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Item No. 15.1.4
Halifax Regional Council
February 21, 2023

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: February 15, 2023

SUBJECT: **HRM Auditor General Term of Appointment – HRM Charter Amendment**

ORIGIN

At the November 22, 2022, meeting of Halifax Regional Council (Item 15.6.1), the following was moved by Councillor Russell, seconded by Councillor Deagle Gammon:

THAT Halifax Regional Council direct the Chief Administrative Officer to request a staff report to request the Mayor to write a letter to the province requesting an amendment to the Halifax Regional Municipality Charter to provide a retroactive change so the term of the Municipal Auditor General would be for a 10-year period.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, section 49 as follows:

- 49 (1) The Council shall appoint an Auditor General.
- (2) The first Auditor General must take office no later than April 1, 2009.
- (3) The Auditor General must be a qualified auditor.
- (4) Subject to this Section, the Auditor General holds office for a term of seven years and may not be re-appointed.
- (5) The Auditor General may be removed from office by the Council by a resolution carried by a vote of two thirds of the Council members and with the approval of the Minister.
- (6) The Auditor General reports to the Council.

RECOMMENDATION

It is recommended that Halifax Regional Council direct the Mayor to write a letter to the Province requesting an amendment to the *Halifax Regional Municipality Charter* to grant Halifax Regional Council the authority to determine the length of a fixed-term appointment for HRM's Auditor General for a non-renewable term not to exceed 10 years.

BACKGROUND

HRM's Auditor General is a statutory office required under the *Halifax Regional Municipality Charter* (HRM Charter), with the role, authority and term of appointment set out in sections 49 to 54. The HRM Charter requires that Regional Council appoint an auditor general. Once appointed, the Auditor General serves for a 7-year non-renewable term. The Auditor General operates independently from HRM's management and reports to Regional Council.

The mandate of HRM's Auditor General, as set out in the HRM Charter, is to assist Regional Council in holding itself and the Municipality's administrators accountable for the quality of stewardship over public funds and for the achievement of value for money in the Municipality's operations. This mandate is primarily carried out through the undertaking of various audits of municipal operations. The Auditor General has the legislated authority to examine accounts, procedures and programs of the Municipality, as well as any Municipal Board or Commission, or any person or agency receiving a grant from the Municipality.

The Auditor General is required to provide Regional Council with an annual report which sets out recommendations for improvements in the efficiency of the Municipality. The Auditor General does not have the authority to compel the Municipality to comply with their recommendations. Rather, it is Regional Council, primarily through the Audit and Finance Standing Committee, that is responsible for holding HRM management accountable with the guidance of the recommendations from the Auditor General.

The HRM Charter provisions relating to the Auditor General were introduced by the Province in 2008.¹ HRM appointed its first Auditor General, Larry Munroe, in September 2009. HRM's current Auditor General, Evangeline Colman-Sad, began her 7-year term in October 2016, with their tenure set to expire in October 2023.

DISCUSSION

The office of an auditor general is a common institution in Canadian governance and public administration; one which supports public sector accountability. Auditors general share a core mandate of providing the public and their elected representatives with independent assurance about whether governments are appropriately stewarding public resources and effectively delivering public services. This mandate is primarily carried out through the undertaking of various audits of the public sector. Audit results are typically reported publicly to the legislative branch of government.

In the Canadian context, auditors general have their roots in Parliament and the provincial legislative assemblies. They report directly to Parliament or the provincial equivalent and are independent from the executive branch and the public service. Although they report to the legislative branch, auditors general typically have independence to direct their own work. This independence and functional autonomy are key characteristics of the institution of an auditor general.

Auditors general can also be found at the municipal level across Canada, although they are much less ubiquitous as they are at the federal and provincial levels. While auditing requirements for municipalities are common across Canada, municipal auditors general specifically are much less common and are found primarily at larger cities. Like their federal and provincial counterparts, municipal auditors general are characterized by their independence from council and municipal management.

1. Scan of Municipal Auditors General

A jurisdictional scan of municipal auditors general from across Canada was undertaken in preparing this report (see Attachment A). The scan focuses on the legal framework for a municipal auditor general, as

¹ See the June 6, 2008 Information Report for further background on the HRM Charter amendments:
<https://legacycontent.halifax.ca/council/agendasc/documents/080610cai04.pdf>

well as their term of appointment. The scan also considered auditors general at the federal and provincial levels (see Attachment B).

Although not exhaustive, eight (8) other municipalities were identified with a municipal auditor general or a similar position of a “City Auditor”². These include Toronto, Ottawa, Greater Sudbury, Montreal, Winnipeg (City Auditor), Calgary (City Auditor), Edmonton (City Auditor), and Vancouver.

Legal Framework for Municipal Auditors General

For the jurisdictions examined, the legal framework for their municipal auditors general are laid out in either provincial legislation, such as a Municipal Act or Charter, and/or in a municipal bylaw when a council is empowered to do so. Of those examined, only HRM, Toronto, Winnipeg and municipalities in the Province of Quebec with a population greater than 100,000, are required by provincial statute to appoint a municipal auditor general (or City Auditor in the case of Winnipeg). Of those, only HRM and larger municipalities in Quebec have a defined term of appointment for their auditors general prescribed in provincial legislation. While Toronto and Winnipeg are required by provincial statute to appoint an auditor general (or equivalent), their councils are provided with greater discretion to determine many of the terms of the office via bylaw, such as the length of tenure.

In Ontario, with the notable exclusion of Toronto, the *Municipal Act* enables municipalities to appoint a municipal auditor general at their discretion. At the time of writing, only a handful of Ontario municipalities have opted to implement an auditor general model, including Ottawa and Greater Sudbury. Oshawa, Windsor and Markham have each appointed municipal auditors general in the past, but their practices have been inconsistent or have fallen out of use. Ontario municipalities opting for an auditor general have done so through enacting a bylaw, which allows councils to determine the length of tenure, as well as other terms for the office.

In Alberta, provincial legislation enables the cities of Calgary and Edmonton to appoint a City Auditor. Like Ontario, their councils are provided with discretion in setting out the terms of the office in a bylaw, including the length of tenure.

The City of Vancouver is the most recent municipality examined to implement a municipal auditor general, which was established in 2020. In doing so, it was determined that the *Vancouver Charter* provided their Council with sufficiently broad authority to implement a municipal auditor general via a bylaw, despite the statute itself being largely silent on the matter.

Links to relevant legislation provided in Attachment A.

Terms of Appointment for Auditors General

With regards to the terms of appointment for municipal auditors general, the jurisdictions examined vary as to the length of appointment and whether a term appointment is renewable. The lengths of appointment examined ranged from 5 years, often renewable, to being undefined.³ However, the most common appointment examined is a 7-year non-renewable term (HRM, Toronto, Ottawa, Montreal, and Vancouver), with the second most common being a 5-year renewable term (Greater Sudbury, Winnipeg, Calgary).

A scan of auditors general at the federal and provincial levels was also undertaken as part of this report (see Attachment B). Each office examined had a term of appointment prescribed in statute. The scan found that a 10-year non-renewable term of appointment is the most common. 8-year appointments are also

² A City Auditor is distinct from a municipal auditor general, often combining elements of internal auditors and auditors general models. While their mandates vary, City Auditors often have their work plans approved by Council. However, they are comparable to municipal auditors general to the extent that they are independent from municipal management and report only to their council.

³ Some lengths of appointment may be set out in an employment contract, many of which are not available to the public. The City Auditor for Edmonton being an example.

common in western provinces. Only Prince Edward Island, Manitoba, and Alberta have renewable terms of appointment, with the rest being non-renewable.

2. Principles and Best Practices for Municipal Auditor General Appointments

Whether it is at the federal, provincial, or municipal level, independence and functional autonomy have been identified as key characteristics underlying the office of an auditor general; characteristics necessary to operate as an effective accountability mechanism for government. A body of best practices has evolved around protecting this independence from both real and perceived threats which might undermine the integrity of the office in the public eye. Clear fixed-term appointments and security of tenure have been identified as key safeguards.

The International Organization of Supreme Audit Institutions (INTOSAI)⁴ has established a number of globally recognized principles that guide the design and operation of Supreme Audit Institutions (SAI), such as auditors general.⁵ These principles focus on protecting the independence of SAIs, with the first two being:

- That the independence of a SAI be clearly set out in statute/legislation.
- That the personal independence of an SAI be protected by safeguards such as security of tenure and legal immunity in the normal discharge of their duties.

Clear fixed-term appointments are highlighted by INTOSAI as a best practice. Eligibility for reappointment has been recognized as an undesirable practice as it might compromise the real or perceived independence of an auditor general. The reasoning is that, as the time for reappointment approaches, an eligible incumbent may become reluctant to be critical in carrying out their duties. The possibility of reappointment might also create a perception that the government may exert pressure on an incumbent.

With regards to the length of a fixed-term appointment, INTOSAI notes that the term should be long enough to enable the development of independence and the ability for the auditor general to effectively steer the work of their office. Another key consideration in setting the length of a fixed-term appointment is the electoral cycle of Parliament, provincial legislature, or a municipal council. In most jurisdictions, the fixed-term has been set to exceed at least one electoral cycle.⁶

The City of Toronto was among the first municipalities in Canada to implement a municipal auditor general in 2002. In doing so, the City recruited the services of Denis Desautels, the former Auditor General for the Government of Canada, to prepare a report to provide guidance on how to establish an effective independent auditor general for the City.⁷ In the report, Desautels sets out a number of best practices to protect the independence of an auditor general in the municipal context. The report notes:

It would be very important to enshrine the Auditor General function in the provincial statutes that pertain to the City, i.e., the *City of Toronto Act*, instead of doing it through a by-law. Although this act can only be changed through the provincial legislature, it is crucial to do so in order to ensure that the function is not changed so easily as to diminish its importance, its independence and its continuity.⁸

Security of tenure is highlighted by Desautels as another key safeguard. The report notes that a clear term of appointment supports the personal independence of the auditor general and helps to ensure that they are not vulnerable to pressures that would hamper them in carrying out the examinations necessary to

⁴ INTOSAI is an intergovernmental organization representing Supreme Audit Institutions (SAIs). INTOSAI seeks to help set standards for public sector auditing and the promotion of good governance, among other advocacy work.

⁵ INTOSAI 2007 Mexico Declaration on Independence:

https://www.intosai.org/fileadmin/downloads/documents/open_access/INT_P_1_u_P_10/INTOSAI_P_10_en_2019.pdf

⁶ INTOSAI Good Practices Related to SAI Independence: <https://www.issai.org/wp-content/uploads/2019/08/GUID-9030-Good-Practices-Related-to-SAI-Independence.pdf>

⁷ 2002 Desautels report was titled "Serving Council and Citizens: Strengthening the Audit Function at the City of Toronto" and is available here: <https://www.toronto.ca/legdocs/2002/agendas/council/cc020521/pof7rpt/cl001.pdf>

⁸ Desautels Report (Ibid footnote 7): pg 23.

discharge their responsibilities. The report recommended a 7-year non-renewable term of appointment, with the following reasoning provided:

It is important to make the term long enough in order to attract good candidates who may be reluctant to leave their current employment for a shorter engagement than the recommended seven years. A term of seven years also gives the office holder enough time to formulate a vision or agenda for the Office and be able to implement it.⁹

Desautels' recommendations were largely adopted by the City of Toronto. This included the recommended 7-year non-renewable term, which was subsequently enshrined in the *Toronto Municipal Code*, but not the *City of Toronto Act*.

The recommendations put forward in the 2002 Desautels report helped to inform the Province of Nova Scotia when the current auditor general provisions in the HRM Charter were adopted in 2008. This includes the recommended 7-year non-renewable term of appointment. Unlike Toronto, however, the 7-year non-renewable term of appointment for HRM's Auditor General was enshrined in the provincial statute itself.

More recently, in 2020, the City of Vancouver established a municipal auditor general. To support this work, the City commissioned a report from the Canadian Audit and Accountability Foundation (CAAF) to outline best practices to guide the establishment of an independent auditor general in the municipal context.¹⁰ The CAAF report noted that the most important principle that governs the design and operation of an auditor general is independence. Clear fixed-term appointments were likewise identified as a key safeguard to this independence, with the CAAF report noting:

Our research and consultations found that a seven-year non-renewable term is common in Canadian municipal auditor general offices. The rationale is that a long term will do the following:

- encourage strong candidates to apply who may be reluctant to leave secure positions for a short-term assignment.
- allow the auditor general to enact a long-term vision and plan for the office.
- span electoral cycles, thereby providing additional independence by allowing the auditor general to carry forward their long-term vision across two Council mandates.

Making the term non-renewable can help protect the auditor general's independence. The prospect of being reappointed may influence how an auditor general carries out their work. A non-renewable term helps ensure that they have a clearly delineated time frame to enact their vision for the office.¹¹

The City of Vancouver adopted the recommendations put forward in the CAAF report, mandating a 7-year non-renewable term in the bylaw establishing the office of their municipal auditor general.

While safeguarding independence is a primary consideration in setting a term of appointment for a municipal auditor general, it can still be balanced against other considerations that might suggest the desirability of limiting or extending the length of an appointment. As with many appointments to statutory offices, consideration may be given to keeping the term short enough to avoid an office holder from becoming complacent in their role and to allow for appropriate turnover. Most jurisdictions allow for a municipal auditor general to be removed, typically by a 2/3rds majority vote of a council. However, this may be undesirable due to the impact that it may have on the public perception of the independence of the office. A limited term appointment is one safeguard in this respect. Conversely, conditions in the labour market may point to the desirability of being able to retain effective auditors general for a longer term.

⁹ Desautels Report (Ibid footnote 7): pg 25.

¹⁰ CAAF report titled "Establishing an Independent Auditor General for the City of Vancouver": <https://www.caa-fcar.ca/images/pdfs/research-publications/Establishing-An-AGO-Vancouver.pdf>

¹¹ CAAF Report (Ibid footnote 10): pg 31.

There is no precise formula for determining the specific length for an appointment of a municipal auditor general. However, the best practices outlined above suggest that an auditor general should be appointed for a fixed-term that is non-renewable. The term should be long enough to attract strong candidates, span electoral cycles, and allow an auditor general to enact a long-term vision and plan for their office.

3. HRM Context

The 7-year non-renewable term for HRM's Auditor General, as currently prescribed in the HRM Charter, is consistent with the tenure of other auditors general examined in the municipal context, as well as best practices.

While a 10-year non-renewable term is common at the federal and provincial levels, the longer term may be seen as more appropriate in those contexts. Some influencing factors may include electoral cycles which are less fixed than at the municipal level, the presence of a more clearly defined executive branch, as well as the presence of political parties which create a greater need for the perception of independence and non-partisanship. However, beyond these contextual factors and balancing the considerations outlined in the best practices discussed above, there is no precise formula that dictates that one specific term length is most appropriate.

HRM's Auditor General is a statutory office prescribed in legislation, including the tenure of appointment. If the legislation were to be amended, then any new term would apply to all future appointees absent additional HRM Charter amendments. In this regard, HRM's Office of the Auditor General should be viewed as an institution, keeping the future continuity of that office in mind.

However, as is reflected in the scan, HRM is unique in that it is the only jurisdiction among municipal comparators, other than those in Quebec, where the term of appointment for the municipal auditor general is prescribed in provincial legislation. In the other jurisdictions examined, the authority to determine the length of an appointment is delegated to municipal councils. This provides these jurisdictions with greater flexibility to respond to their operational needs at the time of appointment while also adhering to the best practices for protecting the independence of the municipal auditor general.

While the current 7-year term prescribed in the HRM Charter is consistent with best practices, HRM could likewise benefit from having the flexibility in the legislative framework to determine the length of a fixed, non-renewable term appointment for HRM's Auditor General. Staff recommend that Council seek an amendment to the HRM Charter to provide Council with this authority. This would align with the legislative framework of municipal comparators and provide Council with the ability to adjust the Municipality's approach to appointing an auditor general to respond to labour market conditions at the time of appointment as well as other operational considerations.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from this report.

RISK CONSIDERATION

No risk considerations were identified.

COMMUNITY ENGAGEMENT

No community engagement was required.

ENVIRONMENTAL IMPLICATIONS

No environmental implications were identified.

ALTERNATIVES

Halifax Regional Council could choose to:

1. Forego seeking an amendment to the *Halifax Regional Municipality Charter* seeking to change the term of appointment of HRM's Auditor General at this time and maintain the current seven (7) year non-renewable term as currently set out under the *Halifax Regional Municipality Charter*.

ATTACHMENTS

Attachment A – Jurisdictional Scan of Municipal Auditors General

Attachment B – Jurisdictional Scan of Federal and Provincial Auditors General

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: David Perusse / Intergovernmental Affairs Advisor / GREA / 902.430.3143

Scan of Municipal Auditors General		
Jurisdiction	Legislative Authority	Term of Appointment
1. Halifax Regional Municipality	<p>Halifax Regional Municipality Charter</p> <p>49 (1) The Council shall appoint an Auditor General. (3) The Auditor General must be a qualified auditor. (4) Subject to this Section, the Auditor General holds office for a term of seven years and may not be re-appointed. (5) The Auditor General may be removed from office by the Council by a resolution carried by a vote of two thirds of the Council members and with the approval of the Minister. (6) The Auditor General reports to the Council.</p>	7-years non-renewable
2. City of Toronto	<p>City of Toronto Act</p> <p>177 (1) The City shall appoint an Auditor General. (2) The Auditor General reports to city council.</p> <p>Toronto Municipal Code Chapter 3 – Accountability Officers</p> <p>3-3.1. Term. The Auditor General shall be appointed for a seven-year non-renewable term of office.</p>	7-years non-renewable
3. City of Ottawa	<p>Municipal Act, 2001 - Part V.1</p> <p>223.19 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Auditor General who reports to council and is responsible for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations.</p> <p>Auditor General (By-law No. 2021-5)</p>	<p>non-renewable term to be determined by Council</p> <p>(Current AG 7 year non-renewable appointment)</p>

	<p>3(1) City Council shall by public resolution appoint a person to the position of Auditor General for a non-renewable term to be determined by Council, and shall specify the terms and conditions of such appointment.</p>	
<p>4. Greater Sudbury</p>	<p>Municipal Act, 2001 - Part V.1</p> <p>223.19 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Auditor General who reports to council and is responsible for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations.</p> <p>By-law 2015-217 to Establish the Position and Duties of the Auditor General</p> <p>2. The position of Auditor General is hereby established with the duties and functions as set out in this By-law or any other By-law or provincial statute that makes reference to the Auditor General.</p> <p>3. The appointment of a person to the position of Auditor General may be made, suspended or revoked only by a two-thirds majority vote of Council.</p> <p>4. The office of the Auditor General shall be independent of the City administration.</p>	<p>None specified, to be determined by Council</p> <p>(Current AG 5-year renewable appointment)</p>
<p>5. Montreal</p>	<p>Cities and Towns Act</p> <p>107.1. The council of every municipality having 100,000 inhabitants or more shall have an officer called the chief auditor who is a member of the Ordre des comptables professionnels agréés du Québec.</p> <p>107.2. The chief auditor shall, by a resolution approved by a two-thirds majority of the votes of the members of the council, be appointed for a single term of seven years.</p>	<p>7-years non-renewable</p>
<p>6. City of Winnipeg</p>	<p>City of Winnipeg Charter</p> <p>96 Council must appoint the following statutory officers: (d) the city auditor.</p>	<p>None specified, to be determined by Council</p> <p>(Current City Auditor on 5-year renewable contract)</p>

<p>7. City of Calgary</p>	<p><u>Municipalities Act</u></p> <p>210(1) A council may (a) by bylaw establish one or more designated officer positions, give each of the positions a different title and specify which powers, duties and functions of a designated officer under this or any other enactment or bylaw are to be carried out by which positions, and</p> <p>280(1) Each council must appoint one or more auditors for the municipality. (4) The council of the City of Edmonton or of the City of Calgary may, on the approval of the Minister, appoint by bylaw an employee of the municipality to be the auditor for the municipality if the person is a chartered professional accountant and reports directly to the council.</p> <p><u>By-Law Number 30M2004 – To Establish the Position of City Auditor</u></p> <p>1. The designated officer position of City Auditor is hereby created, with the powers, duties and functions as specified in this Bylaw or any other bylaw making reference to the City Auditor. 2. Council may, by resolution, appoint a person for a term not exceeding five (5) years, to hold the position of City Auditor and specify the terms and conditions of such appointment. 3. The person appointed to the position of City Auditor is eligible for reappointment.</p>	<p>5-year renewable term</p>
<p>8. City of Edmonton</p>	<p><u>Municipalities Act</u></p> <p>210(1) A council may (a) by bylaw establish one or more designated officer positions, give each of the positions a different title and specify which powers, duties and functions of a designated officer under this or any other enactment or bylaw are to be carried out by which positions, and</p> <p>280(1) Each council must appoint one or more auditors for the municipality. (4) The council of the City of Edmonton or of the City of Calgary may, on the approval of the Minister, appoint by bylaw an employee of the municipality to be the auditor for</p>	<p>None specified, to be determined by Council</p> <p>(Previous City Auditor served for over 10 years)</p>

	<p>the municipality if the person is a chartered professional accountant and reports directly to the council.</p> <p>By-Law 12424 – City Auditor By-Law</p> <p>4 The position of designated officer for the purpose of internal auditing is established, and the individual appointed to that position will have the title “City Auditor.”</p> <p>5 Council will, by resolution, appoint an individual to the position of City Auditor, and establish terms and conditions of such appointment.</p>	
<p>9. City of Vancouver</p>	<p>Vancouver Charter</p> <p>162 The Council (a) may establish and equip such departments and offices as it may from time to time deem expedient in the exercise of its powers, and may assign such functions and duties to the persons employed in such departments and offices as the Council may from time to time decide.</p> <p>Auditor General By-Law No. 12816</p> <p>2.8 The Auditor General will be appointed for a non-renewable fixed term of office of 7 years.</p> <p>2.9 The term of office for the Auditor General may only be modified by a resolution of Council.</p>	<p>7-year non-renewable</p>

Attachment B

Auditors General at the Federal & Provincial Levels		
Jurisdiction	Legislative Authority	Term of Appointment
Office of the Auditor General of Canada	<u>Auditor General Act</u>	10-year non-renewable term
Office of the Nova Scotia Auditor General	<u>Auditor General Act</u>	10-year non-renewable term
Office of the Auditor General, Newfoundland and Labrador	<u>Auditor General Act</u>	10-year non-renewable term
Auditor General of New Brunswick	<u>Auditor General Act</u>	10-year non-renewable term
Office of the Auditor General, Prince Edward Island	<u>Audit Act</u>	10-year renewable term (may be reappointed for additional 10 years)
Auditor General of Quebec	<u>Auditor General Act</u>	10-year non-renewable term
Office of the Auditor General of Ontario	<u>Auditor General Act</u>	10-year non-renewable term
Office of the Auditor General Manitoba	<u>Auditor General Act</u>	10-year renewable term (may be reappointed for additional 10 years)
Provincial Auditor of Saskatchewan	<u>Provincial Auditor Act</u>	8-year non-renewable term
Auditor General of Alberta	<u>Auditor General Act</u>	8-year renewable term
Auditor General of British Columbia	<u>Auditor General Act</u>	8-year non-renewable term