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**Governance and Boundary Review Committee  
May 12, 2010**

**TO:** Mayor Kelly and Members of the Governance & Boundary Review Committee

A handwritten signature in cursive script, appearing to read "C. Mellett".

**SUBMITTED BY:** \_\_\_\_\_  
Cathy J. Mellett, Acting Municipal Clerk

**DATE:** May 11, 2010

**SUBJECT:** Powers of Community Council

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**SUPPLEMENTARY INFORMATION REPORT**

**ORIGIN**

A request from the April 26<sup>th</sup> meeting of the Governance and Boundary Review Committee to provide background and opinion on opportunities and constraints regarding extended the powers of Community Councils

**BACKGROUND**

Questions for Legal Services included:

- 1) Can Regional Council delegate specific decision-making authority to community councils; and, if so, what limitations are there on that delegation of authority?
- 2) Are there any restrictions on the services that can be recommended by a community council for area rates under s. 29(4) of the Charter?
- 3) What are the limits and opportunities under the Charter s. 25(e) that might be available to communities and community councils to amend or adjust by-laws to better suit local issues? Can the by-law process be adjusted to allow for options within a regional by-law? Procedurally, would the ability to opt in or opt out of specific by-law provisions require additional public hearings? Could this same flexibility be achieved through amendments to local land use regulations or by other means? The examples given of by-laws that have

presented challenges due to conflicting community interests were: the signs by-law, the burning by-law and the responsible pet owner's by-law.

For Finance questions included:

- 4) Is there currently an operational definition of what constitutes a "regional" versus a "local" service that would assist in determining the services where Community Councils could make recommendations to area rate the services?
- 5) Possible costs and/or challenges in administering a greater number of area rated services and the costs associated with expanding the budget process to allow for input from the community councils with a view to effective decision-making being made at the community council level in respect of certain community expenditures?
- 6) A description of how monitoring services and recommending the appropriate level of services [s. 25(a)] and community councils submitting an annual budget for services in the community to be area rated [s. 29(3)], might fit into HRM's annual budget and business planning process. What could that process look like?

## **DISCUSSION**

**The following is provided for the Committee's consideration:**

*1) Delegation of Authority*

*(i) Decision-making powers*

Regional Council does not, under the Charter, have a general ability to delegate its powers to a community council. Regional Council cannot delegate final decision making authority to a community council, or any other committee of Council, unless specifically permitted in the Charter. The Charter is very clear on the limited circumstances in which Regional Council can delegate its authority.

Those limited circumstances are set out in sections 30 and 31 of the Charter. Specifically, s. 30(3) states:

*30 (3) A community council **may amend the land-use by-law** of the Municipality applicable to the community with respect to any property in the community if the amendment carries out the intent of any municipal planning strategy of the Municipality applicable to the property and, in doing so, the community council stands in the place and stead of the Council.....*

S. 31 states:

31 (1) “*Where the municipal planning strategy of the Municipality provides for **development by agreement, the community council stands in the place and stead of the Council and Part VIII applies with all necessary changes.***”

These delegated powers are limited further by s. 31(4) which provides that a development agreement is of no force or effect if it requires an expenditure by the Municipality *until approved by Council*.

No other delegation of decision-making authority is allowed by the Charter to community councils. If additional decision-making authority is considered desirable, that can only be achieved through an amendment to the Charter by the Province.

*(ii) Recommendation-making powers*

The Charter does provide for a much wider range of powers in which community councils can provide recommendations including:

- 1) area rated services and projects
- 2) appropriate by-laws, regulations, controls and development standards for the community
- 3) appropriate user charges for different parts of the community
- 4) appropriate level of services for an area and ways in which services can be improved
- 5) an annual budget for recommended projects and services

While Council, under the Charter, must retain the final decision-making power, Council can move the primary debate to the community level where that is more appropriate. This would be little different from the manner in which other committees of Council currently operate, where Council respects the recommendations of its appointed committee and, only where the issue becomes one of more general regional interest, does the Regional Council revisit the committee’s recommendation.

By policy and practice, Council could adopt a procedural approach to dealing with matters coming from community councils under what is known as “Consent Agenda”. Under this concept, recommendations of administration and committees, or potentially recommendations of HRM community councils are placed on the Consent Agenda under an omnibus motion. Consent Agendas are utilized by many municipalities throughout the country for consideration of recommendations without debate unless moved onto the full agenda of Council. A sample of a consent agenda from the City of Calgary in March 2009 is attached.

Likewise, if a community council, as allowed for in s. 29(3), made budget submissions for area rated services and/or projects during the annual budget process, and those budgets were debated and moved as part of the HRM budget process, Council may be satisfied with that level of review for budget decision-making. The Director of Finance would be interested in discussing this further with the Committee following the tabling of the budget.

## 2) Area Rates

Section 96 of the Charter provides that “ *A Council may spend money in an area .... For any purpose for which the Municipality may expend funds or borrow.* ” Thus there are no limitations on the matters for which an area rate may be levied provided that it is within the spending authority of the Municipality. Therefore a community council may make a recommendation to Regional Council in respect of any spending item; but that is a recommendation only and is not decision-making power.

The policy for area rates in HRM are laid out in the *Interim Area Rate Guidelines*:

1. Area rates can only be used for the provision of services within the municipal mandate; services traditionally provided by the municipality
2. Area rates are not to be used to provide different levels of a municipal service within urban, and suburban areas where said service is covered by the general tax rate.
3. In order for a proposed new area rate to move to the process as outlined in #4 below is must have the support of the areas Councillor (s).
4. Proposals for new area rates must be advertised publicly, clearly identifying affected areas, the purpose of the area rate, rate information and the duration the rate is expected to be charged.
5. With the concurrence of the Councillor, the request is forwarded to the Community Council for review and a recommendation to Regional Council. Where a Community Council does not exist, the request will go directly to Regional Council.
6. Any proposed new area rates recommended by Community Council will be submitted to Halifax Regional Council through a staff report with a recommendation from the Chief Administrative Officer. The staff report will identify the implications to the Municipality along with the results of the public meeting.
7. Regional Council is responsible for approving all area rates.

The current policy does not generally allow for area rates to be applied to services covered under the general levy. The most recent Council decision on transit funding has been an amendment to the general policy in this regard. Should it be Council’s intention to move further into this area, and allow more broad based application of additional area rates for services also covered under the general rate, a more detailed discussions with Finance regarding the impact and implications would need to be undertaken.

## 3) By-laws

Regional Council can currently tailor by-laws of general application such as the animal control by-law to address local interests. Council has in fact done this in a number of instances including the Sign By-law and the Burning By-law. What Council cannot do is devolve the by-law process to a community council without a Charter amendment with the exception of those planning/development related by-laws referenced above. In 2009, Council did seek from the Province an amendment to

the Charter to enhance the planning powers of the community councils but that request has not yet been granted.

Questions 4.) - 6.) The Director of Finance would be pleased to attend a meeting of the committee following tabling of the budget on May 18<sup>th</sup> to begin those discussions.

**BUDGET IMPLICATIONS**

There are budget implications to implementation of more Area Rated services both in the administering of those rates, as well as potential impact should there be a subsequent request for inclusion of Area Rated services in the General Tax Rate. A more detailed discussion with Finance would be required to determine policy and cost implications and possible approaches.

**FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

This report complies with the Municipality’s Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

**ATTACHMENTS**

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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