



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 14.1.5
Halifax Regional Council
September 18, 2018

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY:

Original Signed by 

Jacques Dubé, Chief Administrative Officer

DATE: August 10, 2018

SUBJECT: **Proposed Administrative Order 2018-004-ADM: Respecting Real Property Transactions**

ORIGIN

This report originates with staff respecting the need to update the 2002 Transaction Policy approved by Regional Council relating to the delegated authorities for agreements for real property.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, ("HRM Charter") S.N.S. 2008, c.39

Subsection 59 (3) "In addition to matters specified in this Act or another Act of the Legislature, the Council may adopt policies on any matter that the Council considers conducive to the effective management of the Municipality."

HRM Charter

Subsection 61 (3) "The property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise."

Clause 61 (5)(a)(b) "The Municipality may:

- (a) acquire property....that the Municipality requires for its purposes or for the use of the public;
- (b) sell property at market value when the property is no longer required for the purposes of the Municipality;
- (c) lease property owned by the Municipality at market value";

Section 64 "Where the Municipality holds land that is of insufficient size or dimensions to be capable of any reasonable use, in the opinion of the Council, all or part of the land may be sold to the owner of any lot abutting that land and may be consolidated with the lot and, notwithstanding Section 63, the sale price of the land so sold may be set by the Council at a price that is less than market value at the time of the sale."

Subsection 109 (7) "Where the grantee is a registered Canadian charitable organization, a deed is exempt from deed transfer tax if the property is not to be used for a commercial, industrial, rental or other business purpose and if an officer of the grantee makes and files an affidavit to that effect."

RECOMMENDATIONS ON PAGE 2

Administrative Order 50, the Disposal of Surplus Real Property Administrative Orders

Subsection 2. “The Municipality will dispose of real property Council determines is no longer required for the purposes of the Municipality. ”

Administrative Order 54, the Procedures for the Development of Administrative Orders.

RECOMMENDATION

It is recommended that Regional Council:

1. Adopt Administrative Order 2018-004-ADM Respecting Real Property Transactions as set out in Attachment 1 of this report, including repealing the 2002 *Transaction Policy – Real Property Acquisitions and Disposals*.

BACKGROUND

In 2002 Council delegated authority to the CAO to manage the conveyance and leasing of municipal real property. The delegated authorities were put in place to improve the approval time lines and business processes for routine transactions necessary for effective property negotiations and conveyancing work.

Under the 2002 Council approved Transaction Policy the CAO delegated authorities include as follows:

- authority to sell surplus property up to a market value of \$150,000;
- authority to purchase property up to a market value of \$200,000; and
- authority to enter into market lease transactions up to an annual value of \$200,000 and up to a term of five (5) years

The authorities are now over fifteen years old and staff are recommending they be updated and adopted to keep pace with current practice, values and for continuous improvement and “red tape” reduction purposes. In accordance with Administrative Order 54, the new Transaction Policy is in the form of an Administrative Order.

DISCUSSION

This report brings forward updated transactional authorities for real property agreements to improve approval and processing time lines for routine and operational transactions of real property at market value. Council should note that the sale of real property is subject to it being first approved surplus by Regional Council pursuant to Administrative Order 50, the *Disposal of Surplus Real Property Administrative Order*, and all purchases of real property must first have funds approved by Regional Council.

The proposed authorities are consistent with the CAO’s delegated authority levels under the *Procurement Policy*.

PRE-REQUISITIES TO AUTHORITIES

The following pre-requisites apply to an approval of a Property Transaction under this proposed Administrative Order:

- (a) funds and ongoing operating costs for acquisitions have been approved by Council as part of the business planning and budget process;
- (b) the acquisitions and disposition of Real Property is consistent with a municipal purpose;

- (c) the sale of Real Property is at Market Value or greater;
- (d) the purchase of Real Property does not exceed 110% of Market Value; and
- (e) the base rent for leasing Real Property is at Market Value as supported by a market comparable analysis.

Approval of Property Transactions may be subject to other policies or legislative requirements, such as Administrative Order 50 (the *Disposal of Surplus Real Property Administrative Order*), Administrative Order 2016-ADM-005 (the *Procurement Policy*), or subsection 111(5) of the HRM Charter (Ministerial Approval for long term commitments).

All agreements for Property Transactions shall be stamped "Approved as to Form and Authority" by Legal Services or in the form of a template approved by Legal Services prior to execution.

RECOMMENDED APPROVAL AND SIGNING AUTHORITY

Subject to the provisions of the Administrative Order, Council delegates the approval authority and signing authority for Property Transactions as follows

Property Transaction Type	Maximum Financial Commitment	Maximum Term	Approval Authority	Signing Authority
Agreement of Purchase and Sale, Option Agreement, Assignments and Right of First Refusal	\$25,000	N/A	Manager	Director
	\$500,000	N/A	Director	CAO
	\$1,500,000	N/A	CAO	Mayor and Clerk
Easement, Lease, and License	\$25,000	5 years	Manager	Director
	\$500,000	10 years	Director	CAO
	\$1,500,000	No limit	CAO	Mayor and Clerk
Public Utility Easement	No limit	No limit	Manager	Mayor and Clerk
Community Facility Agreement	\$500,000	10 years	Director(s) responsible for the community or recreational facilities	Mayor and Clerk or Agent if applicable
	\$1,500,000	No Limit	CAO	Mayor and Clerk or Agent if applicable

A reference to a maximum term shall include all renewals and extension rights that may be exercised by any party to a Property Transaction.

The Maximum Financial Commitment is the total financial commitment of the Property Transaction, or annual financial commitment in the case of agreements with a term, including operating expenses, realty taxes and additional rent and excluding the harmonized sales tax.

Property Transactions that exceed the limits of authorities delegated in subsection (1) require the approval of Council.

Delegated Authorities, Comparative Cities Reference

Toronto:

- City Manager up to \$10,000,000
- Deputy City Manager and Chief Financial Officer up to \$5,000,000
- Chief Corporate Officer up to \$3,000,000 Million
- Director of Real Estate Services up to \$1,000,000

Edmonton:

- Up to \$500,000 are approved by the Director of Property Sales, Sustainable Development.
- \$500,000 to \$1,000,000 are approved by the Manager of Corporate Properties, Sustainable Development.
- \$1,000,000 to \$3,000,000 are approved by the General Manager of Sustainable Development.
- Over \$3,000,000 or sales with non-standard terms and conditions require Executive Committee and sometimes City Council approval. These sales generally require an additional three weeks or longer to obtain formal approvals.

Calgary:

- City Manager may approve \$5,000,000 or less; and;
- City Manager may delegate \$2,000,000.00 or less to Director

FINANCIAL IMPLICATIONS

The adoption of the proposed Administrative Order will result in reduced staff and report production time; faster approval time; and greater process certainty for parties to the transactions.

RISK

Low. The recommended Administrative Order does not diminish or fetter Council's decision authorities, it simply enable staff to act on approved direction from Council up to a set financial threshold.

COMMUNITY ENGAGEMENT

This report is administrative in nature and as a result there is no community engagement component. Community engagement is however a component of Council's operating and capital budget respecting property acquisitions and through Administrative Order 50 respecting property disposals.

ENVIRONMENTAL IMPLICATIONS

Environmental implications are managed and disclosed as a required component of the Municipality practice under Administrative Order 50 as well as property acquisition protocols.

ALTERNATIVES

1. Council could elect refuse to adopt the Administrative Order, and continue with the use of the 2002 authorities as approved.

2. Council could adopt the Administrative Order with amend authorities and/or changes Council considers appropriate. This may require a require a supplementary report with a revised Administrative Order depending on the extent of Council's changes.

ATTACHMENTS

1. Proposed Administrative Order 2018-004-ADM: Respecting Real Property Transactions

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: Peter Stickings, Manager Corporate Real Estate, Finance and Asset Management 902 476 8237

ATTACHMENT 1

ADMINISTRATIVE ORDER NUMBER 2018-004-ADM RESPECTING REAL PROPERTY TRANSACTIONS

WHEREAS the Municipality may acquire and own property granted or conveyed to the Municipality either absolutely or in trust for a public or charitable purpose;

AND WHEREAS the property vested in the Municipality, absolutely or in trust, is under the exclusive management and control of the Council, unless an Act of the Legislature provides otherwise;

AND WHEREAS the Municipality may acquire property, including property outside the Municipality, that the Municipality requires for its purposes or for the use of the public;

AND WHEREAS the Municipality may sell or lease property owned by the Municipality at market value, unless Council approves a less than market value sale or lease to a non-profit organization Council considers to be carrying on an activity that is beneficial to the Municipality;

AND WHEREAS the Municipality may enter into a lease, lease-purchase or other commitment to pay money over a period extending beyond the end of the current fiscal year if, where the total commitment exceeds five hundred thousand dollars, the proposed commitment has been approved by the Minister.

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 *Real Property Transactions Policy*.

PURPOSE

2. The purpose of this Administrative Order is to delegate to the CAO and employees of the Municipality, authorities respecting the acquisition and disposal of interests in Real Property at Market Value.

INTERPRETATION

3. In this Administrative Order,

(a) "Agent" means a person, organization or entity expressly appointed by a written agency agreement entered into by the Municipality authorizing such person, organization or entity to act on behalf of the Municipality with respect to the management and operation of a community or recreational facility, including the leasing and subleasing of Real Property;

(b) "Agreement of Purchase and Sale" means any agreement between a vendor and purchaser for the disposition or acquisition of an interest in Real Property, excluding a Lease;

(c) "CAO" means the Chief Administrative Officer of the Municipality, including their delegate;

(d) "Community Facility Agreement" means an Agreement, Lease, Sublease or a License respecting Real Property negotiated by an occupier or Agent of a community or recreational facility who occupies such facility under an agreement with the Municipality;

(e) "Director" means a director of a department of the Municipality;

(f) "Easement" means a right of use over or under the Real Property of another, and includes a right of way;

(g) "Lease" means any agreement relating to Real Property which gives rise to a relationship of landlord and tenant or lessor and lessee;

(h) "License" means any agreement conferring a personal privilege to do some act or series of acts on Real Property without transferring any estate or interest in the Real Property, and which is ordinarily not assignable, excluding rental of a municipal facility or municipal land for the holding of a recreational event, sporting event, community event, educational event entertainment event or cultural event;

(i) "Manager" means an employee of the Municipality at a M3 or M4 level who directly reports to a Director;

(j) "Market Value" means the most probable price or rent for a Property Transaction that is determined in accordance with section 8;

(k) "Municipality" means the Halifax Regional Municipality;

(l) "Option Agreement" means any agreement, including a right of first refusal, made for consideration conferring a right, which acts as a continuing offer, to purchase or lease Real Property upon certain terms for a specified period;

(m) "Property Transaction" means the acquisition or disposition of an interest in Real Property, such as an Agreement of Purchase and Sale, Option Agreement, Easement, Public Utility Easement, Community Facility Agreement, Lease, and License;

(n) "Public Utility" means a public utility as defined in the *Public Utilities Act*;

(o) "Real Property" means real estate, realty, immovable property, land and all structures affixed to it; and

(p) "Public Utility Easement" means an Easement to a Public Utility.

GENERAL

4. Subject to section 5, this Administrative Order applies to all Property Transactions to be entered into on behalf of the Municipality.

5. This Administrative Order does not apply to:

(a) the disposition of Real Property, or other interests in property, made in accordance with the Policy for the Sale and Lease of Land in HRM Business and Industrial Parks; or

(b) the approval of rental agreements for the use of municipal facilities or municipal land made in accordance with Administrative Order 58.

6. Property Transactions made under this Administrative Order are subject to the disposal categorization methods of Administrative Order 50 regarding the disposal of surplus property and any applicable statutory or common law requirements.

RESPONSIBILITIES

7. The business unit responsible for the Real Property of the Municipality shall:

(a) facilitate and negotiate the terms and conditions respecting the acquisitions and disposition of Real Property, or other interests in property, at Market Value; and

(b) provide the Municipality with professional advice respecting Real Property, or other interests in property.

MARKET VALUE

8. (1) Market Value shall be determined by an appraisal or market comparable analysis.
- (2) Market Value is based on certain assumptions and such assumptions may include one or more of the following:
- (a) that all the conditions requisite for a fair transaction are satisfied;
 - (b) that all the parties are acting prudently and knowledgeably;
 - (c) that there is an absence of undue stimulus;
 - (d) that an acquisition or disposal of title or an interest in Real Property, or other interests in property, will be completed on a specific date and that title or interest will be passed between the parties;
 - (e) that all the parties are motivated, are well informed and are well advised;
 - (f) that all the parties are acting in what they consider their best interests;
 - (g) that a reasonable time has been allowed for exposure of the Real Property, or other interests in property, in the open market;
 - (h) that payment is made in Canadian Dollars and in cash or a mutually agreeable alternative; and
 - (i) that the price represents the normal consideration for the Real Property, or other interests in property, acquired or disposed of as being unaffected by any special or creative financing or a sales concession promised by anyone associated with the transaction.

PRE-REQUISITES TO AUTHORITIES

9. (1) The following pre-requisites apply to an approval of a Property Transaction under this Administrative Order:
- (a) funds and ongoing operating costs for acquisitions have been approved by Council as part of the business planning and budget process;
 - (b) the acquisitions and disposition of Real Property is consistent with a municipal purpose;
 - (c) the sale of Real Property is at Market Value or greater;
 - (d) the purchase of Real Property does not exceed 110% of Market Value; and
 - (e) the base rent for leasing Real Property is at Market Value as supported by a market comparable analysis.
- (2) Approval of Property Transactions may be subject to other policies or legislative requirements, such as Administrative Order 50 (respecting the Disposal of Real Property), Administrative Order 2016-ADM-005 (the *Procurement Policy*), or section 111(5) of the Halifax Regional Municipality Charter (Ministerial Approval for long term commitments).
- (3) All agreements for Property Transactions shall be stamped "Approved as to Form and Authority" by Legal Services or in the form of a template approved by Legal Services prior to execution.

APPROVAL AND SIGNING AUTHORITY

10. (1) Subject to the provisions of this Administrative Order, Council delegates the approval authority

and signing authority for Property Transactions as follows:

Property Transaction Type	Maximum Financial Commitment	Maximum Term	Approval Authority	Signing Authority
Agreement of Purchase and Sale, Option Agreement, Assignments and Right of First Refusal	\$25,000	N/A	Manager	Director
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	\$1,500,000	No Limit	CAO	Mayor and Clerk or Agent, if applicable

(2) A reference to a maximum term shall include all renewals and extension rights that may be exercised by any party to a Property Transaction.

(3) The Maximum Financial Commitment is the total financial commitment of the Property Transaction, or annual financial commitment in the case of agreements with a term, including operating expenses, realty taxes and additional rent and excluding the harmonized sales tax.

(4) Property Transactions that exceed the limits of authorities delegated in subsection (1) require the approval of Council.

(5) The authorities relative to a Property Transaction assigned under this Administrative Order include the authority to:

- (a) approve and execute an amending agreement;
- (b) consent to an assignment of an agreement or sublease;
- (c) exercise a contractually defined option, including an option to renew an agreement; and
- (d) terminate an agreement prior to expiry.

SUBDELEGATION

11. The CAO may delegate their approval and signing authority under this Administrative Order to a Director.

12. The Director may delegate their signing authority to a Manager.

Reference to Transaction Policy

13. A reference in an enactment to the former Transaction Policy, or part thereof, is to be read as including a reference to the provisions of this Administrative Order relating to the same subject matter.

Repeal

14. The Transaction Policy adopted by Council on October 8, 2002, and any amendments thereto, is repealed.

Done and passed in Council this day of , 2018.

Mayor

Municipal Clerk

I, Kevin Arjoon, 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 (date), 2018.

Kevin Arjoon, Municipal Clerk