

HALIFAX

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

Item No. 10.1
Halifax Regional Council
June 23, 2020
July 7, 2020

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed
John Traves, Q.C., Director of Legal & Legislative Services

Original Signed by 
Jacques Dubé, Chief Administrative Officer

DATE: May 12, 2020

SUBJECT: Procedure for Appointment of Traffic Authority

INFORMATION REPORT

ORIGIN

On December 12, 2019 the Transportation Standing Committee passed the following motion:

MOVED by Councillor Cleary, seconded by Councillor Mason

THAT the Transportation Standing Committee request a staff report on establishing a new procedure for the appointment of the Halifax Traffic Authority that would include the committee considering candidates and making recommendation to Council and may include the recruitment and hiring of new municipal staff for the appointment.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter

35(2)(b) The Chief Administrative Officer may ... appoint, suspend and remove all employees of the Municipality, with power to further delegate this authority;

321(2) The Council may, by policy, appoint a traffic authority for all or part of the Municipality.

Motor Vehicle Act

86(6) The council of a city or town may, from time to time, appoint the city or town manager, the chief of police, or some other official of the city or town, to be the traffic authority for the city or town.

86(7) The council of a city or town may, from time to time, appoint a member of the police force, or some other official of the city or town to be deputy traffic authority who, in the absence or incapacity

of the traffic authority or in the event of his death or ceasing to hold the office, shall perform the duties and have all the authority of the traffic authority of the city or town.

86(10) If it is made to appear to the Minister that the traffic authority of a city or town is not carrying out his duties or performing his functions under this Act, the Minister, by letter to the mayor or clerk of the city or town, may cancel the appointment of the traffic authority.

BACKGROUND

This information report is in response to a request for a staff report made by the Transportation Standing Committee on December 12, 2019. Due to the ongoing Covid-19 pandemic, meetings of the Transportation Standing Committee have been cancelled indefinitely. Therefore, this information report is being submitted by staff directly to Halifax Regional Council.

The Province of Nova Scotia regulates motor vehicles and the use of public highways via the *Motor Vehicle Act* (the “MVA”). The MVA contemplates that the “Registrar [of Motor Vehicles] or a person appointed by the Minister shall be the Provincial Traffic Authority” and that “The council of a city or town may, from time to time, appoint the city or town manager, the chief of police, or some other official of the city or town, to be the traffic authority for the city or town.”

The Traffic Authority’s responsibilities/powers under the MVA include:

- erecting signs, markings and traffic control signals to direct and regulate traffic (s. 87-89; 93-94);
- establishing crosswalks, safety zones, traffic lanes, areas where left-turn/right-turn/U-turns are prohibited, one-way streets, (s. 90) tow-away zones (s. 92), temporary work areas (s. 106C), passenger and loading zones (s. 144), bus stops and taxi stands (s. 146), fire lanes (s. 150), no parking/no standing zones (s. 152);
- issuing parade permits; (s. 90);
- fixing maximum rates of speed (s. 101 – 105);
- designating school areas (s. 103);
- designating a sidewalk or part thereof as a trail and authorizing the use of bicycles thereon (s. 171A); and
- making and enforcing temporary regulations to cover emergencies or special conditions (includes the winter parking ban) (s. 202).

The position of Traffic Authority was first established in the *Motor Vehicle Act* in 1932. In the years immediately following, the former City of Halifax and the former Town of Dartmouth appointed members of their respective police forces as Traffic Authority. In subsequent years, the former municipalities of Halifax, Dartmouth and Bedford typically chose to appoint a professional engineer as Traffic Authority.

As vehicle traffic in the municipality became more prevalent and complex, it became more important for Traffic Authority to be an individual with training and knowledge in the field of traffic management. In order to align and clarify responsibilities, in 1961 the former City of Halifax approved the appointment of the City’s Traffic Engineer as Traffic Authority and also directed that the traffic engineering function be established as a division of the Department of Works. The rationale for appointing a traffic engineer as the City’s Traffic Authority was set out in a recommendation report from the City Manager and endorsed by the City’s Safety Committee:

The Traffic Engineer has been specially trained in traffic control and regulation. Traffic engineering was instituted by municipalities to provide a comprehensive approach to problems created by the increasing use of motor vehicles. The Traffic Engineer is involved in all aspects of traffic, including roadway locations, town planning, traffic routing, public transportation routes, street and off-street parking, traffic control device requirements and the general economics coincident with efficient traffic

movement. It would seem, therefore, that traffic engineering must be closely related with the functions of the Department of Works in respect to street construction and maintenance, [and] with the Planning Department in respect to the overall planning functions and requirements of the city.

Later in the 1960s, as the municipality grew and as the volume of the Traffic Authority's work began to increase, Halifax City Council requested that the Province amend the Motor Vehicle Act to permit the municipality to appoint a 3-person Traffic Authority board. The Province refused the request and instead suggested that the municipality could establish a committee of municipal officials to consult with and advise the Traffic Authority and Deputy Traffic Authority as needed. Indeed, since then, the Traffic Authority has consulted formally and informally with other municipal officials, councillors, police, and other stakeholders – particularly on matters of significance. Today, HRM has a Traffic Management department within the Municipality's Department of Transportation and Public Works to consult with and advise the Traffic Authority.

At times there have been questions as to the appropriate role of Council vis-à-vis the Traffic Authority. While a municipal council can appoint a Traffic Authority, the Nova Scotia Court of Appeal has determined that Council does not have a supervisory role over decisions that fall within the purview of the Traffic Authority and cannot usurp the powers of the Traffic Authority (see *Canada Trust Co. v. (Halifax City)*, (1993) 126 N.S.R. (2d) 218 (C.A.)).

In 1984 the Traffic Authority for the former City of Halifax was the City's Traffic Services Supervisor. A report from the City Manager at the time outlined the various functions of the Traffic Authority and explained the rationale and importance of having traffic management decisions made by the Traffic Authority (as opposed to Council):

The purpose of the Traffic Authority function is two-fold. Firstly, it removes from members of Council the responsibility for onerous routine daily decisions on matters of parking, loading zones, signs and signals, pedestrian cross-overs, regulation of traffic flow through signs, markings, signals, etc. Approximately 1200 of these regulations are annually approved by the Traffic Authority. Secondly, it minimizes the possibility of technical problems of traffic flow being solved on the basis of public opinion rather than on the basis of nationally adopted criteria and the principles which have been developed over the years in the field of traffic engineering.

The function is a nonsalaried position and is held in conjunction with his normal responsibilities as the division head of the Traffic Services Division.

The modus operandi of the present Traffic Authority is to work closely with City Council and to keep the various Aldermen advised of what would be considered major changes within their wards. On City wide issues which are considered to involve matters beyond normal traffic concerns but which fall within the provisions of the Motor Vehicle Act, the Traffic Authority seeks the opinion of City Council before making a final decision.

Most recently, in 2015, upon the advice of staff, Halifax Regional Council approved a resolution that "Halifax Regional Council continue its recent practice of appointing the Director of Transportation and Public Works to the position of Traffic Authority." The report to Council explained the rationale as follows:

Because the responsibilities of the Traffic Authority are focused on the safety and regulation of streets, the role of the Traffic Authority and Deputy Traffic Authority at HRM have traditionally resided in the Traffic Management section of Transportation and Public Works, and have been assigned to the Manager of Traffic Management and the Senior Traffic

Operations Engineer, respectively. These positions are responsible to develop standards of practice based on legislation, uniform traffic control standards and engineering principles that support the traffic authority mandate and have the requisite knowledge, skill and ability in the specialized application of traffic operations engineering.

Within the current statutory requirements, it is possible to make administrative changes to the appointment of the traffic authority from the traditional model outlined above. It was recommended to the Municipality by CIMA Consultants that the Traffic Authority be one position removed from the Manger of Traffic Management, with the Manager of Traffic Management as the Deputy Traffic Authority. By appointing the Director of Transportation and Public Works as the Traffic Authority, the Traffic Authority role is placed at a more strategic level in the organization when making decisions.

DISCUSSION

On December 12, 2019, the Transportation Standing Committee requested a report on “establishing a new procedure for the appointment of the Halifax Traffic Authority that would include the committee considering candidates and making recommendation to Council and may include the recruitment and hiring of new municipal staff for the appointment.” For the reasons that follow, HRM staff are of the view that such a procedure is not possible under the existing legislative framework, nor would it be advisable if the legislation allowed for it.

The *Motor Vehicle Act* sets out that only a certain class of person may be designated to act as a local Traffic Authority. Section 86(6) of the *Act* requires that a municipally appointed Traffic Authority be “... the city or town manager, the chief of police, or some other official of the city or town ...” It is clear that HRM’s city manager is Jacques Dubé and that HRM’s chief of police is Dan Kinsella. There is, however, no definition in the *MVA* for who may qualify as “some other official of the city or town”. In 1987, the Nova Scotia Provincial Court determined that an RCMP corporal did not fit the class of persons who could be appointed local traffic authority for the Town of Digby (see *R. v. Thibault* (1987) CarswellNS 21 (NSPC)). Otherwise, this section of the *Act* has not received any judicial interpretation.

For the reasons identified by staff in 1984, it is not desirable to have traffic management decisions made at a political level or by individuals who lack technical expertise in the subject matter. Since at least the 1960s the functions of the Traffic Authority have been closely intertwined with the functions of the municipality’s traffic management/traffic engineering staff. In effect the role is a full-time role carried out by a number of professional staff under the direction of and the authority of the appointed Traffic Authority.

It is important to note that pursuant to section 86(10) of the *Motor Vehicle Act* the Province can cancel the appointment of a local Traffic Authority if the Province determines that the local Traffic Authority is not carrying out their duties in accordance with the *Act* (e.g. for failing to follow approved guidelines, standards or regulations) – in which case, the Provincial Traffic Authority (i.e. the Registrar of Motor Vehicles) would become the Traffic Authority for the Municipality. Effectively the Municipality’s Traffic Authority serves at the pleasure of the Minister.

Under section 35(2)(b) of the *Halifax Regional Municipality Charter*, the Chief Administrative Officer has the unfettered authority to “... appoint, suspend and remove all employees of the Municipality, with power to further delegate this authority;” Council does not have the authority to tell the CAO who to hire or fire and the CAO’s power in this respect is not subject to policies of Council as is the case in many other respects. Therefore, Council may either accept or refuse the CAO’s recommendation for Traffic Authority. It is not possible for the Transportation Standing Committee or Council to seek and consider applicants from outside the Municipality for the position of Traffic Authority, nor to direct the CAO to hire such individuals. In any event, and for the reasons described in this report and other previous staff reports, it is advised that the

position of Traffic Authority remain an individual with requisite training and knowledge employed within the Transportation and Public Works department of the Municipality.

It is within the Terms of Reference for the Transportation Standing Committee to make recommendations to Council on Regional Transportation issues including road and pedestrian safety. Recommendations regarding the appointment of the Traffic Authority and Deputy Traffic Authority could therefore flow through the Transportation Standing Committee to Council. In the 1960s and 1970s Traffic Authority appointments flowed through the City's "Safety Committee" to City Council for ultimate approval. In all cases, Council approved the staff recommended appointment.

Under Administrative Order 12 *Respecting the Appointment of the Traffic Authority*, Bruce Zvaniga, P.Eng. is currently designated by Council as Traffic Authority for the Municipality. Mr. Zvaniga is no longer employed with Halifax Regional Municipality. Subsection 86(7) of the Motor Vehicle Act provides that, in the absence or incapacity of the Traffic Authority or in the event of his death or ceasing to hold the office, a Deputy Traffic Authority shall perform the duties and have all the authority of the Traffic Authority. Taso Koutroulakis, P.Eng. and Roddy MacIntyre, P.Eng. are each currently designated as Deputy Traffic Authority. Once Council receives this information report in response to the motion from Transportation Standing Committee, it is the intention of the Chief Administrative Officer to submit a supplementary report to Council to recommend a successor appointee, barring any further related direction from Regional Council.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

COMMUNITY ENGAGEMENT

N/A

ATTACHMENTS

None

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: Colin Taylor, Solicitor 902.490.4655
