



**MIDDLETON TOWN COUNCIL
TOWN HALL – COUNCIL CHAMBERS
MONDAY, SEPTEMBER 19, 2016
7:00 P.M.**

AGENDA

- 16.09.01 CALL TO ORDER
- 16.09.02 APPROVAL OF THE AGENDA
- 16.09.03 PROCLAMATIONS
 - .01 Right to Know Week
 - .02 Fire Prevention Week
- 16.09.04 APPROVAL OF THE MINUTES
- 16.09.05 NEW BUSINESS
 - .01 Committee of the Whole Recommendations
 - a. Ratification of Transfer to Reserve Fund
 - .02 Provincial Registry of Heritage Property - Process
 - .03 Municipal Government Act Review
 - .04 Date for Swearing-In of New Council
- 16.09.06 REPORTS
 - .01 Management
 - .02 Planning Services – July & August 2016
 - .03 Planning Services Public Advisory Panel
 - .04 Police Advisory Board
 - .05 Mayor
- 16.09.07 CORRESPONDENCE
- 16.09.08 ANYTHING BY MEMBERS
- 16.09.09 IN-CAMERA (PERSONNEL)
- 16.09.10 ADJOURNMENT

Lesa Rossetti

From: Young, Julie A <Julie.Young@novascotia.ca>
Sent: June-23-16 1:44 PM
To: 'dobcao@eastlink.ca'; 'munbar@eastlink.ca'
Subject: Right to Know Week in Nova Scotia
Attachments: 2016 Municipal Proclamation Template.docx



Office of the Information
& Privacy Commissioner
Nova Scotia

Dear Mr. Frost and Ms. Rossetti:

RE: Right to Know Week in Nova Scotia

I am very pleased to take this opportunity to once again encourage your participation in Right to Know Week.

September 28, 2016 is **International Right to Know Day**. In Canada, the week of September 26 to October 2 has been designated as "Right to Know Week." There will be various activities in most provinces/territories and at the national level during this week.

To enhance public awareness, we invite your municipality to proclaim September 26 to October 2, 2016 Right to Know Week in your municipality. A proclamation would serve as an official endorsement demonstrating your commitment to openness, transparency and accountability, greatly increasing the number of citizens who will become aware of their right to access information.

The purpose of Right to Know Week is to celebrate the right of all Canadians, and in our case specifically Nova Scotians, to access information in the custody or under the control of public bodies, municipalities, and health custodians as guaranteed by access to information legislation. Such legislation entrenches the accountability of governments by ensuring they operate with transparency and openness.

As the Nova Scotia's Information and Privacy Commissioner, I am participating in this Canada-wide effort along with my other Canadian Commissioner colleagues to raise awareness of the right to access information and its value, with a local focus on what it means to those living and working in Nova Scotia.

In 2015 the OIPC sent invitations to the Province of Nova Scotia and all municipalities inviting them to proclaim Right to Know Week. The following proclaimed or passed a motion/resolution for Right to Know Week in Nova Scotia:

- Province of Nova Scotia
- Town of Bridgewater

This Year, in an effort to increase the number of municipalities proclaiming Right to Know Week, I am sending this invitation earlier to ensure there is enough time to pass a motion to sign the proclamation. We will send another invitation later in the summer as a reminder.

A copy of the proposed wording for the proclamation is attached. It has been formatted in such a way as to make it easy for you to complete. As soon as your municipality has passed a motion to sign the proclamation please provide the OIPC with a signed and sealed copy of the proclamation, which will be posted on the Right to Know Week webpage of our website www.foipop.ns.ca. We also may Tweet about it on our Twitter page, [@NSInfoPrivacy](https://twitter.com/NSInfoPrivacy). We invite you to retain an original signed copy of the Right to Know Proclamation and post it in a prominent location in your municipality.

Thank you for your participation in Right to Know Week. If you require further information, please contact Julie Young, Executive Assistant, OIPC at 902-424-4684, or julie.young@novascotia.ca.

I invite you to feel free to contact my office you have any questions or concerns relating to your administration of your access responsibilities under *Part XX* of the *Municipal Government Act*.

Yours truly,



Catherine Tully
Information and Privacy Commissioner for Nova Scotia

Sent on behalf of Catherine Tully by:

Julie Young
Executive Assistant to the Commissioner



Office of the Information and Privacy Commissioner for Nova Scotia

Telephone: 902.424.4684; Toll free within NS: 1.866.243.1564

TDD: 1.800.855.0511; Fax: 1.902.424.8303

www.foipop.ns.ca

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**PROCLAMATION
RIGHT TO KNOW WEEK
September 26 to October 2, 2016**

WHEREAS the **Town of Middleton** has adopted the principles of openness, transparency and accountability; and

WHEREAS part XX of the *Municipal Government Act* gives citizens a right of access to information in the custody or under the control of the **Town of Middleton**; and

WHEREAS access to information ensures citizens of Nova Scotia have the opportunity for meaningful participation in the democratic process; and

WHEREAS a celebration of the right of citizens to access information will facilitate informed public participation in policy formulation, ensure fairness in government decision-making and permit the airing and reconciliation of divergent views; and

WHEREAS the **Town of Middleton** joins all other Canadian jurisdictions and democracies world-wide in acknowledging Right to Know Week;

THEREFORE be it resolved that I, **Calvin Eddy, Mayor of Middleton**, do hereby proclaim September 26 to October 2, 2016 to be Right to Know Week in the **Town of Middleton**.

Dated at Middleton, Nova Scotia
This 19th day of September 2016.

Calvin Eddy, Mayor

Proclamation

FIRE PREVENTION WEEK

OCTOBER 9 - 15, 2016

WHEREAS, the town of Middleton is committed to ensuring the safety and security of all those living in and visiting Middleton; and

WHEREAS, fire is a serious public safety concern both locally and nationally, and homes are the locations where people are at greatest risk from fire; and

WHEREAS, working smoke alarms cut the risk of dying in reported home fires in half and three out of five home fire deaths result from fires in properties without working smoke alarms and in one-fifth of all homes with smoke alarms, none were working; and

WHEREAS, when smoke alarms should have operated but did not do so it was usually because batteries were missing, disconnected, or dead; and

WHEREAS, Middleton residents should install smoke alarms in every sleeping room, outside each separate sleeping area, and on every level of the home and install smoke alarms and alert devices that meet the needs of people who are deaf or hard of hearing; and

WHEREAS, Middleton residents who have planned and practiced a home fire escape plan are more prepared and will therefore be more likely to survive a fire; and

WHEREAS, Middleton first responders are dedicated to reducing the occurrence of home fires and home fire injuries through prevention and protection education; and

WHEREAS, Middleton residents are responsive to public education measures and are able to take personal steps to increase their safety from fire, especially in their homes; and

WHEREAS, the 2016 Fire Prevention Week theme, "Don't Wait, Check the Date! Replace Smoke Alarms Every 10 Years" effectively serves to remind us that we need working smoke alarms to give us the time to get out safely.

THEREFORE, I Calvin Eddy, Mayor of Middleton do hereby proclaim October 9-15, 2015, as Fire Prevention Week throughout this town, and I urge all the people of Middleton to install smoke alarms in every bedroom, outside each sleeping area, and on every level of the home, including the basement and to support safety activities and efforts of fire and emergency services during Fire Prevention Week 2016.

Dated at the Town of Middleton
this 19th day of September, 2016

Calvin Eddy, Mayor

Sharon McAuley

Subject: Final batch of Housekeeping Issues for Consultation
Attachments: Issue 47 memo.pdf; Issue 67 memo.pdf; Issue 70 memo.pdf; Issue 68 memo v2.pdf; Issue - by-law repeal or amendment.pdf; Memo 1 - Capitalize 'Council'.pdf; Memo 2 - Replace 'policy' with 'Administrative Order'.pdf; Memo 3 - Move all definitions to beginning.pdf; Memo 4 - Insert FOIPOP definitions at the beginning of Charter.pdf; Memo 5 - Change title of Treasurer to Chief Financial Officer.pdf; Memo 6 - Amend 10(3) to allow CAO to sign municipal documents.pdf; Memo 7 - Add 19(6) to add Mayor to non-disclosure requirement.pdf; Memo 8 - Create new Parts for Committees and Community Councils.pdf; Memo 9 - Change name of Part II from Administration to Officers.pdf; Amendment 10 - Broaden powers of CAO.PDF; Memo 13 - Make AG records exempt from FOIPOP.PDF; Memo 15 - Council's by-law authority to impound or dispose of dogs thatpdf; Memo 16 - Allow Clerk to certify administrative orders and resolutions f....pdf; Memo 17 - Delete one of the penalty provisions (s. 369) for offences.pdf; Memo 12 - Entitle Municipal Solicitor to attend all Council and committe....pdf

Mayors, Wardens, Village Commissioners, CAOs, Village Clerk/Treasurers,

Enclosed are 20 more housekeeping memos for you to consider, many of these originated from the HRM Charter Review. This is the final batch of memos to be considered for the fall 2016 session of the legislature.

60 housekeeping issues have now been sent out for your review and comment to date. Of the 60 housekeeping issues, 19 proposed amendments to the MGA are recommended and 24 are recommended for the HRM Charter. The MGA Review website will be updated to reflect all proposed amendments for public input. We will not post the full listing of 60 housekeeping issues on the website because we don't want to make the process too onerous or confusing for the public.

The deadline for input on these housekeeping amendments has been extended to **September 30, 2016**.

Written positions can be sent to:

Association of Municipal Administrators of Nova Scotia
Attention Janice Wentzell, Executive Director
Suite 1106
1809 Barrington Street
Halifax, NS, B3J 3K8
T: (902) 423-2215
F: (902) 425-5592
jwentzell@amans.ca

and

Nova Scotia Department of Municipal Affairs
Attention Jeff Shute, Director, CPA, CA, Policy and Finance
1505 Barrington Street, 14N
Halifax, NS, B3J 2M4
T: (902) 424-6161

F: (902) 424-0821

Jeff.Shute@novascotia.ca

We will continue to update you on the work we are doing on the Review and if you have any questions, please contact either one of us or David Atchison at 902-225-2288 or datchison@amans.ca.

Thank you for your input received to date.

Yours truly,



Jeff Shute, CPA, CA
Project Coordinator, *Municipal Government Act* Review
Director, Policy and Finance, DMA



Erin Beaudin
Chair, *Municipal Government Act* Review Committee
Chief Administrative Officer, Town of Wolfville

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 5, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 10 – Broaden powers of CAO



HRM's description in memo “HRM Charter Amendments – Policy Rationale”

Section 35(A) CAO Powers – this re-states the powers of the CAO by giving a general grant of power and listing restrictions. This was drafted to give Council greater clarity, as there have been occasions when several questions have been raised (2015 discussion on executive pension plan is one example).

Section(s) affected: Charter – 35
MGA – 31

Recommendation from Burchell MacDougall:

Recommendation for Charter: Do not amend

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

We do not recommend that the amendment sought by HRM be made.

We do not understand this proposed amendment in the context of HRM's discussion of it, above. According to the above, the proposed amendment would give the CAO a general grant of power and then list restrictions. However, the draft amended Charter that HRM has provided does not make these changes. There does not appear to be any general grant of powers to the CAO in HRM's proposed amendments. Most of the proposed changes to s. 35 in HRM's draft are very minor changes in capitalization or terminology.

Aside from the lack of clarity in HRM's request, a change to the powers of the CAO is not likely to be a housekeeping amendment, but would be a substantive amendment that would require further analysis and review.

Given the above, we do not recommend the proposed amendments to the Charter changing the powers of the CAO.

MGA - Discussion and rationale for recommendation

We do not recommend this amendment for the MGA for the reasons set out above. Section 31 of the MGA is almost identical to s. 31 of the Charter.

HRM Charter - Amendments

None recommended

MGA – Amendments

None recommended

Relevant provisions

Section 35 of the Charter, which sets out the powers and responsibilities of the CAO, currently reads as follows. Section 31 of the MGA is almost identical.

Responsibilities of Chief Administrative Officer

35 (1) The Chief Administrative Officer shall

- (a) coordinate and direct the preparation of plans and programs to be submitted to the Council for the construction, rehabilitation and maintenance of all municipal property and facilities;
- (b) ensure that the annual budget is prepared and submitted to the Council;
- (c) be responsible for the administration of the budget after adoption;
- (d) review the drafts of all proposed by-laws and policies and make recommendations to the Council with respect to them;
- (e) carry out such additional duties and exercise such additional responsibilities as the Council may, from time to time, direct.

(2) The Chief Administrative Officer may

- (a) attend all meetings of the Council and any board, committee, commission or corporation of the Municipality and make observations and suggestions on any subject under discussion;
- (b) appoint, suspend and remove all employees of the Municipality, with power to further delegate this authority;
- (c) act, or appoint a person to act, as bargaining agent for the Municipality in the negotiation of contracts between the Municipality and any trade union or employee association and recommend to the Council agreements with respect to them;
- (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,
 - (ii) sell personal property belonging to the Municipality that, in the opinion of the Chief Administrative Officer, is obsolete, unsuitable for use, surplus to requirements of, or no longer needed by, the Municipality, and may delegate this authority to employees of the Municipality,
 - (iii) personally, or by an agent, negotiate and execute leases of real property owned by the Municipality that are for a term not exceeding one year, including renewals,
 - (iv) establish departments of the municipal administration,

- (v) adopt a system of classification of positions of municipal officers and employees and specify offices that must not be filled by the same person,
- (vi) determine the salaries, wages and emoluments to be paid to municipal officers and employees, including payment pursuant to a classification system,
- (vii) where not otherwise provided for, fix the amount in which security is to be given by municipal officers and employees, the form of security, the manner in which security is to be given and approved and the nature of the security to be given;

(e) authorize, in the name of the Municipality, the commencement or defence of a legal action or proceedings before a court, board or tribunal, including reporting the commencement of the legal action, defence or proceeding to the Council at the next meeting and may, where the Council so provides by policy, delegate this authority to employees of the Municipality;

(f) where the Council so provides by policy, settle a legal action or proceeding in accordance with the policy.

(3) A lease executed by the Chief Administrative Officer is as binding on the Municipality as if it had been specifically authorized by the Council and executed by the Mayor and Clerk on behalf of the Municipality.

(4) Notwithstanding subsections 37(1), 41(1) and 43(1) and Section 45, the Chief Administrative Officer may, with the consent of Council, perform the duties of the Clerk, Treasurer, Engineer and Administrator, or any of them, pursuant to this Act.

(5) The Chief Administrative Officer may from time to time appoint an employee of the Municipality to act in the place of the Chief Administrative Officer when the Chief Administrative Officer is absent or unable to act.

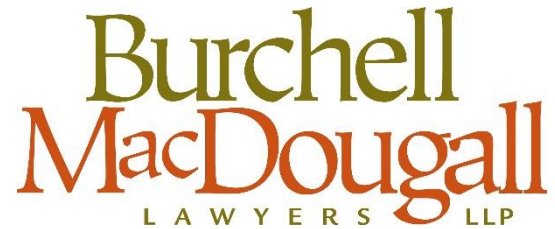
MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 12, 2016

RE: MGA Review – Housekeeping amendments
Repeal of a bylaw



Issue information from Steering Committee

Tracking #:

Working Group:

Issue commented on: The MGA does not outline a process to repeal a By-law. In practice, municipalities generally follow the same process used to enact a By-law. Is clarification needed in the MGA to describe how to repeal a By-law?

Amendments proposed by commenter: Section 209 outlines the process to repeal a planning document as an example. Should similar wording be added for By-laws? Section 168 outlines the process for adopting a By-law. Should clarity be provided in this section on how to repeal? Perhaps a similar clause to 209.

Comments from SC:

Section(s) affected: 168

Recommendation from Burchell MacDougall: Amend as set out below.

Discussion and rationale for recommendation

In our opinion, strictly speaking it is not necessary to do an amendment to make it clear that a municipality can repeal a bylaw, and that it has to follow the same process as passing a new by-law. Legally, it is recognized that the power to make by-laws includes the power to amend or repeal them, and that the same process has to be used.

Despite the above, an amendment would help clarify the situation. We note that the Alberta *Municipal Government Act* contains a provision similar to the amendment we are suggesting.

Proposed Amendment

Add an amendment to state that the process and requirements to repeal or amend a by-law is the same as the process required to pass a by-law. We suggest an amendment along the following lines:

Amendment and repeal

168A (1) The power to make a by-law made pursuant to this Act or another enactment includes a power to amend or repeal the by-law.

(2) The amendment or repeal must be made in the same way as the original by-law and is subject to the same consents or conditions or advertising requirements that apply to the passing of the original by-law, unless this Act or another enactment provides otherwise.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: May 27, 2016

RE: MGA Review – Housekeeping amendments
Issue 47



Issue information from Steering Committee

Tracking #: 47

Working Group: Governance Efficiencies

Issue commented on: Clarify definition of capital budget

Amendments proposed by commenter: Better definition of “capital budget”. Municipalities are currently submitting CIPs in accordance with Gas tax Agreement.

Comments from SC: None provided

Section(s) affected: Part IV

Recommendation from Burchell MacDougall: Do not amend.

Discussion and rationale for recommendation

There is only one appearance of the phrase “capital budget” in the MGA, located in section 87 as follows:

Capital budget filing

87 The Minister shall not establish borrowing limits or approve a borrowing resolution for a municipality, village or service commission in a fiscal year unless the municipality, village or service commission, as the case may be, has filed with the Minister its *capital budget* for that fiscal year in the form prescribed by the Minister.

As noted in s. 87, there is a prescribed form setting out the information that must be contained in the capital budget. As a result, in our opinion there does not need to be any further clarification or definition of “capital budget” in the MGA.

Amendments: None.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: May 27, 2016

RE: MGA Review – Housekeeping amendments
Issue 67



Issue information from Steering Committee

Tracking #: 67

Working Group: Governance Efficiencies

Issue commented on: The act should spell out in layman's language the procedures, rules etc. that govern the municipalities. All rules that apply to one particular item should be grouped together and not spread out throughout the document unless there are links to the additional information if it is located elsewhere. Ease of use is a necessity.

Amendments proposed by commenter: None provided

Comments from SC: None provided

Section(s) affected: Presumably the entirety of the MGA

Recommendation from Burchell MacDougall: Do not amend at present. Consider amendments to improve clarity after the Working Groups and other stakeholders have reviewed the substantive issues related to all parts of the MGA.

Discussion and rationale for recommendation

We do not recommend that the MGA be “overhauled” as proposed at present. We should wait until the working groups and other stakeholders have considered the substantive issues in the MGA before deciding whether and how to significantly rewrite the MGA.

We agree that many of the sections could be subject to review and revision as proposed by the commenter. However, we do not recommend any amendments at this stage of the MGA review for the following reasons:

1. There are many substantive issues being considered with respect to the MGA. There will likely be several significant amendments to the MGA coming out of the work of the Working Groups. We think it will be more efficient and effective to wait for the amendments from the Working Groups before deciding whether to embark on a substantial rewrite.

2. Related to the above, at least parts of a rewrite would likely involve substantive wording changes and would go beyond “housekeeping”.
3. Municipalities are familiar with the current structure and wording of the MGA, and there are Court decisions considering the existing provisions. We will have to be conscious of this and ensure that any efforts to clarify the MGA as proposed by the commenter do not have the opposite effect.
4. The availability of time and resources will also be a factor in determining the extent to which the MGA can be “overhauled”.

Amendments: None recommended at present.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 12, 2016

RE: MGA Review – Housekeeping amendments
Issue 68 - Revised



Issue information from Steering Committee

Tracking #: 68

Working Group: Governance Efficiencies

Issue commented on:

- a) 17(3) term Ordinary Citizen needs to be defined
- b) 17(4) seat vacated if absent from regular meeting of Council. Needs to be defined.
- c) Clarification on video-presence should be added to act
- d) Should a Councillor who represents a ward not be required to live in that ward?

Amendments proposed by commenter: None provided.

Comments from SC: None provided

Section(s) affected: 17

Recommendation from Burchell MacDougall:

Issue (a) - Amend.

Issue (b) - Do not amend.

Issue (c) – Do not amend at present time - not housekeeping in nature and is to be reviewed in more detail by committee.

Issue (d) - Do not amend at present time - not housekeeping in nature and is to be reviewed in more detail by committee.

Discussion and rationale for recommendation

a) s. 17(3) issue – definition of “Ordinary Citizen” [“ordinarily resident”]

Section 17(3) of the MGA reads as follows:

Mayor or councillor resignation

(3) A mayor or councillor who ceases to be *ordinarily resident* in the municipality ceases to be qualified to serve as mayor or as councillor.

There is no definition for the term “ordinarily resident” in the MGA. However, the *Municipal Elections Act* contains extensive guidelines for determining what constitutes “ordinarily resident”. Sections 16 and 17 of the *Municipal Elections Act* are at the end of this Memo.

Amendments: It would be helpful to incorporate the provisions of the *Municipal Elections Act* regarding “ordinarily resident” into the MGA. We propose an amendment by adding a new definition to section 3, Interpretation, along the following lines:

“ordinarily resident” has the same meaning as in the *Municipal Elections Act*;

We have not provided numbering for the inclusion of this definition at this time, as other definitions may change over the course of this project.

b) s. 17(4) issue – define

Section 17(4) reads:

Mayor or councillor resignation

(4) A mayor or councillor who, without leave of the council, is absent from three consecutive regular meetings of the council, ceases to be qualified to serve as mayor or as a councillor.

We are of the opinion that this section is clear and as such, no amendment is required.

Amendments: None recommended.

c) Clarification on video conferencing

We agree with the commenter that the MGA should be clarified as to whether council meetings may be held by video conference, and/or a member of council can attend a meeting via video conference. If video conferencing is to be permitted, guidance on how and when it may be used will be needed, either in the MGA itself or through other material.

However, an amendment of this nature is not a housekeeping matter. We understand it is being further reviewed in detail through the MGA review process.

Amendments: None recommended at this time – not a housekeeping amendment.

d) Should a councillor who represents a ward not be required to live in that ward?

Section 17(3) of the Act requires a councillor to be “ordinarily resident in the municipality”, but at present a councillor is not required to reside in the ward (or polling district) that they represent.

Any amendments to this subsection would not be housekeeping in nature. We understand this issue is being further reviewed.

Amendments: None recommended at this time – not a housekeeping amendment.

Applicable legislation

Sections 16 and 17 of the *Municipal Elections Act*

Ordinarily resident

- 16 (1) A person is ordinarily resident in the place where the person lives and to which, whenever absent, the person intends to return.
- (2) A person may be ordinarily resident in only one place at a time.
- (3) A person does not cease to be ordinarily resident in a place by leaving the place for a temporary purpose only.
- (4) Where a person usually sleeps in one place and has meals or is employed in another place, the person is ordinarily resident in the place where the person sleeps.
- (5) Where a person has temporary residential quarters, those quarters are considered to be the place in which the person is ordinarily resident only if the person has no other place the person considers as that person's ordinary place of residence.
- (6) Where a person is being provided with food, lodging or other social services by a shelter, hostel or similar institution, the person is ordinarily resident in the shelter, hostel or institution.
- (7) Where the rules set out in subsections (1) to (6) are not sufficient to determine the place where a person is ordinarily resident, the place where the person is ordinarily resident must be determined by the appropriate election officer with reference to all the facts of the case.
- (8) A person who, on the first advance polling day,
(a) is a student;
(b) is ordinarily resident in a polling district or polling division other than that of the person's family home; and
(c) is qualified as an elector,
may elect to be included on the list of electors in one or the other of the polling divisions, but not both, and is deemed to be ordinarily resident in that polling division.
- (9) A person is not ordinarily resident in a residence that is generally occupied by the person only between the beginning of May and the end of October but that is generally unoccupied between the beginning of November and the end of April unless the person does not have another residence in the Province where the person resides between the beginning of November and the end of April. 2011, c. 68, s. 4.

Eligibility as councillor

- 17 (1) Except as otherwise provided in this Act, every person shall be qualified to be elected as councillor who
- (a) is a Canadian citizen of the full age of eighteen years at the time of nomination;
- (b) has been ordinarily resident in the municipality or in an area annexed to the municipality for a period of six months preceding nomination day, and continues to so reside;
- (c) has obtained a certificate in the prescribed form from the clerk, treasurer, collector or other official having knowledge of the facts that, as of nomination day, the charges that are liens on the person's property and the taxes due to the municipality by the person have been fully paid or all instalments or interim payments that are due as of nomination day have been paid; and
- (d) is not disqualified under this Act.
- (2) A councillor who is otherwise qualified shall be eligible for re-election.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: May 27, 2016

RE: MGA Review – Housekeeping amendments
Issue 70



Issue information from Steering Committee

Tracking #: 70

Working Group: Public Safety

Issue commented on:

Under the current act the wording says the department must come as a “body corporate” to be registered. What if the incorporation does not exist? What if the department is not “registered”? In cases of injury or death a firefighter may be ineligible for WCB or LODD.

Amendments proposed by commenter:

Amend wording to require all fire departments to be a body corporate.

Comments from SC:

This will ensure that injured fire fighters are eligible for WCB or LODD compensation.

Section(s) affected: 294 (1)

Recommendation from Burchell MacDougall: Do not amend

Discussion and rationale for recommendation

Section 294(1) of the MGA states:

294(1) A body corporate may apply to a municipality for registration as a fire department.

Section 3(af) defines “fire department”:

(af) “fire department” means an *incorporated body* that provides fire services and that may, at its option, provide one or more other emergency services, and includes a fire or emergency services department of a municipality, village, fire protection district or other body corporate;

The combination of s. 3(af) and s. 294(1) means that only organizations that are corporate bodies (under the *Societies Act*, or pursuant to other legislation) can be considered fire departments and can be registered as such with a municipality.

Amendments: None recommended.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: July 29, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 1 – Capitalization of “Council”



HRM’s description in memo “HRM Charter Amendments – Policy Rationale”

Capitalization – “Council” has been capitalized throughout the Charter in keeping with the usual format for titles.

Note: Clarification – As set out below, the above description from HRM is not accurate – “Council” is already capitalized in the Charter. The amendment request is to capitalize “Community Council”

Section(s) affected: 3(m) and (n), 20(1A)(a), 24 through 31A, 222(1), 355(2), 367(1), 371.

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

As noted above, HRM's description of this amendment is to capitalize "Council" throughout the Charter. This is somewhat confusing, since "Council" is already capitalized throughout the Charter, except where it is used as part of the phrase "community council". I have confirmed with Dirk Slauenwhite, solicitor with HRM, that the capitalization of "Community Council" is the change that HRM is seeking to make.

Capitalizing "Community Council" will not have any substantive effect on the Charter or the way in which it is interpreted. Making this change will also make the capitalization of “Community Council” consistent with the present capitalization in the Charter.

We recommend that this requested amendment be approved for the Charter. That is, that "Community Council" be capitalized where ever it occurs in the Charter.

MGA - Discussion and rationale for recommendation

The situation with respect to the MGA is somewhat different than the Charter. The word "council" is not currently capitalized in the MGA. While there would be no drawbacks or problems with capitalizing "council" and "community council" in the MGA, there would be no real benefit either. Since the word "council" occurs many times throughout the entire MGA, capitalizing "council" might be a tedious process for no real benefit.

While the phrase "community council" is used only a few times in the MGA, capitalizing "community council" without capitalizing "council" would be inconsistent.

HRM Charter - Amendments

Amend the Charter to capitalize “community council” to read “Community Council” everywhere it occurs in the Charter. The affected sections include the following: 3(m) and (n), 20(1A)(a), 24 through 31A, 222(1), 355(2), 367(1), 371.

MGA - Amendments

None recommended.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: July 29, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 2 – Replace “policy” with “Administrative Order”



HRM’s description in memo “HRM Charter Amendments – Policy Rationale”

Section 3 – “policy” has been replaced with “Administrative Order” throughout the Charter. There has been only one change to the policy definition being the removal of the reference “including Administrative Order”. The removal of these three words will make it identical to the definition of policy in the MGA. Post-amalgamation the HRM Act used the term of Administrative Order to mean policy. It continued to do this after the 1999 introduction of the MGA, which switched to the more modern term “policy.” HRM would like its legislation to reflect the term “Administrative Order” so Council’s naming practice for policies is expressly mentioned in the Charter and all existing AOs do not have to be redrafted. This is an administrative efficiency.

Section(s) affected: 3 and numerous other sections

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

The change from the use of the word "policy" to the term "Administrative Order" will not have any substantive effect on the Charter or the way in which it is interpreted. HRM's rationale for making this change is reasonable. Using the term "Administrative Order" rather than "policy" will make the wording of the Charter consistent with the practice of HRM that has been in place for many years in referring to policies as "Administrative Orders" in its internal documentation and in the documents made available to the public.

MGA - Discussion and rationale for recommendation

Since HRM is the only municipality, to our knowledge, that currently uses the term "Administrative Order" to refer to policies made by Council, there would be no benefit to changing the terminology in the MGA, and in fact it would probably be counterproductive, since the municipalities governed by the MGA are accustomed to the current references to "policy".

HRM Charter - Amendments

We recommend that the Charter be amended by replacing "policy" with "Administrative Order" throughout the Charter.

In addition, the definition of "policy" at section 3(aw) will have to be revised as follows:

3 (aw) “~~policy~~Administrative Order” means a resolution of the Council that is required, pursuant to this Act, to be recorded in the by-law records of the Municipality, except where the context otherwise requires, ~~and includes an administrative order~~;

MGA - Amendments

None recommended

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: July 29, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 3 – Move all definitions to the beginning of the Act



HRM's description in memo “HRM Charter Amendments – Policy Rationale”

Section 3 Definitions – all definitions in the Charter have been moved into one section at the start.
Consolidating all definitions will make them easier to find and increase transparency.

Section(s) affected: 3 and numerous others

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

We recommend amending the Charter as requested by HRM to move all definitions to s. 3.

At present most of the definitions in the Charter are located in Section 3. However, the definitions related to Planning and Development (Part VIII) and Subdivision (Part IX) are located at the beginning of Part VIII (s. 209). Section 209 contains 23 definitions. There are also a few other definitions throughout the Charter that apply to the sections or Parts in which they are found.

Moving all of the definitions in the Charter to s. 3 will not have any substantive effect on the meaning or interpretation of the Act. The question is whether placing all of the definitions at the beginning will make them "easier to find and increase transparency" as claimed by HRM in the above.

Because HRM has requested that all definitions be moved to the beginning of the Charter, we recommend that these amendments be made, since in our view this change is really a matter of preference.

MGA - Discussion and rationale for recommendation

We do not recommend any amendment to the MGA.

As stated above, whether all definitions are placed at the beginning of the Act, or are left in their current locations, is a matter of preference rather than substance.

It is our understanding that, where definitions are only applicable to a certain part or section of a statute, it is acceptable in modern legislative drafting for those definitions to be placed at the beginning of that part or section. As with the Charter, in the MGA there are many definitions that apply only to Planning and Development (Part VIII) and Subdivision (Part IX), which are currently found at the beginning of Part VIII in s. 191. There are also many definitions that apply only to the FOIPOP provisions at Part XX, found in Section 461. Moving all of these definitions to the beginning of the MGA would create a very lengthy section 3. It is arguably more “user-friendly” to leave the definitions where they are.

We are not convinced that moving all of the definitions to the beginning of the MGA would be beneficial. Based on our review of the issues that arose from the MGA review consultation process, it does not appear that any municipality or other stakeholder requested that all of the definitions in the MGA be placed at the beginning of the Act. Municipalities and other users of the MGA are accustomed to working with the definitions in their current locations.

HRM Charter - Amendments

Make the following amendments:

- (a) Move all 23 definitions from Planning and Development – Part VIII, currently located in s. 209, to s. 3.
- (b) Move s. 111(1), which defines "commitment" for the purposes of s. 111, to s. 3 to read along the lines of the following:

~~1113 (??1) In this Section,~~ “commitment” means, for the purposes of Section 111, a commitment with respect to the possession, use or control of physical or intellectual property.

- (c) Move the definition of "income" from s. 86 to s. 3, to read along the lines of the following:

~~863 (??1) In this Section and Section 88,~~ “income” means, for the purposes of Sections 86 and 88, a person’s total income from all sources for the calendar year preceding the fiscal year of the Municipality and, where so determined by the Council, includes the income of all other members of the same family residing in the same household, but does not include an allowance paid pursuant to the War Veterans Allowance Act (Canada) or pension paid pursuant to the Pension Act (Canada).

MGA - Amendments

None recommended.

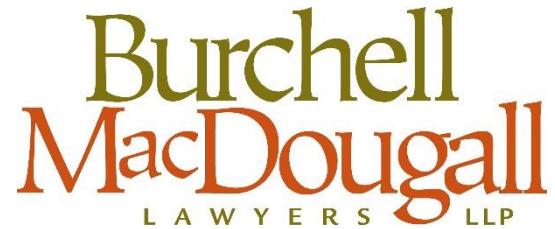
MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: July 29, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 4 – Insert FOIPOP definitions at the beginning of the Charter



HRM's description in memo “HRM Charter Amendments – Policy Rationale”

Section 3(i) – the FOIPOP definitions have been included as FOIPOP has been moved into the HRM Charter in this draft version. Consolidating all legislation relevant to HRM in the Charter is designed to make it easier to find and increase transparency.

Note: Clarification – HRM's memo references section 3, but the real change at issue is moving FOIPOP (Part XX of the MGA) into the Charter.

Section(s) affected: 3 and numerous others

Recommendation from Burchell MacDougall:

Recommendation for Charter: Do not amend at present

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

HRM's memo references inserting the FOIPOP definitions from Part XX of the MGA into the definitions section, s. 3, of the Charter. As noted above, this would be part of an amendment to insert all of Part XX of the MGA into the Charter, so that the Charter has its own FOIPOP provisions. At present, s. 366 of the Charter simply states “Part XX of the *Municipal Government Act* applies to the Municipality.”

HRM states that "consolidating all legislation relevant to HRM in the Charter is designed to make it easier to find and increase transparency". We agree with this statement in principle. However, we do not believe that moving incorporating Parts of the MGA into the Charter should happen piecemeal. There are several Parts of the MGA that the Charter incorporates. In addition to the FOIPOP provisions, these include the following:

- (a) Section 122 of the Charter - incorporates Part V of the MGA – Deed Transfers
- (b) Section 364 of the Charter - incorporates Part XVI of the MGA – Boundaries
- (c) Section 365 of the Charter - incorporates Part XIX of the MGA – Municipal Affairs

We are not clear whether HRM is proposing to move all of the above parts to the Charter at this time. It seems to us that making these changes would be ambitious given the current time constraints.

In light of the above, we recommend that the FOIPOP provisions not be added to the Charter at this time, and therefore the FOIPOP definitions should not be added to s. 3 of the Charter.

MGA - Discussion and rationale for recommendation

As discussed in our memo on Amendment 3, we recommend leaving the definitions in the MGA in their current locations. We therefore do not recommend moving the FOIPOP definitions from Part XX to s. 3.

HRM Charter - Amendments

None recommended

MGA - Amendments

None recommended

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: July 29, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 5 – Change the title of “Treasurer” to “Chief Financial Officer”



HRM’s description in memo “HRM Charter Amendments – Policy Rationale”

Section 3(n) – the title of Treasurer has been changed to Chief Financial Officer. This is to modernize the title and make it more reflective of the HRM Finance Director’s duties.

Section(s) affected: 3 plus numerous other sections

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

We recommend the Charter be amended as requested by HRM to change all reference to “Treasurer” to “Chief Financial Officer”.

The suggested amendment is simply a change in title. The amendment will not affect the substance or interpretation of the Charter. Since HRM already has a senior staff person designated as "Chief Financial Officer", who performs the duties of the Treasurer set out in the Charter, amending the Charter to reflect this terminology makes sense.

MGA - Discussion and rationale for recommendation

We do not recommend making the same change to the MGA.

The situation with respect to the MGA is somewhat different. Municipalities (other than HRM) throughout the province use a variety of titles and descriptions for their senior financial staff people who perform the duties of Treasurer that are set out in the MGA. Examples include "Director of Finance" (Truro); "Manager of Finance" (Kings County); "Finance Manager" and "Director of Corporate Services" (Colchester County). In some smaller municipalities the CAO performs the duties of Treasurer. In light of the wide variety of terminology used by different municipalities, it would probably be counter-productive to amend the MGA to rename the "Treasurer" as "Chief Financial Officer".

HRM Charter - Amendments

Amend s. 3 as follows:

3 (by) “~~Treasurer~~Chief Financial Officer” means the Chief Financial Officer~~Treasurer~~ of the Municipality, and includes a person acting under the supervision and direction of the Chief Financial Officer~~Treasurer~~;

Also replace “Treasurer” with “Chief Financial Officer” wherever it appears in the Charter.

MGA - Amendments

None recommended

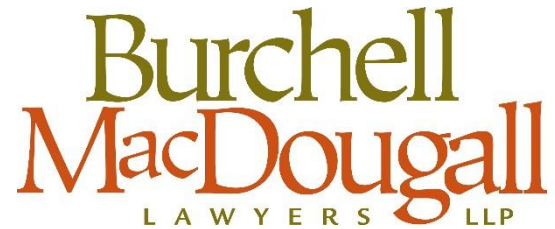
MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 2, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 6 – Amend 10(3) to allow CAO to sign municipal documents



HRM’s description in memo “HRM Charter Amendments – Policy Rationale”

Section 10(3) – adds the CAO to the list of individuals permitted to sign on behalf of the Municipality. Currently only the Mayor and the Clerk must both sign. There are times when the Mayor could be away for an extended period (eg, vacation, business trip, illness). With no one else designated as a permitted signatory, HRM’s business processes cease until the Mayor returns. Adding the CAO as another permitted signatory is an administrative efficiency so that the business of the Municipality can continue if the Mayor is not available.

Note: Clarification – We confirmed with Derk Slaunwhite, a solicitor with HRM, that the goal of this amendment is to have the CAO available as a back-up signatory, who would sign documents only when the Mayor and Deputy Mayor are not available. We also confirmed that under the proposed amendment, s. 10(3) would still require 2 signatures – documents could not be signed by only the CAO on his or her own.

Section(s) affected: 10(3) of Charter, 13(3) of MGA

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

We recommend that the amendment sought by HRM be made.

Taking HRM’s word that the current wording causes problems when both the Mayor and Deputy Mayor are absent, the amendment to allow the CAO to sign documents when necessary sought seems reasonable. Two signatures would still be required, so there would not be any decrease in security or accountability.

The amendment should permit the CAO to sign deeds or other documents in place of the Mayor or Clerk if the Mayor and Deputy Mayor, or the Clerk, are unavailable to do so.

MGA - Discussion and rationale for recommendation

We recommend that the equivalent section of the MGA [s. 13(3)] not be amended, for the following reasons:

- (a) This amendment was not requested by any municipalities or stakeholders in the review consultation process.
- (b) In many municipalities, the Clerk and the CAO are the same person, so this amendment would not be of any assistance.
- (c) Section 13(3) of the MGA already provides flexibility to allow municipalities make a policy to designate a person other than the Mayor/Warden and Clerk to sign documents. Municipalities can use this power to tailor their own solution to the problem of needing to have documents signed when the Mayor/Warden and Deputy Mayor/Warden or the Clerk are all unavailable.

HRM Charter - Amendments

Amend s. 10 along the lines of the following:

10 (3) The Mayor and Clerk or the persons designated by the Council by policy may sign a deed or other document to which the Municipality is a party on behalf of the Municipality.

(4) If the Mayor or Clerk is unable or unavailable to sign a deed or other document on behalf of the Municipality, the Chief Administrative Officer may sign the document in place of the Mayor or Clerk.

MGA - Amendments

None recommended.

Relevant sections of the Charter and MGA

Charter

10 (3) The Mayor and Clerk or the persons designated by the Council by policy may sign a deed or other document to which the Municipality is a party on behalf of the Municipality.

MGA

14 (3) The mayor or warden and clerk or the persons designated by the council by policy may sign a deed or other document to which the municipality is a party on behalf of the municipality.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 2, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 7 – Amend 19(6) to add Mayor to non-disclosure requirements



HRM’s description in memo “HRM Charter Amendments – Policy Rationale”

Section 19(6) – add the Mayor to the non-disclosure clause for In Camera discussions. This clause was added at Council’s request some years ago, to deter HRM Councillors and employees from discussing in-camera issues publicly by making them financially liable for any losses incurred by the sharing of information. A drafting oversight omitted to include the “Mayor” along with “Councillor” and “employee.” This change includes reference to the Mayor or, alternatively, could simply read “any member of the Council” to cover the Councillors and the Mayor.

Section(s) affected: 19(6) of Charter, 22(6) of MGA

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Amend as set out below

HRM Charter - Discussion and rationale for recommendation

We recommend that the amendment sought by HRM be made.

Section 19(6) states that a councillor or employee of the Municipality who discloses information presented at an in camera/private meeting of Council is personally liable if the disclosure results in a financial loss to the Municipality or financial gain to the councillor or employee.

We agree with HRM’s comments. Section 3(p) of the Charter defines “councillor” as a Council member other than the Mayor, so s. 19(6) as it is currently worded does not apply to the Mayor. This oversight should be corrected.

MGA - Discussion and rationale for recommendation

We also recommend that the MGA be amended in the same way. The same analysis applies to the equivalent section of the MGA, s. 22(6).

HRM Charter - Amendments

Amend s. 19(6) along the lines of the following:

19 (6) Any member of the Council~~councillor~~ or employee of the Municipality who discloses any report submitted to, or details of matters discussed at, a private meeting of the Council or a committee, as a result of which the Municipality has lost financially or the member of the Council~~councillor~~ or employee of the Municipality has gained financially, is liable in damages to the Municipality for the amount of the loss or gain.

MGA - Amendments

Amend s. 22(6) along the lines of the following:

22 (6) Any member of the council~~councillor~~ or employee of a municipality who discloses any report submitted to, or details of matters discussed at, a private meeting of the council or committee, as a result of which the municipality has lost financially or the member of the council~~councillor~~ or employee of a municipality has gained financially, is liable in damages to the municipality for the amount of the loss or gain.

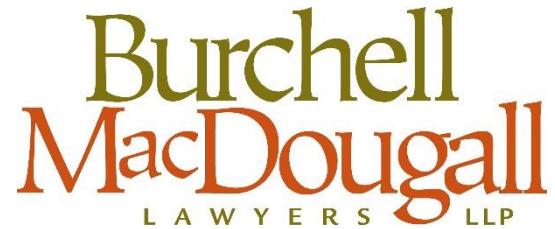
MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 2, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 8 – Reorganize to create new Parts for “Committees” and “Community Councils”



HRM's description in memo “HRM Charter Amendments – Policy Rationale”

Part 1(A) Committees and Part 1(B) Community Councils – this is a new section that merely consolidates all information on committees and community councils in one spot. There have been no substantive changes, only a few more details for clarification of powers to some sections.

Section(s) affected: 21 to 32, 48 of Charter
24 to 27, 44 of MGA

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

We recommend that the amendment sought by HRM be made.

The sections of the Charter at issue, sections 21 to 32, deal with both committees and community councils at the same time. It would be clearer for the Charter to have separate Parts for these two distinct topics.

Note that the draft amendments proposed by HRM include a substantive change to s. 31A, which currently allows a Community Council to establish incentive or bonus zoning arrangements in place of Council, but only in the HRM by Design Downtown Plan Area and the Centre Plan Area. The changes proposed by HRM would give Community Councils this power throughout the entire Municipality if authorized to do so by Council or in a land use by-law. We do not recommend this change to s. 31A at this stage, since it appears to be beyond a housekeeping amendment.

MGA - Discussion and rationale for recommendation

We do not recommend any amendment to the MGA.

The situation with the MGA is different from the Charter in this area, since the MGA does not have any provisions dealing with community councils. In our opinion there would be no significant benefit to amending the MGA.

HRM Charter - Amendments

Amend to create a Part entitled “Committees”, which will contain the existing sections 21, 22, 23 and 32. This Part will also contain existing s. 48, which creates and sets out the responsibilities of the audit committee. Section 48 is currently located in Part II, Administration, along with the provisions regarding audits, the municipal auditor and the Auditor General.

Also create a Part called “Community Councils”, which will contain the existing sections 24 to 28, and sections 30 to 31A. Section 29, dealing with the power of Community Councils to establish area rates, will be moved to Part IV – Finance, where the rest of the provisions of the Charter dealing with area rates and other taxes and charges is located.

We suggest the amendments look along the lines of the following. Note the changes below do not include capitalizing “Community Council” and replacing “policy” with “Administrative Order” as recommended in our Memos on Amendments 1 and 2.

PART IA **COMMITTEES**

Standing, special and advisory committees

21 (1) The Council may establish standing, special and advisory committees.

(2) Each committee shall perform the duties conferred on it by this Act, any other Act of the Legislature or the by-laws or policies of the Municipality.

(3) The Council may appoint persons who are not members of the Council to a committee and may establish a procedure for doing so.

(4) A committee shall operate in accordance with the procedures provided in this Act and the procedural policy for the Council applies to committees unless the Council, by policy, decides otherwise.

(5) A member of a committee established by the Council who is a Council member is not entitled to additional remuneration for serving on the committee but may be reimbursed for expenses incurred as a committee member.

(6) A committee member who is not a Council member may be

(a) paid an annual honorarium for serving on the committee, as determined by the Council by policy, and an honorarium may be a different amount if the person is chair of a committee and honorariums may differ for different committees; and

(b) reimbursed for expenses incurred as a committee member.

(7) Where a Council member is appointed to a committee, board or commission as a representative of the Council, the Council member’s appointment ceases if and when person ceases to be a Council member.

Audit committee

48-21A (1) The Council shall annually appoint an audit committee.

(2) The responsibilities of the audit committee include

- (a) a detailed review of the financial statements of the Municipality with the Auditor;
- (b) an evaluation of internal control systems and any management letter with the Auditor;
- (c) a review of the conduct and adequacy of the audit;
- (d) such matters arising out of the audit as may appear to the audit committee to require investigation;
- (e) such other matters as may be determined by the Council to be the duties of an audit committee;
- (f) any other matters as may be determined by the Council.

Vacancy on board, commission or committee

22 (1) A person appointed by the Council as a member of a board, commission or committee pursuant to this or any other Act of the Legislature who, without leave of the board, commission or committee, is absent from three consecutive regular meetings, ceases to be a member.

(2) The secretary of the board, commission or committee shall immediately notify the Council of a vacancy, and the Council shall fill the vacancy.

Citizen advisory committees

23 The Council may establish, by policy, citizen advisory committees which shall advise the Council, as directed by the Council.

Community committees

23A32 (1) The Council may establish, by policy, a community committee for an area.

(2) A policy establishing a community committee must

- (a) define the boundaries of the area for which the committee is responsible and set out the duties of the committee; and
- (b) include such other matters as the Council deems advisable.

(3) The powers and duties of a community committee may include

- (a) monitoring the provision of services to the area for which the committee is responsible and recommending the appropriate level of services, areas where additional services are required and ways in which the provision of services can be improved;
- (b) the establishment of one or more advisory subcommittees;
- (c) making recommendations to the Council respecting any matter intended to improve conditions in the area for which the committee is responsible including, but not limited to, recommendations respecting
 - (i) inadequacies in existing services provided to the area and the manner in which they might be resolved, additional services that might be required and the manner in which the costs of funding these services might be raised,
 - (ii) by-laws or regulations, including those regarding planning, that are required, and

(iii) the adoption of policies that would allow the people of the area to participate more effectively in the governance of the area.

PART IB COMMUNITY COUNCILS

Community councils

24 (1) The Council may, by policy, establish a community council for an area.

(2) A policy establishing a community council must define the boundaries of the community and the community must include the whole, or part of, at least three polling districts.

(3) The number of electors in a community must be at least twice the average number of electors per polling district in the Municipality.

(4) The community council for each community consists of the councillors elected from the polling districts included, in whole or in part, in the community.

Powers and duties of community council

25 The powers and duties of a community council include

(a) monitoring the provision of services to the community and recommending the appropriate level of services, areas where additional services are required and ways in which the provision of services can be improved;

(b) the establishment of one or more advisory committees;

(c) recommending to the Council appropriate by-laws, regulations, controls and development standards for the community;

(d) recommending to the Council appropriate user charges for the different parts of the community;

(e) making recommendations to the Council respecting any matter intended to improve conditions in the community including, but not limited to, recommendations respecting

(i) inadequacies in existing services provided to the community and the manner in which they might be resolved, additional services that might be required and the manner in which the costs of funding these services might be raised, and

(ii) the adoption of policies that would allow the people of the community to participate more effectively in the governance of the community; and

(f) making recommendations to the Council on any matter referred to it by the Council.

Election of chair and rules

26 (1) A community council shall annually elect its chair from among its members.

(2) The chair shall be elected at the first meeting of the community council after the members are elected.

(3) Subject to any policy adopted by the Council, a community council may make rules governing its procedures, the appointment of committees and the number and frequency of its meetings.

(4) Any rules passed by a community council must be filed with the secretary of the community council and the Clerk.

Annual public meeting of community council

27 (1) A community council shall hold an annual public meeting in the community in each year to report to the public concerning its activities and to receive the views of the public respecting all matters within its mandate.

(2) Except as otherwise provided in this Section, all meetings of a community council must be open to the public.

(3) A community council may meet privately to discuss matters relating to

(a) acquisition, sale, lease and security of municipal property;

(b) personnel matters;

(c) litigation or potential litigation;

(d) legal advice eligible for solicitor-client privilege;

(e) public security.

(4) No decision may be made at a private community council meeting except a decision concerning procedural matters or to give direction to staff of the Municipality.

(5) A record that is open to the public must be made, noting the fact that the community council met in private, the type of matter that was discussed, as set out in subsection (3), and the date, but no other information.

Secretary of community council

28 (1) The Chief Administrative Officer shall appoint an employee of the Municipality to act as the secretary of a community council.

(2) The secretary of a community council is responsible for maintaining the minutes of the community council and its books, records and accounts and for the certification of any document required to be certified as having been adopted by the community council.

Section 29 – move to become s. 96A – see below

Community planning advisory committee and land-use by-law

30 (1) This Section applies to a community council if the Council so provides in the policy establishing the community council.

(2) A community council may appoint a planning advisory committee for the community and Part VIII applies with all necessary changes.

(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 and Part VIII applies with all necessary changes.

(4) A community council stands in the place and stead of the Council with respect to variances and site-plan approvals and Part VIII applies with all necessary changes.

Development agreements by community councils

31 (1) This Section applies to a community council if the Council so provides in the policy establishing the community council.

- (2) Where a 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.
- (3) A development agreement, or amendment to a development agreement, entered into by a community council must be signed by the Mayor and the Clerk on behalf of the Municipality.
- (4) Where a development agreement entered into by a community council purports to commit the Municipality to an expenditure, the commitment has no force or effect until approved by the Council.

HRM by Design Downtown Plan Area and Centre Plan Area

31A (1) This Section applies only with respect to the HRM by Design Downtown Plan Area and the Centre Plan Area.

- (2) A community council stands in the place and stead of the Council with respect to incentive or bonus zoning agreements if the Council so provides in the policy establishing the community council.
- (3) A development officer stands in the place and stead of the Council with respect to incentive or bonus zoning agreements to the extent that the Council so provides by land-use by-law.
- (4) An incentive or bonus zoning agreement, or amendment to an incentive or bonus zoning agreement, entered into by a community council or a development officer must be signed by the Mayor and the Clerk on behalf of the Municipality.
- (5) Where an incentive or bonus zoning agreement entered into by a community council or a development officer purports to commit the Municipality to an expenditure, the commitment has no force or effect until approved by the Council.

Move s. 29 to Part IV – Finance. We suggest moving it to become s. 96A:

Area rates

29-96A (1) This Section applies to a community council if the Council so provides in the policy establishing the community council.

- (2) A community council may determine expenditures, to be financed by area rate, that should be made in, or for the benefit of, the community.
- (3) Except in the first year that it is established, a community council shall submit to the Council its proposed operating budget for services to be provided to the community to be financed by area rate and its proposed capital budget for projects for which the Municipality will be required to borrow money and will charge back all or part of the debt charges to the community.
- (4) The Council shall levy an area rate in the community to recover the cost of
- (a) that part of the budget of the community council that is accepted by the Council;
 - (b) the debt charges applicable to capital expenditures in and for the benefit of the community that are approved by the Council, except those capital expenditures financed out of the general levy;
 - (c) the community's fair share of the cost of services provided generally in the Municipality and financed by area rates;
 - (d) the additional administrative costs, determined by the Council to have been imposed by any additional services provided to the community;

- (e) the administrative costs of the community council, including any expenses paid to the members;
- (f) the estimated deficit from the previous year; and
- (g) a reasonable allowance, as determined by the Council, for the abatement, losses and expenses respecting any amounts that might not be collected or collectable,

less

- (h) any subsidy to the area rate from the general levy that may be approved by the Council;
 - (i) the estimated surplus from the previous year; and
 - (j) the revenues from the community attributable to charges levied with respect to services or capital facilities provided.
- (5) The area rate may be at different rates in different parts of the community.
- (6) A community council may determine upon what money contained in the budget approved by the Council is spent, if the sum of all expenditures does not exceed the sum so approved.
- (7) A community council is subject to the general purchasing, contracting and tendering policies established by the Council.
- (8) A community council may not expend funds with respect to a capital project that cannot be paid for in full out of the area rate, unless the project has been approved by the Council.
- (9) A community council may not, in any fiscal year, incur or make expenditures that will result in a total expenditure in excess of its budget for that year.

MGA - Amendments

None recommended.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 2, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 9 – Change title of Part II from “Administration” to “Officers”



HRM’s description in memo “HRM Charter Amendments – Policy Rationale”

Part II – Officers of the Municipality

Title – “Administration” has been changed to “Officers” to more accurately reflect the contents of the section, which has to do with roles and responsibilities for specific positions.

Section(s) affected: Title of Part II

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

We recommend that the amendment sought by HRM be made.

We are not convinced that the title “Officers of the Municipality” is any more accurate or descriptive than the existing title, “Administration of the Municipality”. Part II does contain descriptions and assigns roles and responsibilities for various senior positions, like the CAO, Clerk, Treasurer, Engineer, Auditor and Auditor General. However, it also has other provisions relating to the administration of the Municipality, such as records management, proof of Municipal documents in court, and pension plans.

Having said the above, the amendment sought by HRM is innocuous and will not affect the interpretation or substance of the Charter, so in light of HRM’s request we recommend the amendment be made.

MGA - Discussion and rationale for recommendation

We do not recommend any amendment to the MGA.

As stated above, we are not convinced that changing the word “Administration” to “Officers” in the title to Part II will make the MGA any more accurate or clear. Since this request was not made by any of the municipalities

in the MGA review consultations, and municipalities are accustomed to the current wording, we suggest leaving the title of Part II as is.

HRM Charter - Amendments

Change the title for Part II as follows:

PART II
~~ADMINISTRATION~~ OFFICERS OF THE MUNICIPALITY

MGA - Amendments

None recommended.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 6, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 12 – Entitle Municipal Solicitor to attend all Council and committee meetings



HRM's description in memo “HRM Charter Amendments – Policy Rationale”

Section 36(A)(3) – clarify the Municipal Solicitor may attend all Council and committee meetings. This is an addition that brings legislation in line with practice. The role of the Municipal Solicitor is to provide legal advice to the Municipality which includes both the CAO and Council and therefore he or she should have the option to be present at all Council meetings. Currently the legislation only specifically states that the CAO may attend all Council meetings. Technically the Solicitor could be barred from attending meetings without explicit legislative authority to attend. This change confirms the authority and practice to attend all meetings just like the CAO.

NOTE: The proposed amendment as presented in the draft amended Charter provided by HRM would do more than what is outlined in the above description, as set out in the discussion in this Memo.

Section(s) affected: Charter – new section in Part II, 36(2), 19(3) and 148(4)(a)
MGA – new section in Part II

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

We recommend that most of the amendment sought by HRM be made.

HRM is correct that at present, the Charter does not state the Municipal Solicitor is entitled to attend all Council and committee meetings. The Charter does not require that there be a Municipal Solicitor at all.

The amendment proposed by HRM would:

- (a) create a new section of the Charter in Part II, under which the CAO would designate an employee of the Municipality to be the Municipal Solicitor and the Municipal Solicitor may designate a Deputy Municipal Solicitor, both of whom would be required to be lawyers entitled to practice law in Nova Scotia;

- (b) entitle the Municipal Solicitor to attend all meetings of Council, committees and other boards or commissions of the Municipality;
- (c) state the Municipal Solicitor may, with the approval of Council and the CAO, act for a “municipal body”;
- (d) empower the Municipal Solicitor to alter the organization, change the language, and correct errors in any HRM by-law;
- (e) move section 36(2) of the Charter to the newly-created section [s. 36(2) states that a report from the solicitor is to be presented to Council by the solicitor].

We recommend that all of the amendments proposed by HRM be made except (d) above.

(a) and (b): According to HRM’s rationale, amendments (a) and (b) above would simply make the Charter reflect current practice and confirm the Municipal Solicitor’s authority to attend all Council and committee meetings. We see no drawback to making these two changes to the Charter, since they have been requested by HRM.

(c): Amendment (c) above also seems uncontroversial, and probably a reflection of the current practice in HRM at present – likely HRM solicitors presently act for HRM entities like the Water Commission. We see no difficulty with this part of the amendment, especially since the CAO and Council must consent before the Municipal Solicitor acts for an HRM entity. Our only hesitation with this aspect of the amendment is that we are not sure it is necessary – even without the amendment, we believe the Municipal Solicitor would be able to act for an HRM entity if directed to do so by the CAO and Council. However, we see no drawback to making this explicit in the Charter.

Note that the wording proposed by HRM is that the Municipal Solicitor may act for a “municipal body”, which is a defined term in the FOIPOP provisions of Part XX of the MGA. As noted in our Memo on proposed HRM Amendment 4, we do not recommend that the FOIPOP provisions of the MGA be added to the Charter at present. As a result, we suggest that instead of referring to a “municipal body”, the amendment adopt the terminology from s. 35(2)(a) of the Charter, which sets out the power of the CAO to attend all meetings of “Council and any board, committee, commission or corporation of the Municipality.”

(d): In our opinion, granting the Municipal Solicitor the power to alter by-laws after they have been passed by Council is not a housekeeping amendment. We recommend that HRM be asked to provide further analysis and research, including examples of other jurisdictions that have a similar provision and an explanation of the process by which the solicitor would make changes to an existing by-law, before this part of the amendment be considered.

(e): If a new section is added to the Charter regarding the Municipal Solicitor, it makes sense to move s. 36(2) to this new section, so all provisions regarding the responsibilities and powers of the solicitor are in the same place in the Charter.

MGA - Discussion and rationale for recommendation

We do not recommend any part of this amendment for the MGA.

HRM differs from almost all other municipalities in the Nova Scotia in that it has its own in-house legal department with several solicitors as HRM employees (a small number of other municipalities do have in-house legal counsel). Other municipalities retain lawyers in private practice, and use legal counsel to varying extents, depending upon their size, resources, and needs. Some municipalities have their solicitors attend all council meetings as well as some committee meetings, but some smaller municipalities only call on their solicitor to attend council or committee meetings, or for other matters, as needed.

In our opinion, this difference between HRM and other municipalities in the province makes it unwise and unnecessary to make the same or similar amendments to the MGA regarding a municipal solicitor as those proposed for the Charter.

- (a) Requiring all municipalities to have an “official” Municipal Solicitor with the power to attend all council and committee meetings could be problematic. As stated, at present in many municipalities, legal counsel only attends council or committee meetings if asked to do so by the CAO or Council.
- (b) The amendment sought by HRM states that the Municipal Solicitor is appointed by the CAO. Imposing this requirement on all municipalities in the MGA would be a concern, since the practice of some municipalities is to have the solicitor selected by council.
- (c) To our knowledge, no problems or concerns regarding municipal solicitors were raised during the MGA Review consultation process, so it appears this issue is not a concern for municipalities.

HRM Charter - Amendments

Amend the Charter as follows:

- (a) create a new section under which the CAO will designate an employee of the Municipality to be the Municipal Solicitor and the Municipal Solicitor may designate a Deputy Municipal Solicitor, both of whom are required to be lawyers entitled to practice law in Nova Scotia;
- (b) entitle the Municipal Solicitor to attend all meetings of Council, committees and other boards or commissions of the Municipality;
- (c) state that the Municipal Solicitor may, with the approval of Council and the CAO, act for an HRM entity;
- (d) move section 36(2) of the Charter to the new “Municipal Solicitor” section;
- (e) change the references to the “solicitor for the Municipality” to “Municipal Solicitor” throughout the Charter, including s. 19(3) and s. 148(4)(a).

We suggest the wording of the amendments be along the lines of the following:

New section 36A as follows:

Municipal Solicitor

36A (1) The Chief Administrative Officer shall designate an employee of the Municipality who is licensed to practice law in the Province to be the Municipal Solicitor of the Municipality;

(2) The Municipal Solicitor may appoint an employee of the Municipality who is licensed to practice law in the Province to be the Deputy Municipal Solicitor, who shall act in the place of the Municipal Solicitor at the request of, or in the absence of, the Municipal Solicitor;

(3) The Municipal Solicitor may attend all meetings of the Council and any Community Council, board, committee, commission or corporation of the Municipality;

(4) The Municipal Solicitor may, with the consent of the Council and the Chief Administrative Officer, act for any board, commission or corporation of the Municipality;

Delete s. 36(2) to become s. 36A(5) as follows:

~~36 (2)-36A(5)~~ A report or recommendation from the ~~solicitor of the Municipality~~ Municipal Solicitor shall be presented to the Council by the Municipal sSolicitor and the Chief Administrative Officer shall be informed of the contents in advance of the presentation to the Council, unless the report or recommendation is with respect to the Chief Administrative Officer.

Amend s. 19(3) as follows:

(3) No decision may be made at a private Council meeting except a decision concerning procedural matters or to give direction to the Municipal Solicitor or other staff of, ~~or solicitors for,~~ the Municipality.

Amend s. 148(4)(a) as follows:

(4) The Municipality is not required to put a property up for tax sale if

(a) the Municipal sSolicitor for the Municipality advises that a sale of the property would expose the Municipality to an unacceptable risk of litigation;

MGA – Amendments

None recommended.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 5, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 13 – Making Auditor General files exempt from FOIPOP



HRM’s description in memo “HRM Charter Amendments – Policy Rationale”

Section 52(A) – Municipal Auditor General and FOI. This aligns FOI rules for the Municipal AG with the Provincial AG so that all information contained in AG files, audits and records is exempt from FOIPOP disclosure. Currently the legislation is silent on the status of the Municipal AG in regards to FOIPOP. This change is the same language used in the NS Auditor General Act and confirms that Municipal AG information is also meant to be confidential.

Section(s) affected: New section (proposed 52A)

Recommendation from Burchell MacDougall:

Recommendation for Charter: Do not amend

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

We do not recommend that the amendment sought by HRM be made.

HRM is proposing that a new provision be added to the Charter in the sections dealing with the HRM Auditor General. This new section would state that all of the records held in the Office of the Auditor General would be exempt from disclosure under the Freedom of Information and Protection of Privacy (“FOIPOP”) provisions of the Charter/MGA (Part XX of the MGA) and exempt from disclosure under any other legislation.

HRM notes that the provincial *Auditor General Act* contains a provision similar to the one sought for the Charter; s. 13(2) of the *Auditor General Act* states that all information contained in the files of the Office of the provincial AG is exempt from the *Freedom of Information and Protection of Privacy Act* and disclosure under any other legislation. HRM proposes that the provisions related to the HRM AG should be the same as those related to the provincial AG in this respect.

In our opinion, this amendment is not a housekeeping amendment. Making the records of the HRM AG exempt from disclosure under FOIPOP may be seen as a significant issue by the public, the media and others. The Charter was amended to add the provisions creating the HRM AG fairly recently (2008), and a provision stating

that the HRM AG's records were not subject to disclosure was not included in those amendments. This may have been an oversight at the time, or there may have been a policy reason for not including this provision.

We suggest that this amendment should not be made without further research on the issue, including the rationale for not including this provision in the 2008 amendments and perhaps a review of how this issue is treated in other jurisdictions.

MGA - Discussion and rationale for recommendation

We do not recommend any amendment to the MGA.

The MGA does not have provisions for a municipal Auditor General, so this issue does not apply to the MGA.

HRM Charter - Amendments

None recommended.

MGA - Amendments

None recommended.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 5, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 15 – Council’s by-law authority to impound or dispose of dogs that “attack”



HRM’s description in memo “HRM Charter Amendments – Policy Rationale”

Section 193(1)(h)(iii) and Section 195 Dog bylaw – expand Council’s by-law authority to deal with dogs that either attack OR are fierce or dangerous. Currently peace officers may only impound a dog if it is proven to be fierce or dangerous. However dogs may not meet the burden of proof for “fierce” or “dangerous” but still attack other dogs or humans – for example, a dog that is generally calm but may be aggressive towards certain animals or in certain circumstances. The definition of “fierce” or “dangerous” is subjective from case to case and this change would allow Council the option to amend the Animal By-law to provide peace officers greater authority to deal with dogs that attack by removing the ambiguity and permitting officers to deal with any dogs that attack others.

Section(s) affected: Charter – 193(1)(h)(iii) and 195
MGA – 175(1)(h)(iii) and 177

Recommendation from Burchell MacDougall:

Recommendation for Charter: Do not amend

Recommendation for MGA: Do not amend

HRM Charter - Discussion and rationale for recommendation

We do not recommend that the amendment sought by HRM be made.

The amendment proposed would add the word “attack” to section 193(1)(h)(iii) and to section 195, so they would read as follows:

193 (1) Without limiting the generality of Section 188, the Council may make by-laws

...
(h) authorizing the dog control officer to impound, sell, kill or otherwise dispose of dogs

....
(iii) that attack or are fierce or dangerous,

195 At the trial of a charge laid against the owner of a dog that attacks, that is fierce or dangerous, that persistently disturbs the quiet of a neighbourhood by barking, howling or otherwise or that runs at large, contrary to a by-law, in addition to the penalty, the judge may order that the

(a) dog be destroyed or otherwise dealt with...

HRM suggests that the definitions of “fierce” or “dangerous” are subjective from case to case, and that adding the word “attacks” to the Charter would add clarity and broaden HRM’s authority to deal with aggressive dogs.

We do not agree that the Charter needs to be amended as HRM has requested. Under s. 193(1)(e) of the Charter, Council has the authority to define “fierce and dangerous dogs” in its animal control by-law. If HRM wants to clarify that staff may impound or dispose of dogs that attack another animal or a human, it may do so by defining “fierce and dangerous” dogs in its by-law to include such dogs. By way of example, the Cape Breton Regional Municipality Dog By-Law contains the following definition:

“Fierce or Dangerous” means any individual dog:

- which inflicts bites or attacks a human being or domestic animal; or
- with a demonstrated propensity, tendency or disposition to attack, to cause injury to or otherwise endanger the safety of human beings or domestic animals; or
- which when either unmuzzled, unleashed, or unattended by its owner, or a person in whose care the dog was placed by its owner, in a vicious or terrorizing manner, approaches any person in an apparent attitude of attack upon streets, sidewalks, any public grounds, or places or on private property; or
- owned, harboured or trained primarily or in part for the purposes of fighting; unless the circumstances described in the Part of this By-law titled “Provoked Attacks” are met. (*emphasis added*)

The model Dog By-Law produced by the Nova Scotia Association of Municipal Administrators contains a similar definition of “fierce or dangerous dog”.

Another problem with HRM’s proposed amendment is that it would add “attack” to two provisions of the Charter that deal with fierce or dangerous dogs, but would leave two other such provisions unamended. Section 193(1)(f) allows Council to make by-laws regulating the “keeping of fierce or dangerous dogs”, and s. 194 gives a peace officer the power to obtain a warrant to enter premises and seize a dog that is fierce or dangerous. It seems inconsistent to add the word “attack” in some sections that deal with fierce and dangerous dogs, but not others.

In our opinion, HRM can achieve its goal through amending its animal control by-law to include a specific and comprehensive definition for “fierce or dangerous dogs”, which will be more effective and clearer than simply adding the word “attack” to s. 193(1)(h)(iii) and s. 195 of the Charter.

MGA - Discussion and rationale for recommendation

We do not recommend the amendment to the MGA.

The above analysis applies equally to the MGA. The MGA’s provisions regarding dog by-laws and dog control are practically identical to the Charter’s.

HRM Charter - Amendments

None recommended.

MGA - Amendments

None recommended.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 5, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 16 – Allow Clerk to certify administrative orders and resolutions for use in court



HRM’s description in memo “HRM Charter Amendments – Policy Rationale”

Section 206(1) Prima facie proof – this change would allow Council administrative orders and resolutions to be certified by the Clerk, in addition to the Clerk’s current power to certify bylaws. Currently the Clerk must either sign an affidavit and file it with the court or testify in court that Council passed an administrative order or resolution, because the power only allows him/her to certify bylaws. This is an administrative efficiency to eliminate the Clerk being called into court frequently.

Section(s) affected: Charter – 206
MGA – 188

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Amend as set out below

HRM Charter - Discussion and rationale for recommendation

We recommend that the amendment sought by HRM be made.

Section 206 of the Charter, and the equivalent section of the MGA (s. 188) currently states that a copy of a by-law that is certified by the Clerk can be admitted into evidence in any court as *prima facie*¹ proof of the by-law and that it was duly passed by Council. This provision saves time and resources, since without s. 206 the only way to prove the content of a by-law and that it was properly passed would be to have the Clerk attend court and testify. A complete copy of s. 206 of the Charter (and of s. 188 of the MGA) is set out at this end of this Memo.

HRM’s proposal is that s. 206 should be expanded to allow the Clerk to certify copies of resolutions and administrative orders (policies) for use in court.

¹ *Prima facie* proof means that the copy of the by-law and its proper passage must be accepted as true unless there is proof otherwise.

We agree with this proposed amendment and with HRM's rationale for it. Allowing the use of certified copies of resolutions and administrative orders (policies) in court, as well as by-laws, will reduce the need to have the Clerk attend court where a resolution or administrative order (policy) needs to be admitted into evidence. A similar method to prove provincial statutes, regulations, orders-in-council and other government notices is set out in the provincial *Evidence Act* (s. 3 to 18). The amendment will not create any prejudice or harm, since any party wishing to challenge either the accuracy of the copy of the resolution or administrative order/policy, or whether it was properly passed by Council, may still do so in court – they simply need to provide some evidence to back up their challenge.

MGA - Discussion and rationale for recommendation

We recommend the same amendment to the MGA. Section 188 of the MGA is almost identical to s. 206 of the Charter, and the same reasoning applies.

HRM Charter - Amendments

Amend s. 206 to apply to administrative orders/policies and resolutions of the Municipality, in addition to by-laws. We suggest wording along the lines of the following:

Prima facie proof

206 (1) A copy of a by-law, Administrative Order or resolution made pursuant to this Act or another Act of the Legislature purporting to be certified by the Clerk, under the seal of the Municipality, to

(a) be a true copy of a by-law, Administrative Order or resolution passed by the Council;

(b) have received all required approvals,

must be received in evidence as *prima facie* proof of its passing, receipt of all required approvals, publication, being in force and the contents of it without further proof in any court, unless it is specially pleaded or alleged that the seal or the signature of the Clerk was forged.

(2) Printed documents, certified by the Clerk, purporting to be printed copies of any or all by-laws, Administrative Orders or resolutions passed by the Council must be admitted in evidence in all courts in the Province as *prima facie* proof of the by-laws, Administrative Orders or resolutions and of the due passing of them.

NOTE: This draft wording assumes that the amendments to the Charter will include using “Administrative Order” in place of “policy”, as discussed in our Memo on Amendment 2.

MGA - Amendments

Amend s. 188 to apply to policies and resolutions of a municipality, in addition to by-laws. We suggest wording along the lines of the following:

Prima facie proof

188 (1) A copy of a by-law, policy or resolution made pursuant to this Act or another Act of the Legislature purporting to be certified by the clerk, under the seal of the municipality, to

(a) be a true copy of a by-law, policy or resolution passed by the council;

(b) have received all required approvals,

shall be received in evidence as *prima facie* proof of its passing, receipt of all required approvals, publication, being in force and the contents of it without further proof in any court, unless it is specially pleaded or alleged that the seal or the signature of the clerk was forged.

(2) Printed documents, certified by the clerk, purporting to be printed copies of any or all by-laws, policies or resolutions passed by the council shall be admitted in evidence in all courts in the Province as *prima facie* proof of the by-laws, policies or resolutions and of the due passing of them.

MEMORANDUM

TO: Jeff Shute
Municipal Affairs

FROM: Charles Thompson

DATE: August 5, 2016

RE: HRM Charter and MGA Review – Housekeeping amendments
Amendments requested by HRM in memo “HRM Charter Amendments – Policy Rationale”
Amendment 17 – Delete one of the penalty provisions (s. 369) for offences



HRM's description in memo “HRM Charter Amendments – Policy Rationale”

Section 369 and 372 Offences - There is a discrepancy between sections 369 and 372 of the HRM Charter. Subsection 369(1) makes it an offence to violate a provision of the Charter, or an order, regulation or by-law done under the Charter. As well, the subsection makes it an offence to fail to comply with orders, regulations or by-laws done in accordance with the Charter and to obstruct or hinder any person from performing duties under the Act offences. Subsection 369(2) then goes onto say that, unless a by-law provides an offence, the penalty is \$100 and not more than \$10,000 and to a term of imprisonment of not more than two months. The difficulty is that section 372 goes on to say that where no penalty is specified in the Act, the fine is \$100 to \$5,000 and term of imprisonment of not more 90 days. However, section 369 just imposed a penalty with a maximum penalty of \$10,000 (not \$5,000) and to a term of imprisonment not to exceed two months (not 90 days). The solution is to remove section 372.

Section(s) affected: Charter – 372
MGA – 508

Recommendation from Burchell MacDougall:

Recommendation for Charter: Amend as set out below

Recommendation for MGA: Amend as set out below

HRM Charter - Discussion and rationale for recommendation

We recommend that the amendment sought by HRM be made.

The problems raised by HRM above are that the Charter contains two separate provisions, s. 369 and s. 372, both of which set out penalties for violations of the Charter, and that the penalties specified are not consistent. These sections are set out at the end of this Memo.

Section 369(1) creates offences for violating the Charter and for violating Municipal by-laws. Section 369(2) prescribes a penalty for a person who commits an offence, unless another penalty is provided for in a by-law. The penalty prescribed in s. 369(2) is:

- (a) Minimum fine: \$100
- (b) Maximum fine: \$10,000
- (c) Maximum prison term if default in payment: 2 months

Section 372 creates an offence for violating a provision of the Charter, and states that where no penalty is specified for the violation, there is a prescribed penalty of:

- (a) Minimum fine: \$100
- (b) Maximum fine: \$5,000
- (c) Maximum prison term if default in payment: 90 days

We are unable to determine a need or use for the penalty provisions in both s. 369 and s. 372. It looks as though s. 372 would never have any application, since it only applies where there is no penalty specified for the violation of the Charter, and s. 369(2) does specify a penalty. At any rate, aside from the fact that the penalties are not consistent, it is confusing and unnecessary to have two sections covering the same thing.

Our (admittedly quick) research indicates that s. 372 is not used by the courts or by municipalities in by-law prosecutions. We turned up a total of 10 cases where s. 369 of the Charter or the equivalent section of the MGA (s. 505) was referred to and used by the court in by-law prosecutions since the MGA came into force in 1998. In contrast, there were no cases that referred to s. 372 of the Charter (or to the MGA equivalent, s. 508).

In our opinion, s. 372 should be removed from the Charter.

MGA - Discussion and rationale for recommendation

We recommend the same amendment to the MGA. Sections 505 and 508 of the MGA are almost identical to s. 369 and 372 of the Charter, and the same reasoning applies.

HRM Charter - Amendments

Delete s. 372.

MGA – Amendments

Delete s. 508.

Relevant provisions

Section 369 and s. 372 of the Charter are set out below. Section 505 of the MGA is identical to s. 369, and s. 508 of the MGA is identical to s. 372.

Offence and penalty

369 (1) A person who

- (a) violates a provision of this Act or of an order, regulation or by-law in force in accordance with this Act;
- (b) fails to do anything required by an order, regulation or by-law in force in accordance with this Act;
- (c) permits anything to be done in violation of this Act or of an order, regulation or by-law in force in accordance with this Act; or

(d) obstructs or hinders any person in the performance of their duties under this Act or under any order, regulation or by-law in force in accordance with this Act,

is guilty of an offence.

(2) Unless otherwise provided in a by-law, a person who commits an offence is liable, upon summary conviction, to a penalty of not less than one hundred dollars and not more than ten thousand dollars and in default of payment, to imprisonment for a term of not more than two months. (*emphasis added*)

(3) Every day during which an offence pursuant to subsection (1) continues is a separate offence.

(4) In addition to a fine imposed for contravening a provision of this Act, a regulation or a by-law of the Municipality made pursuant to this Act, a judge may order the person to comply with the provision, order, regulation or bylaw under which the person was convicted, within the time specified in the order.

Offence and penalty

372 Where no penalty is specified for the violation of this Act, a person who contravenes the provision is guilty of an offence and is liable, on summary conviction, to a penalty of not less than one hundred dollars and not more than five thousand dollars and in default of payment, to imprisonment for a period of not more than ninety days. (*emphasis added*)



PUBLIC WORKS REPORT

September 19, 2016

WATER MAINS, SEWER MAINS AND STORM DRAINS

- Two separate water main breaks have been fixed, both on Marshall Street.
- Parging and repairs have been completed to catch basin on Spring Garden Road.
- King Street sewer line has been video inspected.
- Booster pump at the Booster Station has been replaced.
- High Level pump for the Booster Station at Sewage Treatment Plant has been sent away for repairs.
- PH Probe has been replaced at the Well House.
- Corrosion Control has been started.
- Water Meter readings are scheduled to start next week.
- Annual Monitoring Report is coming up (due Oct.1).

SEWAGE TREATMENT PLANT

- The Sewage Treatment Plant has been reclassified to a Class I wastewater treatment facility.

ROAD REPAIR

- Second phase of patch paving of streets has been completed.
- Line painting has been completed.
- Ditching has been completed on Meadow Lane and Sunset Crescent.
- Shouldering of streets has been completed.
- Street signs and posts have been ordered and are scheduled for replacement or repair.

GENERAL MAINTENANCE

- Brush and limbs have been cut back from streets and intersections.
- Line Laser painting machine has been serviced and repaired.
- Arborists are scheduled for the end of the month for tree and stump removal.

OTHER

- Safety Training Courses for Public Works members have been scheduled and are underway.

OCCUPATIONAL HEALTH & SAFETY

- OH & S Meetings are taking place once a month; minutes will be posted on SharePoint.
- There are no accidents to report at this time.

Shaun Thompson

Foreman of Public Works

SUMMER

We had a really great summer in Middleton this year. We were very fortunate to have a dedicated staff who went above and beyond to make sure that the services we were providing were of a high quality. Our participant numbers reflected those efforts. Our day camp programs were filled each week. Our senior's fitness classes maintained their high participation rates, our new programs held enough interest that we would offer them again, and our canoe/kayak program saw almost 400 people on the river this year.

On the events side of things, we saw a decrease in the number of cyclists at our Century Ride from 400 last year to just over 300 this year. The weather was certainly a deterrent, as was the closure of Highway 8 and high traffic emergency vehicles due to the forest fires. The heart run, on the other hand, saw an increase in participation from around 60 last year to over 100 this year. We were once again impressed to see the community participation in our senior's event and our annual picnic in the park.

The local businesses were very generous with their donations this summer and we would like to thank them for enhancing our community events. We would also like to wish our summer students best of luck with what the next year holds in store for them and hope to see them back again next summer. Finally, we would like to thank the community for coming out to participate and celebrate all of the good things that make our community the heart of the valley.



FALL PROGRAMS

With the momentum that built from such an exciting summer, we are equally as excited about the opportunities that we are producing for the fall. Our team has been working hard to offer our traditional programs, as well as some new programs with different instructors at different times and different locations that might be more appealing to a wider range of participants. We have been putting more energy into reaching out to the community to find out what would help the active people stay active, and the less active people to get more active. If none of our programs are appealing to you, please come

have a chat with us so we can find out more about what might be of interest to you. For more information on what programs we offer, please come visit us upstairs of Town Hall (131 Commercial Street), or check out our facebook page <https://www.facebook.com/townofmiddleton/> or our website www.discovermiddleton.ca. You can also give us a call at 902.825.6611.

SKATEPARK

To add to the excitement of our fall programs, we are also pretty pumped up about the construction of the skatepark. The design work has been completed and the construction is set to begin next week on that project. It will take about three weeks to build the park and then we will prepare a grand opening event and invite the community to come out and see what talent we have and inspire some new interest in the world of skateboarding, bmx bikes, and scooters. We will keep you posted on those details upon completion of the park.



OTHER ITEMS OF INTEREST

- The theme of this year's haunted house is going to be "The Haunted Carn-Evil". Details will be out soon. Please let us know if you're interested in volunteering to help either as a "scarer" or with set-up/props.
- The splashpad, which was very heavily used during the hot, dry summer, will be closing for the season on September 30th.
- The last day to borrow a canoe or kayak for this season is also going to be September 30th. Until then the boats are available to use by calling 902.825.8143 and booking a time between 9am and 4pm, Monday through Friday.
- The Visitor Information Center closed for the season on September 5th.



TOWN OF MIDDLETON

PLANNING SERVICES



JULY

2016

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1. Planning and Development Activity Report
2. Building Permit Activity Report
3. Planning/GIS Technician Activity Report



**Planning
Development
Project Management**

To: Sharon McAuley, Coordinator, Planning and Development Services
From: Chris Millier
Date: August 1, 2016
Re: Town of Middleton, Status Report

July 1 - 31, 2016

Planning Application Activity

- PAC Meeting, July 11, 2016

Development Permit Activity

- Development Permit M16-014, July 28, 2016
P. Buxton, 270 Main Street
Demolition/Repair, Existing Commercial Structure

Permit Activity Summary, July 2016

	Current Month	Current YTD	Previous Yr. Month	Previous Yr. YTD
Development Permits				
Residential				
New Construction	0	0	0	0
Renovation/Addition	0	1	0	1
Accessory Structures	0	1	2	3
Commercial/Industrial				
New Construction	0	0	0	0
Renovation/Addition	1	4	0	2
Accessory Structures	0	1	0	0
Institutional				
New Construction	0	0	0	0
Renovation / Addition	0	2	0	0
Accessory Structures	0	1	0	0
Other (signs, occupancy, etc.)	0	2	1	2
Final Subdivision Approval				
Residential Lots Created	0	0	0	0
Comm./Industrial Lots Created	0	0	0	0

TOWN OF MIDDLETON

BUILDING PERMIT REPORT

Figures based on Fiscal Year July to March

Municipal Unit: **Town of Middleton**

Month: **July 2016**

	Number of Building Permits	Building Value
Month: July	2	\$6,000.00
Year To Date 2016-2017:	7	\$154,600.00
Year To Date 2015-2016:	13	\$619,125.00
Year To Date 2014-2015:	8	\$315,100.00

Total Estimated Value July 2016:	\$6,000.00	Total permits for July 2016:	2	Total Estimated Value YTD 2016-2017:	\$154,600.00	Permit Fees July 2016:	\$175.20
Total Estimated Value July 2015:	\$35,200.00	Total permits for July 2015:	3	Total Estimated Value YTD 2015-2016:	\$619,125.00	Permit Fees YTD 16-17:	\$719.80
Total Estimated Value July 2014:	\$33,500.00	Total permits for July 2014:	3	Total Estimated Value YTD 2014-2015:	\$315,100.00		

File #	Name	Applicant Address	Location	Construction	Date Building Permit Issued	Permit Fee	Estimated Value
M16-012	Kevin Goodlad	Middleton	16 Bentley Drive	repair/resurface existing deck & stairs	July 6, 2016	\$75.20	\$2,500.00
M16-013	Town of Middleton	Middleton	339 Marshall Street	install 40' X 7.5' container	July 5, 2016	\$100.00	\$3,500.00
				Dev. Permits Only	0 permits	\$0.00	
					Total July:	\$175.20	\$6,000.00
	Total Active Permits:	14					
	Conversions	0					
	Demolitions	0					



Town of Middleton LIU/GIS
 GIS & Planning Technical Support Services
 Period : July 1 to July 31

Submitted by: Trevor Robar

Date: August 9, 2016

Task	Category	Date	Hrs
Update NSCAF and Property data for AVLIIU	PLAN	Sunday, July 10, 2016	0.50
New color design for AVLIIU Public Viewer (Added new Building Foot Prints)	PLAN	Tuesday, July 12, 2016	0.5
New color design for AVLIIU Admin Viewer	PLAN	Wednesday, July 13, 2016	0.5
New color design for AVLIIU Admin & Public Viewer	PLAN	Monday, July 18, 2016	0.5
New color design for AVLIIU Public Works Viewer & Updated GIS Server with new service and programming	PLAN	Tuesday, July 19, 2016	1
Development Agreement GIS Layer Cleanup, municipalview GIS Server with new service and programming	PLAN	Sunday, July 24, 2016	1
			Hrs
			4.00

Category Description: **PW** = Public Works **PLAN** = Planning **REC** = Recreation
OTHER = Meetings, Printing etc...

TOWN OF MIDDLETON

PLANNING SERVICES



AUGUST

2016

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1. Planning and Development Activity Report
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3. Inspection Services Activity Report – July & August
4. Planning/GIS Technician Activity Report



**Planning
Development
Project Management**

To: Sharon McAuley, Coordinator, Planning and Development Services
From: Chris Millier
Date: September 1, 2016
Re: Town of Middleton, Status Report

August 1 - 31, 2016

Planning Application Activity

Development Permit Activity

Permit Activity Summary, August 2016

	Current Month	Current YTD	Previous Yr. Month	Previous Yr. YTD
Development Permits				
Residential				
New Construction	0	0	0	0
Renovation/Addition	0	1	0	1
Accessory Structures	0	1	0	3
Commercial/Industrial				
New Construction	0	0	0	0
Renovation/Addition	0	4	1	3
Accessory Structures	0	1	0	0
Institutional				
New Construction	0	0	0	0
Renovation / Addition	0	2	0	0
Accessory Structures	0	1	0	0
Other (signs, occupancy, etc.)	0	2	0	2
Final Subdivision Approval				
Residential Lots Created	0	0	0	0
Comm./Industrial Lots Created	0	0	0	0

TOWN OF MIDDLETON

BUILDING PERMIT REPORT

Figures based on Fiscal Year August to March

Municipal Unit: **Town of Middleton**

Month: **August 2016**

	Number of Building Permits	Building Value
Month: August	1	\$154,000.00
Year To Date 2016-2017:	8	\$308,600.00
Year To Date 2015-2016:	15	\$647,890.00
Year To Date 2014-2015:	10	\$323,300.00

Total Estimated Value August 2016:	\$154,000.00	Total permits for August 2016:	1	Total Estimated Value YTD 2016-2017:	\$308,600.00	Permit Fees August 2016:	\$145.00
Total Estimated Value August 2015:	\$28,765.00	Total permits for August 2015:	2	Total Estimated Value YTD 2015-2016:	\$647,890.00	Permit Fees YTD 16-17:	\$864.80
Total Estimated Value August 2014:	\$8,200.00	Total permits for August 2014:	2	Total Estimated Value YTD 2014-2015:	\$323,300.00		

File #	Name	Applicant Address	Location	Construction	Date Building Permit Issued	Permit Fee	Estimated Value
M16-014	Paul Buxton (Bell Canada)	Annapolis Royal	270 Main St.	comm - partial demo, abatement & reno	August 18, 2016	\$145.00	\$154,000.00
				Dev. Permits Only	0 permits	\$0.00	
					Total August:	\$145.00	\$154,000.00
	Total Active Permits:	13					
	Residential Conversions	nil					
	Residential Demolitions	nil					



COUNTY *of* ANNAPOLIS
NATURALLY ROOTED

Activity Report – JULY 2016

2 BUILDING PERMITS ISSUED FOR JULY

2 INSPECTIONS CARRIED OUT FOR JULY

Staff continue to drive through the Town and receive inquiries calls from the residents.

Activity Report – AUGUST 2016

1 BUILDING PERMITS ISSUED FOR AUGUST

1 INSPECTIONS CARRIED OUT FOR AUGUST

1 FIRE INSPECTION



Town of Middleton LIU/GIS
GIS & Planning Technical Support Services
Period : August 1 to August 30

Submitted by: Trevor Robar

Date: September 11, 2016

August			
Task	Category	Date	Hrs
GIS File Cleanup	PLAN	Sunday, August 7, 2016	1
Update Repairs GIS Layer	PW	Wednesday, August 10, 2016	0.50
62 Connaught Avenue, Civic Address verification	PLAN	Tuesday, August 30, 2016	0.5
			Hrs
			2.00

Category Description: **PW** = Public Works **PLAN** = Planning **REC** = Recreation
OTHER = Meetings, Printing etc...

MAYOR'S REPORT AUGUST- SEPTEMBER 2016

July 18 th	Chaired monthly Council session
August 14 th	Attended Old Holy Trinity Church 225th Anniversary Church Service
Sept. 6 th	Chaired monthly Committee of the Whole session
Sept. 14 th	Chaired Performance Appraisal Committee meeting

CORRESPONDENCE – JULY, AUGUST & SEPTEMBER
(for September 19, 2016 Council Meeting)

The following items of correspondence are tabled for the Council's attention. A copy of any correspondence item listed, if not previously circulated, is available on SharePoint for interested members of Council:

1. A letter and fact sheet from *NS Provincial Lotteries & Casino Corp.*, on their 2015-16 Summary of Results.
2. A thank you note from Youth Ambassador, *Kayla Gillespie*, for the scholarship.
3. A thank you letter and information brochure from the *Companion Animal Protection Society*, for the annual grant from the Town of Middleton.
4. A thank you letter from *Trans County Transportation Society*, for the annual grant from the Town of Middleton.
5. A thank you note from the *Nova Scotia Trefoil Guild*, for the Town's donation of Middleton pins to the delegates of the *Purple Heads East Trefoil Gathering*.
6. A thank you letter from the *Annapolis Valley Historical Society*, for attendance at the *Macdonald Museum* Canada Day celebration.