

HALIFAX

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Item No. 12.1.1
Executive Standing Committee
September 12, 2016

TO: Chair and Members of the Executive Standing Committee

SUBMITTED BY: Original Signed
John Traves, Q.C., Acting Chief Administrative Officer

DATE: August 23, 2016

SUBJECT: In-Camera Breaches

ORIGIN

On January 12, 2016 Regional Council passed the following resolution:

"THAT Halifax Regional Council request a staff report on options for Council to consider with respect to a breach by a member of Regional Council on matters of an in camera nature."

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, ("HRM Charter"), subsection 19(6) "Any councillor or employee of the Municipality who discloses any report submitted to, or details of matters discussed at, a private meeting of the Council or a committee, as a result of which the Municipality has lost financially or the councillor or employee of the Municipality has gained financially, is liable in damages to the Municipality for the amount of the loss or gain."

HRM Charter, subsection 18(5) "The person presiding at a meeting of the Council may cause to be expelled and excluded any person, including a Council member, who is disrupting the proceedings of the Council."

HRM Charter, clause 20(1) (b) "The Council may make policies...(b) regulating its own proceedings and preserving order at meetings of the Council".

Administrative Order 52, Code of Conduct for Municipal Officials (copy attached), sections IV (9) and IX (19):

IV. MEMBER RESPONSIBILITIES

9. No Member shall disclose or release to any member of the public any confidential information acquired by virtue of their office, in either oral or written form except when required by law or authorized by the municipality to do so. Nor shall Members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.

IX. CORRECTIVE ACTION

19. Any reported violations of this Code will be subject to an investigation by Council. Council may retain an external consultant or panel with relevant experience to conduct an investigation and provide a report and recommendation to Council. If an investigation finds a Member has breached a provision of this Code, Council may take corrective action which may include censure of the Member, an apology to those affected by the breach, counselling, and withdrawal of appointment from any committee of Council.

RECOMMENDATION

It is recommended that the Executive Standing Committee recommend to Regional Council the following:

1. THAT the Code of Conduct investigation process outlined by the Auditor General, and approved by Regional Council October 25, 2011, be replaced by a self-governing model as identified by Section 20 of Administrative Order 52, Code of Conduct for Elected Officials; and described in the report dated May 24, 2016; and
2. THAT Council request to the Province of Nova Scotia to initiate legislative changes to the *Halifax Regional Municipality Charter* to allow for the ability to censure Members of Council, by remitting remuneration, for violations to Administrative Order 52, Code of Conduct for Elected Officials.

BACKGROUND

On May 26, 2009 Halifax Regional Council approved the HRM Code of Conduct for Municipal Officials ("Code"), which was modified from the Union of Nova Scotia Municipalities ("UNSM") code of conduct framework, with the exception of its Reporting Breaches and Corrective Action sections. At that time, staff advised that these sections should not be included in the approved Code as it would require an amendment to the HRM Charter by the Province of Nova Scotia.

In 2011, discussion regarding the Code resumed. Regional Council requested that staff investigate implementing the Code and to establish a process on how Code breaches could be dealt with. Discussion also focused on the need for amendments to be made to the Municipal Government Act/HRM Charter for the ability to enforce sanctions. The Executive Standing Committee requested that the Auditor General be tasked to develop an investigation process, which resulted in the adoption of an independent investigative panel, and subsequently Regional Council adopted the proposed provisions on October 25, 2011.

In 2013, the Code was put into a formal Administrative Order, and became AO 52, Code of Conduct for Elected Officials, as attached as Attachment 1. The Code was amended to include the Sections from the original UNSM Code of Conduct, Reporting Breaches and Corrective Action. At that time, corrective action was defined to include; an apology to those affected by the breach, counselling, or withdrawal of an appointment to a committee of Council. Council had been working through UNSM to petition the Province to have the ability to enforce greater corrective measures to Code violations.

On August 6, 2013 in response to the UNSM decision to suspend its request to the Province for greater powers of censure, Regional Council determined to suspend the request as well. To date, the required amendments to the HRM Charter to ensure that Halifax Regional Council has the ability to enforce corrective action on Code violations has not occurred.

DISCUSSION

The resolution passed on January 12, 2016 requested that staff investigate options for Council to consider with respect to a breach by a member. In response, the ways in which a complaint is handled, and the current options for corrective action were evaluated.

Auditor General Complaint Process

On October 25, 2011, Council approved a complaint process with respect to Code breaches. The process was developed by the Office of the Auditor General, but was not implemented as it was recommended that the panel be constituted after the required HRM Charter amendments regarding censure abilities were granted. Central to the process would be an investigative panel, consisting of members independent and external to the organization. The panel would receive complaints regarding a Member of Council and would work with the complainant and the Member to determine whether a breach occurred. The panel could request to Regional Council that a formal complaint be received which could trigger a third party investigation of the matter. Although the investigative work would be facilitated by the panel, if the matter was not criminal, the responsibility to determine the action or outcome would rest with Council. Council would convene In-Camera to review the panel's findings, and could determine whether further investigation was required or whether a breach of the code had occurred, and ratify any decision in open session.

Self-Governing Approach to Code of Conduct Complaints

As the investigative panel has not been constituted, Regional Council has relied on the self-governing model to address Code of Conduct complaints. Staff recommends that the self-governing model, with options to call upon the expertise of a third party investigator, be the primary way in which to address Code of Conduct complaints.

The proposed self-governing process attached as Attachment 2 to this report, would establish the following process: a complaint, as well as information and facts respecting the complaint would be provided for consideration by Council at an In-Camera meeting. As the complaint is discussed at a meeting of Council, it would be subject to the rules of Administrative Order One, respecting the rules and procedures of Council. If Council upon circulation and review of the complaint, and with or without hearing from the member, is satisfied that the complaint has no merit, the matter could be considered as investigated, and on motion, Council may decide to dismiss the complaint. Alternatively, Council could proceed on the basis of a motion, to refer the matter to a consultant for further investigation or to impose a corrective action. In addition, the wishes of the Member whose conduct has been questioned may also be presented to assist Council in determining how the complaint could proceed.

In addition, the wishes of the Member whose conduct has been questioned may also be presented to assist Council in determining how the complaint could proceed. Throughout any review process, Council owes the member a duty of procedural fairness. In particular, a member is entitled to know the case/allegations brought against them and all information or evidence that Council may consider in making a decision. The member of Council is also permitted to make a response to the allegations, either personally or through external legal counsel; and is entitled to know the decision of Council and its reasoning. This duty of fairness should also apply in the event that Council retains a consultant to conduct an investigation and files a report on their findings. The member is entitled to make representations to the consultant in response to the allegations and to make representations to Council concerning the conclusions of the report before Council makes a decision. Council must ensure that all proceedings satisfy that this duty of fairness has been met at all stages in the review.

Should Council decide to change how they address Code complaints, by formally adopting a self-governing approach, Administrative Order One, section 62(6) notes that "A motion of rescission is not required to cancel or countermand a previous action or order if such action or order was passed before the most recent ordinary municipal election". The previous Code investigation process, approved by Regional Council on October 25, 2011 would not require a motion of rescission.

Current Penalties

Currently, the Code provides that if an investigation finds a Member has breached a provision of the Code, Council may take certain corrective action which may include censure (an official reprimand or condemnation) of the Member, an apology to those affected by the breach, counselling, or withdrawal of appointment from any committee of Council.

Options for Consideration

UNSM was leading the work on addressing the deficiencies in the Code. However it was unable to develop a consensus position amongst its member municipalities on sanctions. During its 2012 annual conference UNSM decided against pursuing the issue at this time. Accordingly, on August 6, 2013, Regional Council decided to remove the Code of Conduct amendment request until such time as UNSM was ready to proceed.

A jurisdictional scan has identified that the municipalities of London, Ottawa, Hamilton and Toronto have greater powers of censure than currently held by Halifax Regional Municipality. For instance, the City of Toronto, through subsection 160(5) of the City of Toronto Act has the authority to issue a reprimand; or suspension of the remuneration paid to the Member in respect of his or her services as a Member of Council or a local board, as the case may be, for a period of up to 90 days. The other municipalities listed above have similar language in their respective Codes of Conduct.

The resolution passed on January 12, 2016 requested options to consider with respect to an In-Camera breach by a member of Regional Council. Staff is recommending that Council submit a formal request to the Province for a HRM Charter amendment to clearly outline the sanctions that could be used for a violation of the Code. Council would advocate for the ability to provide sanctions on a Member of Council, and to ensure that all methods listed in the previous section and the ability to suspend remuneration were clearly articulated in the HRM Charter.

Should the Province provide the Municipality with the ability to enforce suspension of remuneration on Code violations, Administrative Order 52, the Code of Conduct for Elected Officials would be updated to clearly reflect possible consequences to a violation. In addition, Council would also direct staff to enhance resources to the public on the Code and the complaint process.

HRM Charter

Separate and apart from the Code, the HRM Charter provides that any Councillor who discloses any report submitted to, or details of matters discussed at, a private meeting of the Council or a committee, which results in the Municipality suffering a financial loss or the Councillor has gained financially, is liable in damages to the Municipality for the amount of the loss or gain.

FINANCIAL IMPLICATIONS

Not Applicable.

RISK CONSIDERATION

Halifax Regional Municipality's Code of Conduct does not have clear authority to enforce censure to violations to the Code. It may leave Regional Council and subsequently the Municipality at risk as it is limited in its ability to self-govern and ensure compliance with the Code.

COMMUNITY ENGAGEMENT

Not Applicable.

ENVIRONMENTAL IMPLICATIONS

Not Applicable.

ALTERNATIVES

Executive Committee could direct staff to work with or make request through the UNSM to reassume its work amongst membership municipalities and the Province to address the deficiencies in enforcing the Code.

ATTACHMENTS

Attachment 1 - Administrative Order 52, Code of Conduct for Municipal Officials

Attachment 2 - HRM Complaint Process under the HRM Code of Conduct for Municipal Elected Official

A copy of this report can be obtained online at <http://www.halifax.ca/boardscom/SCadmin/index.php> then choose the appropriate Standing Committee and meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Kevin Arjoon, Municipal Clerk, 902.490.6456

**HALIFAX REGIONAL MUNICIPALITY
ADMINISTRATIVE ORDER 52
CODE OF CONDUCT
FOR
ELECTED MUNICIPAL OFFICIALS**

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

I. SHORT TITLE

1. This Administrative Order may be cited as Administrative Order 52, the *Code of Conduct for Elected Officials*.

IA. PURPOSE

2. The public expects the highest standards of professional conduct from Members elected to local government. The purpose of this Code is to establish guidelines for the ethical and interpersonal conduct of Members of Council (“Members”). Council is answerable to the community through democratic processes and this Code will assist in providing for the good government of the Halifax Regional Municipality.

II. STANDARDS OF CONDUCT

3. Members shall uphold the law and at all times:

(a) Seek to advance the common good of the municipality as a whole while conscientiously representing the communities they serve.

(b) Perform the functions of office truly, faithfully and impartially to the best of their knowledge and ability in accordance with the following core values:

(i) **Integrity** – giving the municipality’s interests absolute priority over private individual interests;

(ii) **Honesty** – being truthful and open;

(iii) **Objectivity** – making decisions based on a careful and fair analysis of the facts;

(iv) **Accountability** – being accountable to each other and the public for decisions taken;

(v) **Leadership** – confronting challenges and providing direction on the issues of the day.

(c) Uphold this Code as a means of promoting the standards of behaviour expected of members and enhancing the credibility and integrity of Council in the broader community.

III. COUNCIL RESPONSIBILITIES

4. The Council (or its designated committee) will:

(a) review the Halifax Regional Municipality's Code of Conduct for Elected Officials as required and make any amendments considered appropriate.

(b) review, consider or take other action concerning any violation of this Code of Conduct which is referred to Council for consideration.

(c) where there is any conflict between this Code of Conduct and the requirements of any statute of the provincial or federal government, provincial or federal statutes shall take precedence.

IV. MEMBER RESPONSIBILITIES

Conduct to be Observed

5. Members are agents of the public whose primary objective is to address the needs of the citizens. As such, they're entrusted with upholding and adhering to the by-laws of the municipality as well as all applicable provincial and federal laws. As public servants, Members must observe a high standard of morality in the conduct of their official duties and faithfully fulfill the responsibilities of their offices, regardless of their personal or financial interests.

Dedicated Service

6. All Members should faithfully work towards developing programs to address the needs of the citizens in the course of their duties. Members should strive to perform at a level which is expected of those who work in the public's interest.

Respect for Decision-Making Process

7. All Members recognize the responsibility of the Mayor to accurately communicate the Decisions of the Council, even if they disagree with such decisions, such that respect for the decision-making processes of Council is fostered.

Conduct at Meetings

8. Members shall respect the chair, colleagues, staff and members of the public present during Council meetings or other proceedings of the municipality. Meetings shall provide an environment for transparent and healthy debate on matters requiring decision-making.

Release of Confidential Information Prohibited

9. No Member shall disclose or release to any member of the public any confidential information acquired by virtue of their office, in either oral or written form except when required by law or authorized by the municipality to do so. Nor shall Members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.

Gifts and Benefits

10. No Member shall show favouritism or bias toward any vendor, contractor or others doing

business with the municipality. Members are prohibited from accepting gifts or favours from any vendor, contractor or others doing business with the Municipality personally, or through a family member or friend, which could give rise to a reasonable suspicion of influence to show favour or disadvantage to any individual or organization.

Use of Public Property

11. No Member shall request or permit the use of municipal-owned vehicles, equipment, materials, or property for personal convenience or profit, except where such privileges are granted to the general public. Members shall ensure that the business of the municipality is conducted with efficiency and shall avoid waste, abuse and extravagance in the provision or use of municipal resource.

Obligations to Citizens

12. No Member shall grant any special consideration, treatment, or advantage to any citizen or group of citizens beyond that which is accorded to all citizens.

Interpersonal Behaviour

13. Members shall treat every person, including other Members, corporate employees, individuals providing services on a contract for service, and the public with dignity, understanding and respect and ensure that their work environment is free from discrimination, bullying and harassment.

Community Representation

14. Members shall observe a high standard of professionalism when representing the municipality and in their dealings with members of the broader community.

V. GOOD GOVERNANCE

15. Members accept that effective governance of the municipality is critical to ensuring that decision are taken in the best interests of all stakeholders and to enable the municipality to function as a good corporate citizen.

VI. GOVERNMENT RELATIONSHIPS

16. Members recognize the importance of working constructively with other levels of government and organizations in Nova Scotia and beyond to achieve the goals of the municipality.

VII. CONFLICT OF INTEREST AVOIDANCE

17. Members are committed to making decision impartially and in the best interests of the municipality and recognize the importance of fully observing the requirements of the *Municipal Conflict of Interest Act*, R.S.N.S. 1989, c. 229 with regard to the disclosure and avoidance of conflicts of interest.

VIII. REPORTING BREACHES

18. Persons who have reason to believe that this Code has ben breached in any way are encouraged to bring their concerns forward. No adverse action shall be taken against any Member or municipal employee, who, acting in good faith, brings forward such information.

IX. CORRECTIVE ACTION

19. Any reported violations of this Code will be subject to an investigation by Council. Council may retain an external consultant or panel with relevant experience to conduct an investigation and provide a report and recommendation to Council. If an investigation finds a Member has breached a provision of this Code, Council may take corrective action which may include censure of the Member, an apology to those affected by the breach, counselling, and withdrawal of appointment from any committee of Council.

X. COMPLIANCE WITH CODE

20. Members acknowledge the importance of the principles contained in this Code which will be self-regulated by Council. Councillors are required to sign a “Statement of Commitment to the Code” (Attachment A) within seven (7) days of taking the Councillors’ oath pursuant to section 147 of the *Municipal Elections Act*, R.S.N.S. 1989, c. 300.

XI. OVERALL RESPONSIBILITIES

21. The Halifax Regional Municipality Code of conduct for elected Municipal Officials applies to all members of Council.

Done and passed in Council this 23rd day of July, 2013.

Mayor

Municipal Clerk

I, Cathy Mellett, Municipal Clerk of Halifax Regional Municipality, hereby certify that the above noted Administrative Order was passed at a meeting of Halifax Regional Council held on July 23, 2013.

Cathy Mellett, Municipal Clerk

ATTACHMENT A

**STATEMENT OF COMMITMENT TO THE ELECTED OFFICIALS CODE OF
CONDUCT
OF THE HALIFAX REGIONAL MUNICIPALITY**

I, (Full Name) _____ declare that as a member of **HALIFAX REGIONAL COUNCIL** acknowledge and support the elected official's Code of Conduct.

Signed: _____

Declared this ____ day of _____, 20 __.

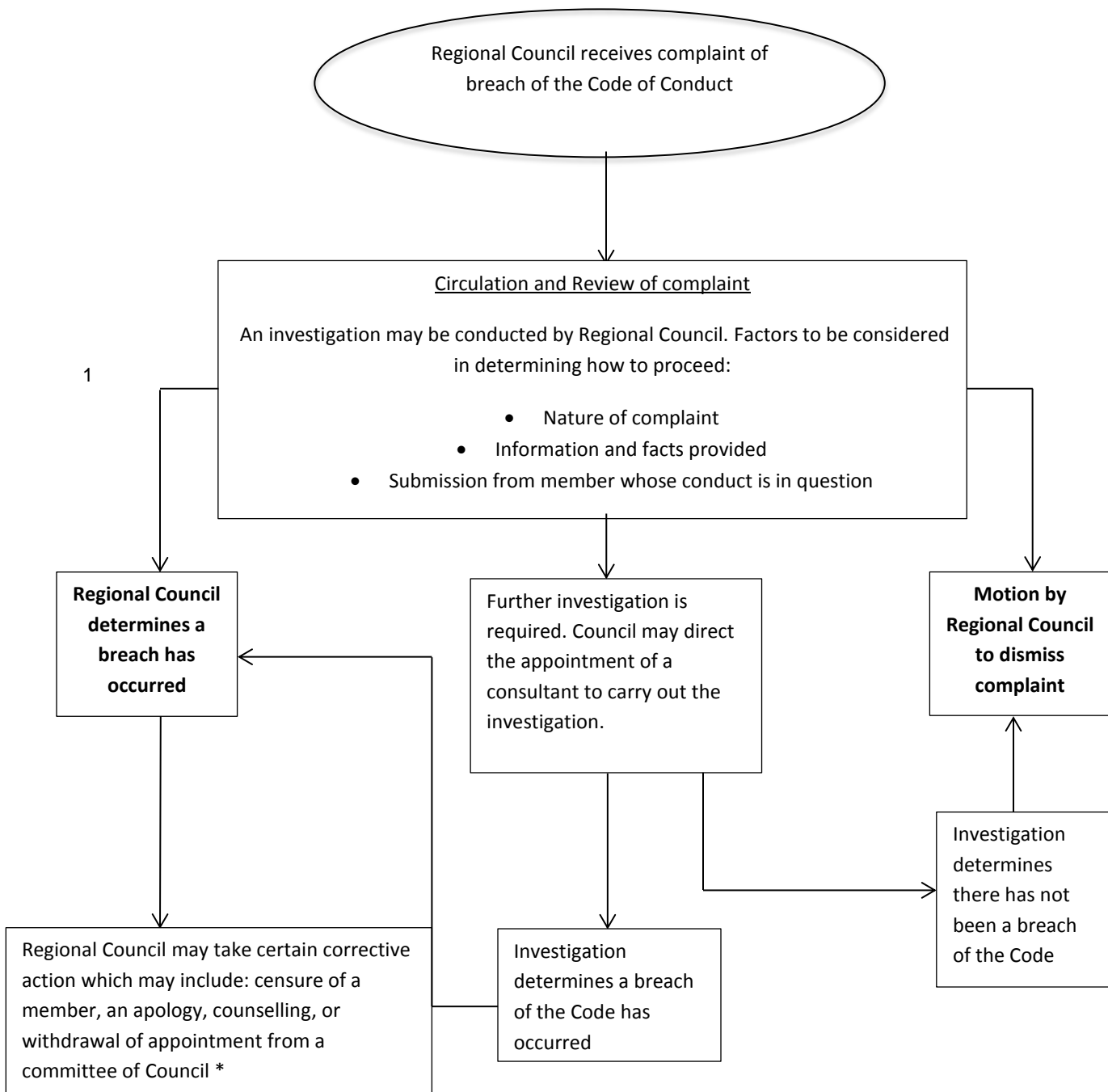
Before me:

Municipal Clerk

Approval:

July 23, 2013

Flow chart- Self-Governing Approach to Code of Conduct Complaints



* Subsection 115(2) of Administrative Order One requires every member be appointed to at least two Standing Committees.