October 16, 2023
HRM Bill 329 Submission to Law Amendments

Clause	Stated Provincial Intent	Municipal Service Delivery	HRM Comments
Clause 1 amends the Halifax Regional Municipality Charter to allow the Council of the Halifax Regional Municipality to adopt public participation programs by means other than policy.	Remove requirement for HRM Council to provide 7-day notice when considering a public participation program.		This amendment is supported as it has the ability to provide for a more flexible approach to implementing public participation programs when preparing planning documents.

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Clause 2 requires the Municipality to create a trusted-partner program that allows for expedited administrative and residential development approvals.	Recommended by Deloitte and based on the principle of reverse onus, the Trusted Partner progress will establish a fast-track development process for trusted partners with a record of submitting quality development applications. Two specific components of the trusted partner program include: -the ability for HRM staff to issue phased development permits for large scale developments -alternative compliance for As-Of-Right Development	Trusted Partners program will require HRM to staff up to train applicants on the requirements, to work with any new system requirements, and for audit function. TPW, Parks and Recreation, Fire Services, other levels of government.	Generally HRM staff supports the change and has already committed to implement the program under the Housing Accelerator Fund initiative. Initial work is already underway. The proposed changes do not reflect previous discussions with the Province and do not fully adopt the Deloitte recommendations. The April 1, 2024 deadline is not reasonable/achievable to draft the necessary by-law, changes, design the program, upgrade our electronic system processes to reflect the new process steps, hire and train new staff to train users/trusted partners on requirements, complete audits, and to act as single points of contact for tracking applications and responses in the system. HRM's position is that authority for approval of the by-law ought to be with Council as opposed to the Minister given the partnership ultimately is with HRM not the Minster. The amendment would benefit from simplified wording.

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Clause 3 allows the Minister of Municipal Affairs and Housing to exclude healthcare facilities from the Parts of the Act related to planning and development and subdivision and from municipal planning strategies, land-use by-laws, development agreements, policies and subdivision by-laws.	To ensure the expedient construction of healthcare facilities, the Minister of Municipal Affairs will be given the authority to create areas within which long term care facilities are exempt from all municipal planning requirements.	Location of large health care facilities has an impact on municipal water and sewer infrastructure, transportation, transit and connectivity to surrounding areas.	HRM supports this amendment in principle but not as drafted because the language does not address infrastructure and site engineering needs/issues which creates the potential for health and safety risks if these issues are exempt from consideration. At a minimum, HRM believes the legislature should limited the Minister's exercise of this power to buildings classified as B1 to B3 under the National Building Code.

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Clause 4 prohibits, for a period of two years, the Municipality from changing, without the approval of the Minister, fees, certain charges and incentive or bonus zoning agreements that would increase the cost of applicants for approvals.	For a two year period, HRM will be required to receive Ministerial approval for increasing, changing, or adding new fees or charges to all infrastructure, permit, application and approval fees related to residential development.	Freezing of current fees and prohibition of on new infrastructure, capital or similar charge will have a significant impact on municipal service delivery with respect to: density bonus affordable housing grant program, and providing essential infrastructure (water, stormwater, sewer) to new communities or upgrading infrastructure for infill developments.	This proposed amendment will have significant impact on municipal budgets and resources and causes concern at a time when there is already a significant infrastructure deficit and unprecedented levels of growth. While CPI or other discrete increases to fees will have an impact, the greatest concern is that the new bill will prevent the Municipality from establishing new Capital Cost Contributions in new developments where infrastructure is needed without the Minister's written permission. It will also freeze and increases to Halifax Water fees which are currently under review due to high current and anticipated growth levels. Removing HRM's ability to increase and collect fees required to fund infrastructure needed to support growth, will further compound our ability to respond to this infrastructure gap and deliver basic services to our residents. This also reduce HRM's ability to collect funds to invest in affordable housing projects delivered by non-profits and helps the offset project increases. HRM believes the legislature should establish clear criteria the Minister will use to approve new fees or agreements, and that infrastructure charges should be exempted from the freeze.

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Clause 5 allows the Council of the Municipality to agree to development agreements in principle prior to finalizing small administrative amendments. The Chief Administrative Officer of the Municipality is given the authority to finalize those outstanding administrative amendments without returning to the Council.	Substantive elements of a development agreement are approved by Council. However, administrative details are often what slows down the process and delays development from beginning. This change would clarify Council's role which is to approve a development agreement in principle leaving contractual / administrative details of the approval to be dealt with by staff (CAO).		Staff generally supports this amendment, because administrative details are often what slows down the process and delays development from beginning. However, the amendment does not define "administrative amendments" and arguably adds an appeal period which may be more limiting that the current practice and contrary to the intent of the legislation.
Clause 6 allows the Chief Administrative Officer of the Municipality to discharge development agreements that are more restrictive in terms of height or density than the relevant land-use by-law.			This amendment was requested by HRM and is supported but minor wording change is recommended to clarify that it pertains to completed development agreements. New land use by-laws will nearly always be more permissive. HRM recommends the language *"more restrictive in terms of height or density than the relevant land-use by-law"* in Clause 6 be substituted with the word *"completed"* to facilitate creation of new plans and LUBs. This amendment would also be more impactful with a companion legislation that would prohibit private covenants on lands that limit the types of units permitted in development (e.g. secondary suites). This would be similar to the *Clothesline Act* passed in 2010.

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Clause 7 removes the ability of the Council to require a larger notification distance for site plan approvals and a provision made redundant by other amendments.	HRM chose to set the notification distance for variances to site plans beyond the minimum legislative requirement of 30 m. The result is increased appeals and increased nuisance appeals. This change will limit HRM to the 30 m boundary, ensuring only those directly impacted by a variance and with substantive claims can appeal a decision.		There are no site plan approval notification areas greater than 30 metres however HRM supports the removal in principle but recommends that subsection 9 ***not*** be repealed as this appears to create new grounds for appeal for non-substantive amendments which are *not* currently subject to appeal and consequently is contrary to the stated intent of the legislation.

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Clause 8 (a) requires a development officer to grant a variance respecting a setback or a street wall notwithstanding any land-use by-law or development agreement unless the variance would materially conflict with the municipal planning strategy; and (b) allows a decision to reject the variance to be appealed to the Utility and Review Board, with the onus on the development officer to demonstrate the conflict.	This change is not part of what HRM understands to be the Government's stated package of Housing-Related Changes to Increase Housing Supply and Expedite Residential Development.	Appeals to UARB will add timelines and costs.	This is a far-reaching, problematic amendment where there is already an efficient and timely process in place to review variances which will also impact the enforcement of existing legislation by professional and experienced Development Officers. The wording of Clause 8 is confusing, contrary to the stated intent of the legislation and will not speed things up For example, the test for variances is defined in HRM Charter while criteria for site plan approval variations in the Centre Plan are defined in the LUB. It is not clear what aspects of a streetwall can be varied, and if setbacks are varied it may have the effect of eliminating all setbacks (which will have an impact on municipal infrastructure and pedestrian space). The proposed amendment introduces conflict and a lack of clarity in the regulations. Furthermore, this amendment changes the appeal body from Community Council to the NSUARB, but only for applications refused by the Development Officer which will create an inconsistency, more time and more process. Regardless of which appeal body is chosen to hear variance appeals, the same appeal body should hear all variance appeals, both approvals and refusals. Currently, decisions of the Development Officer which are appealed to the UARB can only be overturned if the Board determines the Development Officer's decision conflicts with the LUB or subdivision by-law. HRM's position is that he Suburban Plan can create site plan variations and that additional flexibility can be introduced in the Centre Plan through the site plan approval process making this amendment unnecessary and recommends Clause 8 be removed. If Clause 8 is not removed and the appeal body is changed to the NSUARB which is *not* recommended, then it is recommended sections 251, 252, and 262-268 of the Charter also be amended to clarify the process, powers, and basis on which the Board may overturn the Development Officer's decision.

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Clause 9 removes the ability to designate distances of greater than 30 metres where notice of a variance is required.			Subsection (5A) refers to the procedure where Council has increased the notification distance. If increasing the notification distance is no longer possible, it is not clear why subsection (5A) is not being repealed and replaced with a similar subsection to the replacement subsection (1A). It is also unclear how these sections on appeal process would interface with the amendments to section 250A, which require the development officer to approve certain variances. More consideration should be given to the best procedure for variances and appeals. HRM recommends Clause 9 be removed pending determination of the best procedure for variance and appeals having consideration for all implications.

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Clause 10 requires applications for appeals relating to site plan and variance approvals to state the grounds for appeal and allows the Minister to make regulations listing non-substantive matters that may not be appealed.	HRM has the authority within the Centre Plan to outline through by-law a list of non-substantive matters that cannot be appealed when a Development Officer approves or denies a site plan. This authority will be extended to the entire municipality to reduce appeals based on poor relationships and petty grievances. Substantive appeals will not be impacted.		Property owners do not "apply" to appeal a decision on a variance or site plan approval. They have a statutory right to appeal a decision. A valid grounds for appeal would be that the Development Officer erred in their analysis of the variance against the criteria in section 250 (3) of the Charter. Any appeal which does not demonstrate this should be dismissed. It is unclear what is intended by a "non-substantive" matter. These amendments still require that Council dismiss invalid appeals. This will still require a staff report, placement on the Community Council agenda, and a decision of Council. This will not save any time compared to holding a hearing and having the appeal dismissed, which appeals without merit generally are. If the goal is to improve approval timelines and reduce unnecessary process, this amendment does reduce the number of nuisance appeals. The amendment further creates powers for the Minister to create regulations with respect to what constitutes non-substantive amendment and takes it out of Council's hands. HRM recommends that Clause 10 be deleted but if left in it is recommended the Clause be amended by removing the words "*application for*" throughout the Clause.

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Clause 11 requires the Utility and Review Board to award costs against the Municipality when a decision of a development officer to refuse a variance in respect of a setback or street wall is overturned on appeal.	This change is not part of what HRM understands to be the Government's stated package of Housing-Related Changes to Increase Housing Supply and Expedite Residential Development.		The decisions required of Development Officers differ from the types of decisions that are made by Council. While Council must make a decision on a planning application which reasonably carries out the intent of the MPS, Development Officers are required to make decisions which in their professional opinion comply with the by-law. This is a much more stringent criterion. Refusals are a last resort and are only issued when there is no avenue open to the Development Officer under the provisions of the by-law to approve an application. Where a refusal by a Development Officer is overturned, that decision is then influences all future decisions involving similar fact situations. While decisions to refuse applications should certainly be appealable, this amendment appears to seek to discourage any refusals rather than improve development application timelines or processes. Since a Development Officer is required by the HRM Charter to administer legislation as written, if an application is deemed not to meet the legislation it *must* be refused regardless of what the cost may be of an appeal. The current prohibition on costs being awarded at the URARB serves as a necessary deterrent to frivolous and unnecessary appeals and HRM recommends Clause 11 be deleted however if this amendment is to be retained, it should at a minimum provide for an award of costs to HRM should the appeal fail to deter meritless appeals.
Clause 13 clarifies that the Minister may exercise the Minister's powers without consultation or a recommendation or request.			Changes to HRM planning documents or development approvals can and generally have an impact on Municipal operations, services, and finances. It is unclear what the role of the Housing Panel will be in the future, and whether Municipal staff will still be required to craft plans and by-laws as directed by the Minister. Provincial communications outline more detailed changes to built form and development in the suburban area and creates uncertainty around holistic long range planning such as the Suburban Plan.

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Clause 14 allows the Minister to make an order designating any or all of the Municipality as a special planning area.		Very significant potential impact on municipal services if done without consultation with HRM.	This is very concerning to the Municipality and has the potential to create a lot of uncertainty around current development proposals, staff resourcing, forward planning and potential conflict with Council direction. It replaces long-range and integrated planning with site specific planning isolated from a larger land use infrastructure planning. It has the potential to create very significant potential environmental, infrastructure and financial impact on municipal resources, both operational and capital. It is not clear what criteria the Minister will use to establish new special planning areas or for designating the entirety of the Municipality a special planning area.
Clause 15 allows the Minister to amend or repeal land-use by-laws, subdivision by-laws and municipal planning strategies in special planning areas without the recommendation of the Executive Panel on Housing in the Halifax Regional Municipality.	In Special Planning Areas the Minister has the authority to amend or repeal a land use bylaw. The change will extend the authority to subdivision bylaws.		I appears this amendment may have been intended to make minor changes to approved Special Planning areas but the language is overly broad and can create significant impact and uncertainty not only with the private market but also with the public as to which by-laws will stand and which will not. Major changes can affect density and infrastructure assumptions which were central to the comprehensive planning process for Special Planning Areas. HRM recommends the legislature delete Clause 15 or alternatively limiting permitted amendments to those that are purely administrative or procedural in nature.

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Clause 16 allows the Minister to approve development agreements or amendments to development agreements in special planning areas without the recommendation of the Panel.			The Housing Panel allowed municipal staff to provide professional planning advice and present planning documents to the Panel as drafted by municipal staff. It is unclear what the future role of the Housing Panel will be and whether any professional or technical advice will be considered by the Minister.
Clause 17 allows the Minister as well as the Panel to approve development permits and subdivision approvals in special planning areas.			It is unclear whether municipal staff will be expected to review technical aspects of approved development permits or subdivisions and their alignment with municipal infrastructure and to what extent, if any, their professional advice will have on the Minister's decision.
Clause 19 allows the Minister to make regulations prescribing timelines for the issuance or approval of development permits, agreements and related documents and set penalties for missing the timelines.			Municipal approval timelines have been significantly reduced thanks to new staff resources and operating procedures. Further reductions will require additional staff resources, which may not be possible with the imposition of fee freezes although some of the Housing Accelerator Funding will be directed to that purpose. Timelines often depend more on the complexity of the project and proponent's ability to submit information than on HRM's staff's response time.

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Clause 20 excludes the Act and actions done under it from requirements to consult with the Municipality.			This is of concern to the Municipality as it has the potential to remove municipal jurisdiction for land use planning without the commensurate financial resources to mitigate impacts on municipal services both in the sort and long term.