

HALIFAX

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Item No. 11.1.6
Halifax Regional Council
June 16, 2015

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 
Richard Butts, Chief Administrative Officer

Original Signed by 
Mike Labrecque, Deputy Chief Administrative Officer

DATE: May 28, 2015

SUBJECT: **Amendment to Private Road Maintenance Costs Recovery Policy**

ORIGIN

On January 16, 2007, Regional Council approved the Private Road Maintenance Costs Recovery Policy ("Policy"). The purpose of this Policy is to provide owners of property accessed by private roads with the use of area rates or uniform charges to collect the funds required to maintain private roads.

LEGISLATIVE AUTHORITY

The Halifax Regional Municipality Charter clause 104(1)(g) which states "The Council may make by-laws imposing, fixing and providing methods of enforcing payment of charges for laying out, opening, constructing, repairing, improving and maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads, where the cost is incurred (i) by the Municipality, or (ii) under an agreement between the Municipality and a person."

By-Law P-1100 "Respecting Charges for Private Road Maintenance", and Administrative Order 45, "Respecting Private Road Maintenance".

RECOMMENDATION

It is recommended that:

1. Halifax Regional Council adopt the amendments to the *Private Road Maintenance Costs Recovery Policy* as set out in Attachment 2 of this report; and
2. If Halifax Regional Council adopts the amendments, that Council waive the requirement for a public meeting respecting both the Three Brooks Homeowner's Association and Nowlan Head & Quoddy Point Lot Owners Association as set out in the Discussion of the report.

BACKGROUND

Since Regional Council approved the Policy on January 16, 2007, area flat rate charges have been set up for 12 private road maintenance associations and interest has been expressed by several other groups in doing the same. However, staff have encountered some issues with some applicants recently which make it impractical or unnecessary to hold a public meeting of the property owners as set out in section 6 of the Policy.

DISCUSSION

In the case of the Three Brooks Homeowner's Association, the Association already has an area flat rate charge established and has requested that the catchment area for the charge be expanded to include a newly developed street where the majority of the lots are still owned by the developer. The Association provided to HRM signed letters from the developer requesting that the properties they own be charged the area flat rate already established for the other properties in the subdivision. To confirm this, a ballot letter as described in section 6 of the Policy was mailed to the developer by HRM. The developer returned the ballot letter indicating they were in favour of the area flat rate charge for the 5 lots they own on the street. One lot on the street was no longer owned by the developer, and a ballot letter was also sent to the owner of that property whose mailing address is in Nova Scotia but outside of HRM. In the ballot letter, contact information was provided so that property owners could seek clarification or provide feedback regarding the proposed area flat rate or the nature of the road maintenance proposed. In this case, since it was clearly documented that the developer was in favour of the area flat rate charge, and the only other property owner lived outside of HRM, the need to arrange a public meeting of the property owners was unnecessary and was unlikely to result in any attendees.

In the case of Nowlan Head & Quoddy Point Lot Owners Association, the majority of the lots are still undeveloped and are owned by individuals who live in other parts of Canada, the USA, and Europe. The applicant was able to satisfy the petition requirements of the Policy using an on-line site (surveymonkey.com). Because most of the lots are still undeveloped and most of the owners live outside Nova Scotia, the applicant has confirmed that a meeting of the property owners would be unlikely to result in any attendees.

The applicant would still be required to post notice in the proposed area to notify residents of the change. The only difference in the process would be the waiving of the public meeting requirement.

Staff are therefore seeking amendments to the Policy to provide Council with flexibility to waive the requirement for a public meeting where Council is satisfied that a public meeting would not be in the best interest of the residents or would otherwise be unreasonable.

If Council adopts the amendments, staff are recommending that Council waive the public meeting requirement for both Three Brooks Homeowner's Association and Nowlan Head & Quoddy Point Lot Owners Association as it is not in the best interest of the residents or is unreasonable to require the holding of a public meeting.

Staff are also recommending several housekeeping amendments to the Policy to:

- update the legislative reference from the *Municipal Government Act* to the *Halifax Regional Municipality Charter*;
- add the word "to" to the beginning of section 9 so the section would read "Pursuant **to** this Policy" rather than "Pursuant this Policy"; and
- delete the word "a" in section 12 so the phrase would read "on subject properties" rather than "on a subject properties".

FINANCIAL IMPLICATIONS

There are no financial implications resulting from the recommendations in this report.

COMMUNITY ENGAGEMENT

The recommendations in this report are partly in response to feedback received from applicants under the Private Road Maintenance Cost Recovery Policy.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with the recommendations in the report.

ALTERNATIVES

Council could decline the recommended amendment to the Private Road Maintenance Cost Recovery Policy, or approve an alternative which addresses the issues described in this report.

ATTACHMENTS

Attachment 1: Revised Private Road Maintenance Costs Recovery Policy with the proposed additions underlined and proposed deletions struck out.

Attachment 2: Amending Policy

Attachment 3: Revised Private Road Maintenance Costs Recovery Policy incorporating all the proposed changes.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

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Report Approved by: _____
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Report Approved by: _____
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Attachment 1

Private Road Maintenance Costs Recovery Policy

- 1. Principles.** The Halifax Regional Municipality (HRM) is committed to facilitating public road access for municipal residents whose principal residences are accessed from private roads which do not form part of the HRM municipal street system. It is recognized by HRM that facilitating the maintenance of private roads is a necessary municipal service that will ensure the safety and long term usability of roads situated on privately owned land. Authority to fund work on private road is pursuant to ~~section 65(aaa)~~ clause 79 (ab) of the ~~Municipal Government Act (MGA)~~ Halifax Regional Municipality Charter ("HRM Charter").
- 2. Scope of Assistance.** The purpose of this policy is to provide a financing procedure for the funding and repayment of work to maintain private roads, including culverts, retaining walls, sidewalks, curbs and gutters that are associated with those private roads. Road maintenance includes all work required to maintain the road in a serviceable condition year round and may include snow removal, grading, ditch and culvert and bridge repair and brush clearing. Cost recovery facilitation under this policy is not available for the construction or capital improvement of private roads. HRM will not be involved in the provision of engineering, technical or legal services or advice in respect of the private road maintenance. HRM involvement will be limited to the administration of the area flat rate. This policy applies only to applications for private road maintenance costs recovery facilitation made under this policy. Private road maintenance programs implemented prior to the adoption of this policy by HRM shall continue in effect unmodified.
- 3. Repayment.** Pursuant to ~~MGA section 81~~ section 104 of the HRM Charter HRM has the authority to make by-laws imposing, fixing and providing methods of enforcement of charges for maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads where the cost is incurred under an agreement between the municipality and a person. In particular ~~MGA section 81(3)~~ subsection 104(3) of the HRM Charter provides that the charges may be determined pursuant to the plan or method set out in the implementing by-law.
- 4. Eligibility.** A private road eligible for improvement or maintenance financing under this policy shall include any road that is not public and that provides perpetual direct or indirect access to a public road or highway for at least two properties each of which contains a principal residence. The private road includes the portion of the road and right of way which is not used for vehicle traffic and is available for installation of services or is shoulder, ditch or buffer. If the documentation creating the private road access does not permit the property owners to implement the maintenance work then the legal owner(s) of the property on which the private road is situate must consent in writing to the maintenance of the road.
- 5. Petition.** An application for private road maintenance financing assistance under this policy shall be commenced by presenting a petition to the HRM council. Collectively those signing the petition shall be the applicant for the private road maintenance funding. The presented petition shall be signed by property owners comprising at least two- thirds (66.7%) of both the principal residences and the road frontage on that portion of the private road for which the application is made. The petition shall set out the area to be subject to the application and the nature of the road maintenance proposed, the requested method of area flat rate determination (in conformity with this policy) and the projected annual area flat rate. Upon acceptance of the Petition an HRM staff co-ordinator will be assigned to assist the applicant in processing the application.
- 6. Meeting of Property Owners.** Subsequent to HRM acceptance of the petition an applicant shall call a meeting of the subject property owners. Not less than fourteen (14) days prior to the date of the meeting, notice of the meeting shall be posted in three (3) conspicuous places in the area to which the

rate is to be applied. Notice of the meeting shall also be made not less than fourteen (14) days prior to the date of the meeting to all property owners that will be affected by the area rate through prepaid mail to their tax assessment addresses. The notice of the public meeting shall set out the date and time and place of the meeting, the name(s) of the applicant, describe the area to be subject to the application and the nature of the road maintenance proposed, the requested method of area flat rate determination (in conformity with this policy), the road maintenance plan and amount of the area flat rate to be requested in the application, and advise that rate payers will be entitled to vote and the method of voting. The mail notice shall contain regular postage pre-stamped self return envelopes, proxy forms and ballots approved to form by the HRM staff co-ordinator.

6A (1) Notwithstanding section 6, the requirement for a meeting of the property owners may be waived where Council determines it is not in the best interest of the residents or it is unreasonable to hold such a meeting.

(2) If the public meeting requirement is waived by Council, an applicant shall post notice in three (3) conspicuous places in the area to which the rate is to be applied. Notice shall also be provided to all property owners that will be affected by the area rate through prepaid mail to their tax assessment addresses. The notices must contain the name(s) of the applicant, describe the area to be subject to the application and the nature of the road maintenance proposed, the requested method of area flat rate determination (in conformity with this policy), the road maintenance plan and amount of the area flat rate to be requested in the application, and advise that rate payers will be entitled to vote, the date of the voting and the method of voting. In addition, the notice must provide the contact information for the applicant and the HRM staff co-ordinator so that property owners can seek clarification or provide feedback regarding the proposed area flat rate or the nature of the road maintenance proposed. The report to Regional Council recommending the area flat rate must seek Council approval in the recommendation for the waiver of the meeting, and the reasons for request of the waiver must be clearly explained in the report.

7. Support. The meeting, if the requirement has not been waived by Council, shall be conducted by the applicant under the supervision of the HRM staff co-ordinator and the applicant shall have a register in which those rate payers attending the meeting may place their names and addresses. Prior to a vote being called, the applicant shall make a presentation to the meeting setting out the reasons and proposed purposes for the use of the area rate fund and the amount of the flat rate. The support for the proposed area flat rate shall be the owners of at least two-thirds (66.7%) of the affected properties. Mail in ballots and proxy voting shall be allowed by property owners not in attendance at the public meeting.

8. Application. Upon receipt of an application, HRM Council will consider the establishment of an area flat rate in accordance with the provisions of this policy. The application for the establishment of an area flat rate shall define the proposed area to which the flat rate is to apply with sufficient clarity to allow for proper implementation of the flat rate for billing purposes. The area shall be defined by resolution at Council at the time of setting of the area flat rate. An application shall include a budget in support of the proposed area flat rate, a definition of the area to which the rate shall apply, a declaration setting out the fulfilment of the public notice and public meeting process required under the policy.

9. Area Flat Rate. Pursuant to this policy HRM Council will establish an area flat rate for private road maintenance services to be applied on a per dwelling unit service or adjoining property basis. It is the responsibility of the applicant to determine the method of calculating the area flat rate and to have that stated in the application.

10. Property Owner's Association. Upon HRM Council establishing an area the Applicant shall form, under the Societies Act, an incorporated association of the owners of the subject properties. All subject property owners will be eligible for membership in the association. HRM will enter into an agreement with the association under which the association shall accept responsibility for the implementing and administration of the maintenance services on the private road. Payment of the area rates collected will

be made only to the association. All work performed under private road policy financing arrangements will be under the control and direction of property owner's association and the association shall be wholly responsible for the application of the funds provided.

11. Meetings of the Association. The Property Owner's Association shall have an annual general meeting prior to the end of September in each year, at which meeting the majority of a quorum present shall review and approve the road maintenance plan and budget for the following year. HRM will review the plan and budget to ensure it complies with the purpose of the area flat rate and that sufficient funding can be raised through the area flat rate to fund it. Any changes to the amount of the flat rate shall require majority approval at a special meeting of the Property's Owner's Association called for the purpose of determining the rate increase issue. Notice of the special meeting shall conform to the standards set out above for the application meeting. All proposed area flat rate increases are subject to HRM approval. The Property's Owner's Association may also by special meeting elect to terminate the financial assistance agreement with HRM and upon the termination of the agreement the area flat rate will discontinue.

12. Charge to be Lien. A charge imposed under this policy constitutes a lien on ~~a~~ subject properties in the same manner and with the same effect as rates and taxes under the Assessment Act, and is collectable in the same manner as rates and taxes under this Assessment Act. The lien becomes effective on the completion of the payment of money out of HRM Finance. Interest shall accrue on charges outstanding from the date of billing forward at rate equal to the prime rate of HRM's banker plus two percentage points.

13. Installments. The amount payable as an area charge will be invoiced as installments in two billings during the year on the regular property tax bills.

14. Administration Charges. Pursuant to ~~MGA section 79~~ section 102 of the HRM Charter a charge shall be imposed by HRM for the provision and administration of private road maintenance costs recovery under this policy, which includes, inter alia, billing, collecting and forwarding the area rate funds. The administration fee shall be a set up charge of \$200.00 for each area rate. Applicants should include this fee in their budget calculation in area rate submissions. This administrative charge shall form part of project funding subject to lien and is collectable together with interest as provided for herein.

Attachment 2

Amending Policy

Private Road Maintenance Costs Recovery Policy

BE IT RESOLVED that *Private Road Maintenance Costs Recovery Policy* is amended as follows:

1. Section 1 is amended by:
 - (a) striking out the word, number, brackets and letters “section 65 (aaa)” after the words “pursuant to” and before the words “of the”;
 - (b) adding the word, number, brackets and letters “clause 79 (ab)” after the words “pursuant to” and before the words “of the”;
 - (c) striking out the words, brackets and abbreviate “Municipal Government Act (MGA)” after the words “of the” and before the period; and
 - (d) adding the words, brackets and abbreviate “*Halifax Regional Municipality Charter (“HRM Charter”)*” after the words “of the” and before the period.

2. Section 3 is amended by:
 - (a) striking out the abbreviation, word and number “MGA section 81” after the words “Pursuant to” and before the abbreviation “HRM”;
 - (b) adding the words and number “section 104 of the *HRM Charter*” after the words “Pursuant to” and before the abbreviation “HRM”;
 - (c) striking out the abbreviation, word and number “MGA section 81(3)” after the word “particular” and before the word “provides”; and
 - (d) adding the words and number “subsection 104(3) of the *HRM Charter*” after the word “particular” and before the word “provides”.

3. Section 6A is added after section 6 and before section 7 as follows:

6A (1) Notwithstanding section 6, the requirement for a meeting of the property owners may be waived where Council determines it is not in the best interest of the residents or it is unreasonable to hold such a meeting.

(2) If the public meeting requirement is waived by Council, an applicant shall post notice in three (3) conspicuous places in the area to which the rate is to be applied. Notice shall also be provided to all property owners that will be affected by the area rate through prepaid mail to their tax assessment addresses. The notices must contain the name(s) of the applicant, describe the area to be subject to the application and the nature of the road maintenance proposed, the requested method of area flat rate determination (in conformity with this policy), the road maintenance plan and amount of the area flat rate to be requested in the application, and advise that rate payers will be entitled to vote, the date of the voting and the method of voting. In addition, the notice must provide the contact information for the applicant and the HRM staff co-ordinator so that property owners can seek clarification or provide feedback regarding the proposed area flat rate or the nature of the road maintenance proposed. The report to Regional Council recommending the area flat rate must seek Council approval in the recommendation for

the waiver of the meeting, and the reasons for request of the waiver must be clearly explained in the report.

4. Section 7 is amended by adding the commas and words “,if the requirement has not been waived by Council,” after the word “meeting” and before the word “shall”.
5. Section 9 is amended by adding the word “to” after the word “Pursuant” and before the words “this policy”.
6. Section 12 is amended by striking out the word “a” after the word “on” and before the word “subject”.
7. Section 14 is amended by:
 - (a) striking out the abbreviation, word and number “MGA section 79” after the words “Pursuant to” and before the words “a charge”; and
 - (b) adding the abbreviation, words and number “section 102 of the HRM Charter” after the pursuant to” and before the words “a charge”.

Done and passed in Council on this day of , A.D. 2015

Mayor

Municipal Clerk

Attachment 3

(Incorporating Proposed Changes)

Private Road Maintenance Costs Recovery Policy

1. **Principles.** The Halifax Regional Municipality (HRM) is committed to facilitating public road access for municipal residents whose principal residences are accessed from private roads which do not form part of the HRM municipal street system. It is recognized by HRM that facilitating the maintenance of private roads is a necessary municipal service that will ensure the safety and long term usability of roads situated on privately owned land. Authority to fund work on private road is pursuant to clause 79 (ab) of the *Halifax Regional Municipality Charter ("HRM Charter")*.
2. **Scope of Assistance.** The purpose of this policy is to provide a financing procedure for the funding and repayment of work to maintain private roads, including culverts, retaining walls, sidewalks, curbs and gutters that are associated with those private roads. Road maintenance includes all work required to maintain the road in a serviceable condition year round and may include snow removal, grading, ditch and culvert and bridge repair and brush clearing. Cost recovery facilitation under this policy is not available for the construction or capital improvement of private roads. HRM will not be involved in the provision of engineering, technical or legal services or advice in respect of the private road maintenance. HRM involvement will be limited to the administration of the area flat rate. This policy applies only to applications for private road maintenance costs recovery facilitation made under this policy. Private road maintenance programs implemented prior to the adoption of this policy by HRM shall continue in effect unmodified.
3. **Repayment.** Pursuant to section 104 of the *HRM Charter* HRM has the authority to make by-laws imposing, fixing and providing methods of enforcement of charges for maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads where the cost is incurred under an agreement between the municipality and a person. In particular subsection 104(3) of the *HRM Charter* provides that the charges may be determined pursuant to the plan or method set out in the implementing by-law.
4. **Eligibility.** A private road eligible for improvement or maintenance financing under this policy shall include any road that is not public and that provides perpetual direct or indirect access to a public road or highway for at least two properties each of which contains a principal residence. The private road includes the portion of the road and right of way which is not used for vehicle traffic and is available for installation of services or is shoulder, ditch or buffer. If the documentation creating the private road access does not permit the property owners to implement the maintenance work then the legal owner(s) of the property on which the private road is situate must consent in writing to the maintenance of the road.
5. **Petition.** An application for private road maintenance financing assistance under this policy shall be commenced by presenting a petition to the HRM council. Collectively those signing the petition shall be the applicant for the private road maintenance funding. The presented petition shall be signed by property owners comprising at least two-thirds (66.7%) of both the principal residences and the road frontage on that portion of the private road for which the application is made. The petition shall set out the area to be subject to the application and the nature of the road maintenance proposed, the requested method of area flat rate determination (in conformity with this policy) and the projected annual area flat rate. Upon acceptance of the Petition an HRM staff co-ordinator will be assigned to assist the applicant in processing the application.
6. **Meeting of Property Owners.** Subsequent to HRM acceptance of the petition an applicant shall call a meeting of the subject property owners. Not less than fourteen (14) days prior to the date of the meeting, notice of the meeting shall be posted in three (3) conspicuous places in the area to which the

rate is to be applied. Notice of the meeting shall also be made not less than fourteen (14) days prior to the date of the meeting to all property owners that will be affected by the area rate through prepaid mail to their tax assessment addresses. The notice of the public meeting shall set out the date and time and place of the meeting, the name(s) of the applicant, describe the area to be subject to the application and the nature of the road maintenance proposed, the requested method of area flat rate determination (in conformity with this policy), the road maintenance plan and amount of the area flat rate to be requested in the application, and advise that rate payers will be entitled to vote and the method of voting. The mail notice shall contain regular postage pre-stamped self return envelopes, proxy forms and ballots approved to form by the HRM staff co-ordinator.

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7. **Support.** The meeting, if the requirement has not been waived by Council, shall be conducted by the applicant under the supervision of the HRM staff co-ordinator and the applicant shall have a register in which those rate payers attending the meeting may place their names and addresses. Prior to a vote being called, the applicant shall make a presentation to the meeting setting out the reasons and proposed purposes for the use of the area rate fund and the amount of the flat rate. The support for the proposed area flat rate shall be the owners of at least two-thirds (66.7%) of the affected properties. Mail in ballots and proxy voting shall be allowed by property owners not in attendance at the public meeting.

8. **Application.** Upon receipt of an application, HRM Council will consider the establishment of an area flat rate in accordance with the provisions of this policy. The application for the establishment of an area flat rate shall define the proposed area to which the flat rate is to apply with sufficient clarity to allow for proper implementation of the flat rate for billing purposes. The area shall be defined by resolution at Council at the time of setting of the area flat rate. An application shall include a budget in support of the proposed area flat rate, a definition of the area to which the rate shall apply, a declaration setting out the fulfilment of the public notice and public meeting process required under the policy.

9. **Area Flat Rate.** Pursuant to this policy HRM Council will establish an area flat rate for private road maintenance services to be applied on a per dwelling unit service or adjoining property basis. It is the responsibility of the applicant to determine the method of calculating the area flat rate and to have that stated in the application.

10. **Property Owner's Association.** Upon HRM Council establishing an area the Applicant shall form, under the Societies Act, an incorporated association of the owners of the subject properties. All subject property owners will be eligible for membership in the association. HRM will enter into an agreement with the association under which the association shall accept responsibility for the implementing and administration of the maintenance services on the private road. Payment of the area rates collected will

be made only to the association. All work performed under private road policy financing arrangements will be under the control and direction of property owner's association and the association shall be wholly responsible for the application of the funds provided.

11. Meetings of the Association. The Property Owner's Association shall have an annual general meeting prior to the end of September in each year, at which meeting the majority of a quorum present shall review and approve the road maintenance plan and budget for the following year. HRM will review the plan and budget to ensure it complies with the purpose of the area flat rate and that sufficient funding can be raised through the area flat rate to fund it. Any changes to the amount of the flat rate shall require majority approval at a special meeting of the Property's Owner's Association called for the purpose of determining the rate increase issue. Notice of the special meeting shall conform to the standards set out above for the application meeting. All proposed area flat rate increases are subject to HRM approval. The Property's Owner's Association may also by special meeting elect to terminate the financial assistance agreement with HRM and upon the termination of the agreement the area flat rate will discontinue.

12. Charge to be Lien. A charge imposed under this policy constitutes a lien on subject properties in the same manner and with the same effect as rates and taxes under the Assessment Act, and is collectable in the same manner as rates and taxes under this Assessment Act. The lien becomes effective on the completion of the payment of money out of HRM Finance. Interest shall accrue on charges outstanding from the date of billing forward at rate equal to the prime rate of HRM's banker plus two percentage points.

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14. Administration Charges. Pursuant to section 102 of the *HRM Charter* a charge shall be imposed by HRM for the provision and administration of private road maintenance costs recovery under this policy, which includes, inter alia, billing, collecting and forwarding the area rate funds. The administration fee shall be a set up charge of \$200.00 for each area rate. Applicants should include this fee in their budget calculation in area rate submissions. This administrative charge shall form part of project funding subject to lien and is collectable together with interest as provided for herein.