any proposed amendment to this Act.
- (2) The Municipality shall consult with the Minister respecting any proposed amendment to this Act.

**RECOMMENDATION**

It is recommended that Regional Council request the Province amend the *HRM Charter* to enable Council to implement interim development controls for all or part of the Municipality.

## **BACKGROUND**

Interim Development Controls (``IDC``) are a planning tool used to temporarily restrict or control development in an area while a planning review is underway. The following sections review IDCs in relation to existing planning tools, the *HRM Charter* and other jurisdictions.

### **Existing Interim Development Controls**

Under the *HRM Charter*, HRM currently has two ways to establish a form of interim development controls.

#### Ministerial Order

Section 214 of the *HRM Charter* enables the Provincial Minister to suspend development within an interim planning area where development that is inconsistent with a Statement of Provincial Interest might occur. In such case, the Minister must be satisfied that there are necessary and compelling reasons to establish an interim planning area to protect the provincial interest. In 2004, the Province granted such a Ministerial Order during the preparation of the 2006 Regional Plan to control rural subdivision developments. At the time, the Province provided the Municipality with 90 days to amend its planning documents, including the required public hearing.

#### Land Use By-law (LUB) Amendments

Subsection 261(3) of the *HRM Charter* indicates that development permits cannot be issued for any developments that are not consistent with a proposed LUB amendment for 150 days from the date the public hearing is first advertised. In order to obtain permits during this 150 day period, any proposed development must be consistent with both the existing and proposed LUB. HRM routinely adopts LUB amendments and administers this 150 day dual approval period. However, the impact is usually minimal as LUB amendments, such as a rezoning, are often site specific.

### **Heritage Interim Development Controls**

On February 23, 2016, Regional Council approved a motion to request the Province amend the *Heritage Property Act* and *Heritage Conservation Districts* regulations to authorize Council to adopt a by-law that would suspend specific types of development in heritage conservation district study areas. The request is intended to enable Regional Council to protect heritage resources while HRM engages the public and develops detailed regulations for protecting heritage resources. For more information, please see the staff report at the following link. [www.halifax.ca/council/agendasc/documents/160223ca912.pdf](http://www.halifax.ca/council/agendasc/documents/160223ca912.pdf)

### **Other Jurisdictions**

Several provinces have legislation to enable either the province or local governments to establish IDCs. Similar to Nova Scotia, some provinces provide broad discretion to the responsible Minister to establish IDCs. Other provinces, such as PEI and Quebec, enable local governments to establish IDCs only with the approval of the responsible Minister. Ontario and Saskatchewan provide the authority for municipalities to establish IDCs. Examples can also be readily found in the United States and Australia. Common topics included in the legislation in other jurisdictions include:

- the method for establishing IDC areas, including whether or not a public meeting is required;
- the range of developments that can be controlled or restricted;
- the length of time interim development controls can remain in place, including whether or not there is an opportunity for renewal;
- the appeal process; and
- the period of time that must pass before IDCs can be establish in the same area.

### **On-going *HRM Charter* Review**

HRM and the Province are currently reviewing a number of potential changes to the *HRM Charter*. This review is being led by the Province and is coordinated with a concurrent review of the *Municipal Government Act (MGA)*. In considering any request to amend the *HRM Charter*, the Province may consider it as a standalone request, or may choose to incorporate the request into the on-going *HRM Charter* review process.

## **DISCUSSION**

IDCs are a useful planning tool for controlling development in areas undergoing a planning review. In any comprehensive planning process, there is a risk that public discussion about significant changes to land use regulations could encourage some property owners to fast track development proposals under the existing regulations. This could undermine the purpose of the planning review. The following sections discuss the need, use and content of a potential *HRM Charter* amendment.

### **Need for *HRM Charter* Amendment**

As noted in the background section, there are currently two ways to establish a form of interim development controls: 1) by Ministerial order, and 2) during the LUB amendment approval process. Although both methods have been used, neither provide the discretion and flexibility for HRM to establish IDCs in a manner that may be needed to fully support planning reviews. The Ministerial order relates only to the Statements of Provincial Interest, which may not cover all topics important to HRM such as climate change or economic development.

The LUB amendment process does not provide time for review or discussion of planning issues. The 150 day dual approval period only begins after LUB amendments are drafted and the public hearing is advertised. By this stage, the proposed policy direction is already well known through earlier review and engagement initiatives. As a result, this requirement generally would not prevent development proposals from going forward under the existing regulations.

By amending the *HRM Charter* to provide the municipality with the authority to establish IDCs, HRM would be able to establish IDCs more quickly while also tailoring detailed controls to Municipal needs.

### **Potential Use of IDCs**

IDCs are not intended to be used often. HRM, for example, has only requested an IDC one time in 2004 to control suburban subdivisions during the creation of the first Regional Plan. Although rare, the need for IDCs could arise in relation to heritage resources, environmental protection, or growth management issues. IDCs could be particularly useful for providing the time needed to have meaningful public consultation on difficult topics without an immediate threat to the very issue that the planning initiative is attempting to address.

It is important to note that enabling IDCs in the *HRM Charter* would not compel HRM to use it. Rather, the tool would provide Council the option to use it based on the circumstances of a given planning review. If enabled, Regional Council would have the ability to decide when, where and how to use IDCs on a case by case basis within the scope set out in any new *HRM Charter* provisions.

### **Content of potential *HRM Charter* Amendment**

As provincial legislation, the *HRM Charter* is amended at the discretion of the Province. Subject to further research and discussion, the following provisions should be included in IDC enabling legislation:

#### **Ability to Establish an IDC Area Quickly**

IDCs are intended to prevent development that may undermine or conflict with the purpose of a planning review. In establishing any IDCs it is important that HRM have the ability to establish an IDC on short notice. A lengthy public consultation process could in itself undermine the purpose of an IDC by encouraging some property owners to fast track development proposals under the existing regulations.

#### **Broad Discretion on the Types of Development that may be Controlled**

From land uses to construction, demolitions and subdivisions, there are a number of regulatory approvals that could be addressed through the use of IDCs. An *HRM Charter* amendment, therefore, should provide HRM with broad discretion to select and tailor the types of development to control when establishing specific IDC areas. In some situations, for example, HRM may wish to temporarily prohibit new large scale buildings while continuing to permit additions and accessory structures. In other situations, HRM may wish to only limit subdivisions.

### Discretionary Approvals

Rather than strictly limiting certain types of development, HRM may wish to establish a method for approving developments that meet certain policy objectives or performance standards. Such discretionary approvals could be considered by a committee or delegated to staff. HRM may, for example, wish to use an IDC to require that any demolition permits in an area be reviewed by a designated committee against interim policy criteria, instead of using the IDC to strictly prohibit all demolitions in a specified area.

### Reasonable Time Limit

Other jurisdictions set a maximum time limit for IDCs to remain in effect that range from six months to 2 years. While a time limit is needed to ensure planning documents are updated in a timely manner, any time limit should provide sufficient time for HRM to complete meaningful public consultations and detailed analysis of planning issues as well as provide Council sufficient time to adopt them.

### **Conclusion**

IDCs could help provide the time needed to discuss and review difficult planning issues without the threat of development proposals moving ahead under existing regulations. While the Province currently has this ability to protect Provincial interests, HRM, as the region's largest Municipality, is well positioned to responsibly use IDCs to protect and advance Municipal interests. As an additional planning tool, IDCs could support the renewal of the Planning and Development Department and its efforts to bring HRM's planning legislation into a state of good repair. Therefore, staff recommend that Regional Council request the province amend the *HRM Charter* to enable HRM to establish IDCs in all or part of the Municipality.

### **FINANCIAL IMPLICATIONS**

The HRM costs associated with this report can be accommodated within the approved 2016/17 operating Budget for C320 Planning & Development.

### **RISK CONSIDERATION**

There are no significant risks associated with requesting an amendment to the *HRM Charter*.

### **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was information sharing, achieved through the HRM website and public accessibility to Regional Council meetings.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified.

### **ALTERNATIVES**

1. Regional Council may choose not to request the Province amend the *HRM Charter* to enable Council to implement interim development controls.

