

Item No. 11.1.6
Halifax Regional Council
January 28, 2014

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: January 13, 2014

SUBJECT: Delegated Authority to approve and sign
Non-Disclosure Agreements and Facility Rental Agreements

ORIGIN

This report originates from staff.

LEGISLATIVE AUTHORITY

Under section 10(3) of the *HRM Charter*, the Mayor and Clerk or persons designated by the Council, by policy, may sign any document to which the Municipality is a party on behalf of the Municipality.

Under subsection 11(1) of the *HRM Charter*, the powers of the Municipality are exercised by Council. As the result, municipal officials cannot exercise the powers of the Municipality unless such powers are expressly granted to them elsewhere in the *HRM Charter* or delegated to them by Council.

Under subsection 58(5) of the *HRM Charter*, Council has the power to make and carry out a contract.

Under subsection 59(3) of the *HRM Charter*, Council may adopt policies on any matter Council considers conducive to effective management of the municipality.

Under section 63 of the *HRM Charter*, the Municipality may lease property at a price less than market value to a non-profit organization that the Council considers to be carrying on an activity that is beneficial to the Municipality. The *HRM Charter* requires that a motion to lease property at less than market value must be passed **by at least a two thirds majority of the Members present and voting.**

RECOMMENDATIONS

It is recommended that Halifax Regional Council adopt Administrative Order 58, the *Delegation of Certain Authorities Administrative Order*, as set out in Attachment 1 attached hereto, which:

- 1) authorizes the Chief Administrative Officer, or in the absence of the CAO the Deputy Chief Administrative Officer, to approve and sign non-disclosure agreements, as set out in Attachment 1 attached hereto;
- 2) authorizes staff to approve and sign rental agreements for athletic, cultural, recreational, or sporting purposes for municipal facilities and land at market value rent, as set out in Attachment 1 attached hereto; and
- 3) authorizes staff to approve and sign less than market value rental agreements with a non-profit organization where certain conditions are met, as set out Attachment 1 attached hereto.

BACKGROUND

The *HRM Charter* allows Council to delegate to staff both the authority to authorize agreements and the authority to sign agreements on behalf of the Municipality. At present, Administrative Order 35, the *Procurement Policy*, delegates to staff the authority to authorize expenditures in set amounts. The *Procurement Policy* does not expressly delegate to staff the authority to sign agreements resulting from the staff approvals. Since the authority to sign is not expressly delegated, the Mayor and Clerk or the CAO must sign all such agreements. This can lead to a burden on the present signing authorities and other inefficiencies. As an example, a \$5,000 agreement may be authorized by the Manager of Procurement but must be signed by either the CAO or the Mayor and Clerk.

Council has generally not delegated approval and signing authority to staff to enter into agreements where the Municipality is not expending funds. Such agreements include where the Municipality is in receipt of funds (e.g., funding agreements with other levels of government) and agreements where no value changes hands but where the Municipality and the other party are nevertheless assuming certain rights and obligations (e.g., Non-Disclosure Agreements; mutual exchange of services agreements/mutual aid with other public bodies).

In other matters, Council has already expressly delegated both the authority to authorize and sign agreements to staff. For example, in the Transaction Policy – Real Property Acquisitions and Disposals, Council has delegated to staff the authority to both authorize and sign Commercial Lease Agreements and Agreements of Purchase and Sale up to specific dollar amounts and, in some case, up to specific periods of time, both of which are set out in the Transaction Policy. Currently, Table 1B of the Transaction Policy is being used as the present authority for facility and land rentals, but the approving authorities for this purpose (located in Real Property) are not appropriate given operational realities.

As part of the governance review that is being undertaken, staff will be returning to Council, at a future date, to request Council adopt an Administrative Order which will set out those authorities Council decides to delegate to staff. This process has begun but requires consultations with various Departments of the Municipality. Until such time as a new Administrative Order dealing with delegations is adopted by Council, staff is recommending this draft Administrative Order as an interim measure to deal with non-disclosure agreements and HRM facility and land rentals for athletic, cultural, recreational, or sporting purposes.

DISCUSSION

Non-Disclosure Agreements (“NDA”)

NDA's are commonplace in commercial business relationships. When HRM enters into contract negotiations or engages in discussions with outside parties, an exchange of information between the parties is needed to place each in a position to negotiate appropriate terms and conditions. Often this information is of a confidential nature and one or both of the parties require the execution of a NDA. Under a NDA, the parties are able to disclose confidential information to each other within a contractual framework that prevents the parties from making unauthorized use or further disclosure of the confidential information. A NDA binds both staff and Council. This means that Council would have to go in camera to discuss matters involving confidential information once a NDA has been signed.

The Freedom of Information and Protection of Privacy (“FOIPOP”) obligations under Part XX of the *Municipal Government Act* impose restrictions on the amount and extent of information the Municipality may keep confidential. Any NDA negotiated with an outside party must recognize that HRM cannot keep information confidential where the release of such information is required under FOIPOP.

Typically, a NDA is needed to be executed quickly to prevent delays in contract negotiations between HRM and other parties. Therefore, staff is recommending the CAO be authorized to approve and sign a NDA on behalf of the Municipality.

Facility and Land Rental Agreements

The Municipality uses its lands and its recreational facilities to deliver services and programming to the public. The Municipality also makes its lands and recreational facilities available to various groups and individuals to use for their own purposes. HRM charges fees, or a rent, for this use. Often these rentals are for short periods of time. At present, Council has not provided an expressed delegation to staff to approve and sign these rental agreements for HRM recreational facilities and land. Staff is recommending that such authority be specifically delegated by Council to staff.

Non-profit organizations often request a discount on the rental fees that are charged. Normally, a less than market value lease is specifically approved by the Council by a two-thirds vote of the Council. The draft Administrative Order creates a class of non-profit organizations which Council considers to be carrying on activities that are beneficial to the municipality for the purposes of less than market rent for recreational facilities and land. This means that Council would not have to approve each less than market rental agreement for such facilities and land. The *HRM Charter* requires at least a two-third vote from the Members to delegate this authority to staff.

FINANCIAL IMPLICATIONS

N/A

COMMUNITY ENGAGEMENT

N/A

ENVIRONMENTAL IMPLICATIONS

N/A

ALTERNATIVES

Non-Disclosure Agreements

Regional Council could decline to delegate to the CAO the power to approve and sign Non-Disclosure Agreement which would result in such agreements coming before Council for approval. Staff is not recommending this option for two reasons. Firstly, it may cause delays during contract negotiation. Secondly, it may hinder an outside party providing to HRM information that is necessary for the contract negotiations as the outside party has no assurances that the information it provides to HRM will remain confidential.

Facility and Land Rental Agreements

Regional Council may decline to delegate to the power to approve and sign facility and land rental agreements. Staff is not recommending this option as it causes delays in getting such agreements signed.

ATTACHMENT

Attachment "1": *Administrative Order 58, the Delegation of Certain Authorities Administrative Order*

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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Original Signed

Attachment 1
(Proposed Administrative Order)

HALIFAX REGIONAL MUNICIPALITY
ADMINISTRATIVE ORDER NUMBER 58
RESPECTING THE DELEGATION OF
CERTAIN AUTHORITIES

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 *Delegation of Certain Authorities Administrative Order*.

Application

2. This Administrative Order applies to all employees of the Municipality who are authorized hereunder to approve and sign:

- (a) a non-disclosure agreement; or
- (b) a rental agreement for a facility or municipal land;

on behalf of the Municipality.

3. Nothing in this Administrative Order limits or otherwise restricts any other authorities delegated by Council to staff including the authorities delegated under the Transaction Policy - Real Property Acquisitions and Disposals.

4. Nothing in this Administrative Order shall be construed as to limit or otherwise restrict Council's discretion to grant a lease at market value rent or less than market value rent.

5. A rental agreement authorized by this Administrative Order shall:

- (a) only grant a license to use the facility or municipal land for a certain period of time; and
- (b) not be transferable or assignable.

6. When determining the delegated authorities for approving and signing less than market value rent, the approving and signing authorities shall be determined by reference to the actual market value of the rent without reduction.

7. The authorities delegated to the Divisional Manager or the Director under this Administrative Order may be further delegated by the Divisional Manager or the Director to his or her staff.

8. In this Administrative Order, a delegation up to a specific dollar amount for market value rent shall:

- (a) include a delegation up to and including the expressed dollar amount.
- (b) exclude any Harmonized Sales Tax that may be payable.

Interpretation

9. In this Administrative Order,

- (a) “CAO” means the Chief Administrative Order of the Municipality;
- (b) “DCAO” means the Deputy Chief Administrative Order of the Municipality;
- (c) “Director” means a Director of a Department of the Municipality;
- (d) “facility” means a building or part of a building that
 - (i) is owned or leased by the Municipality;
 - (ii) is operated by the Municipality; and
 - (iii) is used, in whole or in part, for athletic, cultural, recreational or sporting purposes,
- (e) “market value rent” means the most probable rent which municipal land or a facility should bring in a competitive and open market under conditions requisite to a fair agreement,
- (f) “municipal land” means real property owned or leased, in whole or in part, by the Municipality for athletic, recreational or sporting purposes;
- (g) “non-disclosure agreement” means an agreement relative to an exchange of confidential information between HRM and other persons, whether or not HRM is negotiating or has entered into an agreement with such person;
- (h) “non-profit organization” means a group, organization or incorporated body that is not conducted primarily for profit; and
- (i) “maximum rental period” includes all renewal periods.

Delegation – Non Disclosure Agreements

10. (1) Council hereby delegates the authorities to approve and sign non-disclosure agreements to the CAO, where in the opinion of the CAO:

- (a) such agreements are necessary to advance contractual negotiation; or
- (b) such agreements are in the best interests of the Municipality;

(2) The DCAO may act in the place and in the stead of the CAO for the purposes of this section when the CAO is absent or at the request of the CAO.

Delegation – Market Value Rent

11. All renters of a facility or municipal land must pay market value rent.

12. Council hereby delegates the authorities to approve and sign a rental agreement for a facility or municipal land, at market value rent, as follows:

Maximum Rental Period or Term	Annual Market Value Rent (excluding HST)	Approval Authority	Signing Authority
one (1) year	\$1 - \$25,000	Divisional Manager	Divisional Manager
one (1) year	\$1 - \$50,000	Director	Director
one (1) year	\$1 - \$100,000	DCAO or CAO	DCAO or CAO
as approved by Council	\$100,001 and over	Council	Mayor and Clerk

Delegation - Less than Market Value Rent

13. Council hereby considers a non-profit organization to be carrying on an activity that is beneficial to the Municipality, if in the opinion of the delegate:

- (a) the entity is a non-profit organization;
- (b) the non-profit organization is using, in whole or in part, a facility or municipal lands; and
- (c) the non-profit is holding a sporting event, community event, recreational event, entertainment event, or cultural event including artistic performances.

14. Notwithstanding section 11, Council hereby authorizes less than market value rent to be charged to a non-profit organization who is carrying on an activity that is beneficial to the Municipality pursuant to clause 13(c) of this Administrative Order.

15. Subject to sections 12 and 13, Council hereby delegates the authorities to approve and sign rental agreements for a facility or municipal land, with a non-profit organization at least than market value rent, as follows:

Annual Market Value Rent (excluding HST)	Approval Authority	Signing Authority	Maximum Rental Period or Term
\$1 - \$25,000	Divisional Manager or Director	Divisional Manager or Director	one (1) year

Done and passed in Council this day of January, A.D. 2014.

MAYOR

MUNICIPAL CLERK