

TO: Mayor and Members of Executive Standing Committee

SUBMITTED BY: [REDACTED] **(Original Signed)**

John Traves, Q.C., Executive Director

[REDACTED] **(Original Signed)**

Jacques Dubé, Chief Administrative Officer

DATE: June 4, 2021

SUBJECT: Councillor Code of Conduct - Operational Issues

ORIGIN

The January 25, 2021 motion of the Executive Standing Committee:

THAT Executive Standing Committee requests a staff report and recommendations with respect to updates to the Councillor Code of Conduct and any other policies that might be needed to ensure clear guidelines are in place with respect to the limited role of Councillors in the general administration of the business the Municipality.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (Charter) clauses 20(1)(b), and 35(2)(d), and subsection 59(3), as follows:

- 20 (1) The Council may make policies
(b) regulating its own proceedings and preserving order at meetings of the Council;
- 35 (2) The Chief Administrative Officer may
(d) subject to policies adopted by the Council,
(i) make or authorize expenditures, and enter into contracts on behalf of the Municipality, for anything required for the Municipality where the amount of the expenditure is budgeted or within the amount determined by the Council by policy, and may delegate this authority to employees of the Municipality,

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.

Administrative Order One, the *Procedures of the Council Administrative Order*, Schedule 6, Executive Standing Committee Terms of Reference,

8. The Executive Standing Committee shall act as a review committee for matters related to the general self-governance and administration of the Council as directed by the Council.

RECOMMENDATION

It is recommended that the Executive Standing Committee recommend that Halifax Regional Council adopt the amendments to:

- (a) Administrative Order 49, *the Settlement of Claims Administrative Order*,
- (b) Administrative Order 50, *the Disposal of Surplus Real Property Administrative Order*,
- (c) Administrative Order 52, *the Code of Conduct for Elected Officials*,
- (d) Administrative Order 2018-004-ADM, *the Real Property Transactions Policy*, and
- (e) Administrative Order Number 2020-004-ADM, *the Procurement Policy*,

as set out in Attachment 3 of this report.

BACKGROUND

On April 8, 2021 the Province passed Bill 50 which, as of the date of this report, has not yet been proclaimed law. Once in force, Bill 50 will amend the Charter to regulate the Code of Conduct. These amendments will require a number of changes to the existing Administrative Order 52, the *Code of Conduct for Elected Officials* (Code of Conduct). The changes arising from Bill 50 include making the Code of Conduct consistent with the provincial regulations (currently they have not been created), incorporating the requirement for an independent person or entity to review and investigate alleged breaches of the Code of Conduct, and allowing Council to impose sanctions for a breach of the Conduct, providing the sanction is set out in the regulations.

As it is unknown when Bill 50 will be proclaimed and when the regulations will be enacted, this report responds to the motion of Executive Standing Committee on January 25, 2021. It does not address the larger review of the Code of Conduct which will be necessary once Bill 50 is proclaimed law.

Turning to the request of January 21, 2021, the Charter divides the Municipality into two branches: the elected officials (Council) and municipal staff (the Administration). Under the legislative framework, the powers of the Municipality cannot be exercised by individual Members of Council; rather, the powers of the Municipality are exercised by a decision of Council as a whole (the applicable legislative provisions are listed in Attachment 1). For example, the legislation expressly provides that:

No Council member, committee or member of a committee established by the Council **shall instruct or give direction to**, either publicly or privately, **an employee of the Municipality**. [emphasis added]

Once a collective decision is made by Council, it is communicated to and through the Chief Administrative Officer (CAO) to staff of the Municipality.

The CAO is the head of the Administration and is the connection between Council and the rest of the administration. To enable this connection, Council hires a CAO who it understands to be accountable to Council for the administration of the Municipality. The CAO ensures that the day-to-day decisions reflect the strategic direction set by Council.

DISCUSSION

As a collective body, Council sets the strategic direction of the Municipality and makes decisions on a wide range of matters. These matters range from approving the operating and capital budgets, to setting the tax rates, to adopting policies for the effective management of the Municipality, and to debating and adopting the by-laws that regulate the activities, land uses, and behaviors of citizens and businesses.

At times, Members get requests from constituents to assist in resolving disputes with the Municipality, or to assist in acquiring or disposing of land by the Municipality among other issues. To assist the Members with explaining to constituents the framework and the role of individual Members, staff are proposing to add language into the *Disposal of Surplus Real Property Administrative Order*, the *Real Property Transactions Policy*, the *Settlement of Claims Administrative Order*, the *Procurement Policy*, and the *Code of Conduct for Elected Officials*. The drafted language will add wording that an individual Member has no authority to:

- instruct or direct staff, and that Members act collectively through a decision of Council, and Council, in turn, provides instructions and direction to staff through the CAO (Code of Conduct);
- settle a claim or a contract dispute on behalf of the Municipality (*Settlement of Claims Administrative Order*, and the *Procurement Policy*);
- declare a municipal property surplus, or to determine the category or disposal method for a municipal property (*Disposal of Surplus Real Property Administrative Order*);
- acquire or dispose of an interest municipal property (the *Real Property Transactions Policy*); and
- award a contract (the *Procurement Policy*).

These amendments are intended to clarify for the public that Council, rather than individual Members, makes decisions. These amendments do not prevent a Member from communicating directly with employees to obtain or provide information. These amendments will add language that a Member can provide to a constituent showing the individual Member has no authority to instruct or give direction to staff, and that such instruction or direction needs to be given by Council.

FINANCIAL IMPLICATIONS

There are no financial implications associated with these amendments.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this Report as these amendments are capturing the existing framework. The risks considered rate Low.

COMMUNITY ENGAGEMENT

No community engagement was required.

ENVIRONMENTAL IMPLICATIONS

There were no implications identified.

ALTERNATIVES

1. Executive Standing Committee could recommend that Regional Council only adopt the amendments to the Code of Conduct. If this option is selected, staff have drafted the required amendment in Attachment 4. The motion would need to be amended to read:

That the Executive Standing Committee recommend that Halifax Regional Council adopt the amendments to Administrative Order 52, the *Code of Conduct for Elected Officials*, as set out in Attachment 4 of this report.

2. Executive Standing Committee could direct additional amendments to additional Administrative Orders. This would require a supplementary staff report with the additional changes.

ATTACHMENTS

Attachment 1 Excerpts from the HRM Charter

Attachment 2 Showing Proposed Changes to the:

- *Settlement of Claims Administrative Order* (Administrative Order 49)
- *Disposal of Surplus Real Property Administrative Order* (Administrative Order 50),
- *Code of Conduct for Elected Officials* (Administrative Order 52),
- *Real Property Transactions Policy* (Administrative Order 2018-004-ADM), and
- *Procurement Policy* (Administrative Order 2020-004-ADM)

Attachment 3 Amending Administrative Order

Attachment 4 Amending Administrative Order for Alternative One

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: Derk Slaunwhite, Senior Solicitor, 902.490.4226

ATTACHMENT 1
(Excerpts from the HRM Charter)

Select Provisions from the *Halifax Regional Municipality Charter*

- 8 (1) The Municipality is governed by a Council consisting of at least three members.
- 11 (1) The powers of the Municipality are exercised by the Council.
- 12 (3) The Mayor may
- (a) monitor the administration and government of the Municipality; and
 - (b) communicate such information and recommend such measures to the Council as will improve the finances, administration and government of the Municipality.
- 33 The Council shall employ a person to be the Chief Administrative Officer for the Municipality.
- 34 (1) The Chief Administrative Officer is the head of the administrative branch of the government of the Municipality and is responsible to the Council for the proper administration of the affairs of the Municipality in accordance with the by-laws of the Municipality and the policies adopted by the Council.
- (2) The Council shall communicate with the employees of the Municipality solely through the Chief Administrative Officer, except that the Council may communicate directly with employees of the Municipality to obtain or provide information.
- (3) The Council shall provide direction on the administration, plans, policies and programs of the Municipality to the Chief Administrative Officer.
- (4) No Council member, committee or member of a committee established by the Council shall instruct or give direction to, either publicly or privately, an employee of the Municipality.

ATTACHMENT 2

(Showing Proposed Changes to the: *Settlement of Claims Administrative Order* (Administrative Order 49), the *Disposal of Surplus Real Property Administrative Order* (Administrative Order 50), the *Code of Conduct for Elected Officials* (Administrative Order 52), *Real Property Transactions Policy* (Administrative Order 2018-004-ADM), and the *Procurement Policy* (Administrative Order 2020-004-ADM))

ADMINISTRATIVE ORDER 49 RESPECTING THE SETTLEMENT OF ACTIONS, PROCEEDINGS AND CLAIMS

Application

2. This Administrative Order applies to the settlement of legal actions and proceedings which have been commenced, and to all settlements where it would be anticipated that a legal action or proceeding would be commenced but for the settlement.

2A. An individual Member of Council has no authority to settle a legal action or proceeding on behalf of the Municipality.

Settlements of \$25,000 or less

3. A settlement of a legal action or proceeding for \$25,000 or less may be made on the recommendation of staff with the approval of the Manager of Risk and Insurance Services or the Director of Legal, Insurance & Risk Management Services.

ADMINISTRATIVE ORDER NUMBER 50 RESPECTING THE DISPOSAL OF SURPLUS REAL PROPERTY

3. (1) Repealed

(2) All Business Units, as part of their business planning, will identify any municipal properties that are surplus to operational requirements

(3) Upon completion of the Asset Owner Business Unit reviews and identification of operationally surplus property by that Owner the Corporate Real Estate staff shall undertake an interdepartmental review and will categorize the nature of the inventory of potentially surplus properties and list them by category.

(3A) Corporate Real Estate will contact Legal and Risk Management Services and request a title report as part of the review for any property categorized as Community Interest Property.

(4) Local Councillor and Community Council will be informed of the inventory of the properties and the proposed categories by staff. Local Councillor will then have the opportunity to contact local community to discuss potential surplus properties to gauge interest in potential disposal methods for the properties with area residents. The result from these potential community consultations will then be included in the surplus property report that comes to Council.

(4A) For greater certainty, an individual Local Councillor has no authority under this Administrative Order, including no authority to declare a municipal property to be a surplus property, to determine the category of the municipal property, to determine the disposal method for the municipal property, or to approve the disposal of the municipal property.

(5) Corporate Real Estate staff will prepare a Surplus Property Report to Council which will attach lists of properties by category. The report will recommend that all lists of properties should be

declared by Council to be surplus property, that each category be approved by Council, and that the disposal method recommended for each list under this policy be approved by Council.

(6) Council may approve the recommendations, may remove any property from any list, and may move any property from one list to another list, and may declare the lists, or any of them, surplus to the Municipality's requirements.

(7) Corporate and Customer Services will report the operating costs and the status of surplus properties through the Audit and Finance Standing Committee twice per year.

ADMINISTRATIVE ORDER 52 CODE OF CONDUCT FOR ELECTED MUNICIPAL OFFICIALS

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.

Collective Instruction and Direction

6A All Members recognize that instructions or directions to employees must be made by Council, and that Council provides instructions or direction through the Chief Administrative Officer. A Member must not instruct or give direction, either publicly or privately, to an employee of the Municipality.

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.

ADMINISTRATIVE ORDER 2018-004-ADM RESPECTING REAL PROPERTY TRANSACTIONS

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.

5A. An individual Member of Council has no authority to approve a Property Transaction under this Administrative Order.

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.

**ADMINISTRATIVE ORDER 2020-004-ADM
PROCUREMENT ADMINISTRATIVE ORDER**

GENERAL

Application

4. Subject to section 5, this Administrative Order shall apply to the procurement of Goods, Services and Construction by the Municipality.

Exemptions

5. The expenditures listed in Appendix A are exempt from sections 12 through 39 of this Administrative Order.

Purchases by Agents

6. (1) Agents are exempt from the application of this Administrative Order but are required to comply with the *Public Procurement Act* and the terms and conditions of the Agent's written contract with the Municipality when making purchases on behalf of the Municipality.

(2) No person or entity shall purchase Goods, Services or Construction on behalf of the Municipality unless expressly appointed as Agent in a written contract with the Municipality.

Calculation of Contract Amounts

7. Contract amounts referenced in this Administrative Order shall be construed to be the sum of all costs for the duration of the contract plus all applicable net taxes, less all rebates.

Conflict

8. Where there is a conflict with the application of this Administrative Order and the *Public Procurement Act* and the regulations thereunder, the Act and its regulations shall prevail.

Member of Council

8A. An individual Member of Council has no authority under this Administrative Order, including no authority to award a contract, or to settle a supplier performance dispute such as whether the Municipality disqualifies or suspends a supplier from bidding on a Municipal procurement.

RESPONSIBILITIES

Chief Administrative Officer

9. The CAO may authorize additional procedures and protocols not inconsistent with this Administrative Order and may delegate his or her authority under this Administrative Order to employees.

**ATTACHMENT 3
(Amending Administrative Order)**

**ADMINISTRATIVE ORDER 49
RESPECTING THE SETTLEMENT OF
ACTIONS, PROCEEDINGS AND CLAIMS**

**ADMINISTRATIVE ORDER NUMBER 50
RESPECTING THE DISPOSAL OF
SURPLUS REAL PROPERTY**

**ADMINISTRATIVE ORDER 52
CODE OF CONDUCT FOR
ELECTED MUNICIPAL OFFICIALS**

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

**ADMINISTRATIVE ORDER NUMBER 2020-004-ADM
PROCUREMENT ADMINISTRATIVE ORDER**

BE IT RESOLVED as an Administrative Order that Administrative Order 49, the *Settlement of Claims Administrative Order*, Administrative Order 50, the *Disposal of Surplus Real Property Administrative Order*, Administrative Order 52, the *Code of Conduct for Elected Officials*, Administrative Order 2018-004-ADM, the *Real Property Transactions Policy*, and Administrative Order Number 2020-004-ADM, the *Procurement Policy*, are amended as follows:

1. Section 2A is added to Administrative Orders 49, the *Settlement of Claims Administrative Order*, after section 2 and before the header of section 3, as follows:

2A An individual Member of Council has no authority to settle a legal action or proceeding on behalf of the Municipality.

2. Subsection 4A of section 3 is added to Administrative Order Number 50, the *Disposal of Surplus Real Property Administrative Order*, after subsection 4 and before subsection 5, as follows:

(4A) For greater certainty, an individual Local Councillor has no authority under this Administrative Order, including no authority to declare a municipal property to be a surplus property, to determine the category of the municipal property, to determine the disposal method for the municipal property, or to approve the disposal of the municipal property.

3. Section 6A is added to Administrative Order 52, the *Code of Conduct for Elected Officials*, after section 6 and before the header for section 7, as follows:

Collective Instruction and Direction

6A All Members recognize that instructions or directions to employees must be made by Council, and that Council provides instructions or direction through the Chief Administrative Officer. A Member must not instruct or give direction, either publicly or privately, to an employee of the Municipality.

4. Section 5A is added to Administrative Order Number 2018-004-ADM, the *Real Property Transactions Policy*, after section 5 and before section 6, as follows:

5A. An individual Member of Council has no authority to approve a Property Transaction under this Administrative Order.

5. Section 8A is added to Administrative Order Number 2020-004-ADM, the *Procurement Policy*, after section 8 and before the header "RESPONSIBILITIES" before section 9, as follows:

Member of Council

8A. An individual Member of Council has no authority under this Administrative Order, including no authority to award a contract, or to settle a supplier performance dispute such as whether the Municipality disqualifies or suspends a supplier from bidding on a Municipal procurement.

Done and passed in Council this day of , 202 .

Mayor Savage

Municipal Clerk

**ATTACHMENT 4
(Amending Administrative Order for Alternative One)**

**ADMINISTRATIVE ORDER 52
CODE OF CONDUCT FOR
ELECTED MUNICIPAL OFFICIALS**

BE IT RESOLVED as an Administrative Order that Administrative Order 52, the *Code of Conduct for Elected Officials*, is amended as follows:

1. Section 6A is added to Administrative Order 52, the *Code of Conduct for Elected Officials*, after section 6 and before the header of section 7, as follows:

Collective Instruction and Direction

6A All Members recognize that instructions or directions to employees must be made by Council, and that Council provides instructions or direction through the Chief Administrative Officer. A Member must not instruct or give direction, either publicly or privately, to an employee of the Municipality.

Done and passed in Council this day of , 202 .

Mayor Savage

Municipal Clerk