

HALIFAX

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Item No.
Executive Standing Committee
August 6, 2014

TO: Mayor and Members of Executive Standing Committee

SUBMITTED BY:

Original Signed

John Traves, Q.C., Director, Legal Services

DATE: July 29, 2014

SUBJECT: **Summary Report and Recommendations – Governance Review
(External Committees)**

ORIGIN

Motion of Halifax Regional Council of June 25, 2013:

That the Executive Standing Committee, supported by staff, is directed by Halifax Regional Council to undertake a review of Council's governance and committee structure and the terms of reference of Standing Committees to ensure the structure supports Council's priorities, to be completed by June 30, 2014 for submission to Regional Council.

During the Council discussion, it was agreed that the review should also include the number of external committees members of Regional Council are asked to serve on and whether those councillor appointments best serve the interests of HRM.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter – Section 39 of the Acts of 2008 as amended

- Powers of Council - Section 11(1)
- Council May Make Policies – Section 20(2)

RECOMMENDATION

It is recommended that Executive Standing Committee recommend to Regional Council that

Recommendation #1A: Regional Council make no changes to the process for appointments to the Halifax Water Commission board, the Police Commission, the Community Monitoring Committee or the FCM and UNSM boards.

Recommendation #1B: Regional Council reduce the number of Councillors appointed to the Regional Library Board and work with the Provincial Government to make appropriate changes to the relevant agreement.

Recommendation #2: Regional Council, when dealing with appointments to other external boards and committees, consider first, competency based appointment of HRM residents, second, appointment of relevant HRM staff members, and third, appointment of elected officials only if suitable appointments cannot be made under the first two categories

Recommendation #3: Regional Council cease appointing councillors to the boards of Alderney Landing, Canada Games Centre, Neptune Theatre and the Business Improvement Districts, and to the boards of other organizations which might invite the appointment of councillors

Recommendation #4: Regional Council advise all councillors who sit on boards or committees to which they have not been appointed by Regional Council to inform the Municipal Clerk of those positions.

BACKGROUND

INTRODUCTION

In this governance review, to date the Project Manager has

- interviewed councillors about HRM's governance: what works, what needs improvement and how external committee appointments might be managed better.
- researched governance practices in HRM and other comparable Canadian municipalities
- prepared reports and presentations for the Executive Standing Committee to
 - provide feedback on the interviews with councillors,
<http://www.halifax.ca/boardscom/SCadmin/documents/InfoReportUpdateGovernanceProject.pdf>
 - make suggestions about approaches to external committees
<http://www.halifax.ca/boardscom/SCadmin/documents/CouncillorAptstoExternalCommittees.pdf>
 - make suggestions about the use of Committee of the Whole
<http://www.halifax.ca/boardscom/SCadmin/documents/ConsiderationofCOW.pdf>
 - make suggestions about the use of internal committees.
<http://www.halifax.ca/boardscom/SCadmin/documents/GovernancePresentationMarch242014.pdf>
- received and incorporated feedback from the Executive Standing Committee and from staff in the Office of the CAO and Legal Services,
- prepared a Report on Internal Committees for Executive Standing Committee
 - <http://www.halifax.ca/boardscom/SCadmin/documents/Item9.1.1GovernanceReview-SummaryReportandRecommendationsInternalCommittees.pdf>

Regional Council has also received a number of briefings and advice on Conflicts of Interest.

This report focuses on the external committees to which Council makes appointments. It makes change recommendations for Executive Standing Committee to consider.

COMMITTEES

Regional Councillors sit on many boards and committees as appointees or representatives of Regional Council, or as volunteers. Some of the boards and committees are “Internal” and others are “External”.

Internal committees, like Community Councils and Standing Committees and groups which report to them, are established by Regional Council itself. A previous report made recommendations covering internal committees. After discussion at Executive Standing Committee, the report was presented to Regional Council.

External boards or committees are generally established by other organizations. HRM is often asked to appoint members to those boards or committees.

EXTERNAL COMMITTEES

There are both “regional” and “local” external committees. The latter tend to have a specific geographic focus that centres on a single council electoral district.

Regional external committees fall into five broad categories for Councillor appointments;

- Mandated under provincial legislation
- Established to deal with intergovernmental issues
- Directed by motion of Regional Council or by agreement
- Appointed to provide financial oversight or liaison
- Invited under the bylaws of the external organization

DISCUSSION

Regional Council appoints councillors to external Boards/Committees for two main reasons:

- accountability - to know that the organization uses HRM funds/other resources effectively.
- communication - to know what the external body does or to tell it what HRM is doing.

In meetings with the Governance Project Manager, Regional Councillors raised many issues about appointing councillors to the boards or committees of external organizations.

The presence of regional councillors on external boards and committees raises some legal issues. The January 23, 2014 private and confidential report from Legal Services to Executive Standing Committee provides information on those questions. The legal issues require that Regional Council carefully consider its approach for some types of external boards and committees.

A summary of the appointments, by category, follows with recommendations for action. (Attachment A includes legislative and other information about external committees and Attachment B provides an overview of the appointment situation for external committees.)

Appointments mandated under provincial legislation or dealing with intergovernmental issues

Recommendation #1A: *Regional Council make no changes to the process for appointments to the Halifax Water Commission board, the Police Commission, the Community Monitoring Committee or the FCM and UNSM boards.*

Halifax Water, Halifax Library, the Police Commission, the Community Monitoring Committee, the Federation of Canadian Municipalities, the Union of Nova Scotia Municipalities and the Canadian Urban Transit Association are the organizations in these two categories.

For Halifax Water, the Halifax Library, and the Police Commission, appointing elected officials and residents by Council fulfills the requirements of the relevant legislation. (Attachment A).

For the Community Monitoring Committee, the agreement between Halifax and the community covers appointments. Any change requires the agreement of the community.

For intergovernmental organizations, like FCM and UNSM, appointing elected officials meets the requirements of the bylaws of those organizations. As long as Halifax is a member of those organizations, it must abide by their bylaws. For the Transit Committee of CUTA, appointing an elected official, if requested by the Transportation Standing Committee, is appropriate.

Recommendation #1B: *Regional Council reduce the number of Councillors appointed to the Regional Library Board and work with the Provincial Government to make appropriate changes to the relevant agreement.*

The Halifax Regional Library Board is reviewing its governing by-laws. It has discussed the Library Board's composition. Given that Regional Council's size has gone from 23 to 16 councillors, the Library Board suggests that the number of Councillors appointed to the Board be reduced from 4 to 3 and that the number of citizens appointed go from 4 to 5. The Governance Working Group suggests that the appointment of 2 councillors and 6 citizens also be considered.

Discussions with the Province of Nova Scotia suggest that making appropriate changes to the agreement covering the Halifax Regional Library should be straight forward.

Appointments directed by motion of Regional Council or by agreement

Recommendation #2: Regional Council, when dealing with appointments to other external boards and committees, consider first, competency based appointment of HRM residents, second, appointment of relevant HRM staff members, and third, appointment of elected officials only if suitable appointments cannot be made under the first two categories

Organizations in this category include: Halifax Bridge Commission, Shubenacadie Canal Commission, Destination Halifax, and the Greater Halifax Partnership.

The Working Group recommends that Council move to competency based resident appointments as the primary appointments to boards/committees in this category. Council could make HRM staff appointments as a secondary choice. Council should appoint an elected official only under special circumstances.

If adopted, these changes could be implemented in the next round of appointments to both the Halifax Bridge Commission and the Shubenacadie Canal Commission.

If adopted, the changes would require HRM to negotiate amendments to the current agreements with or bylaws of, Destination Halifax and the Greater Halifax Partnership.

The Project Working Group does not recommend changes to the HRM appointments to the Trade Centre Limited. The Trade Centre will soon be replaced by the Halifax Convention Centre and the TCL board wound down. The new legislation governing the appointment of the board of the Halifax Convention centre requires the appointment by Regional Council of four residents with the competencies and experience needed. The partners in the convention centre, Halifax and the province, are developing the competencies required on the new board.

The legislation for the Bridge Commission and the Canal Commission does not require the appointment of councillors to either body.

Given the importance of the harbour bridges to Halifax, it could be argued that it would be useful to have one or two councillors appointed to the Bridge Commission. A similar argument could be made for the Canal Commission. If Regional Council chooses to appoint councillors to either of both of these boards, Regional Council should note that it does not have to make such appointments.

Appointments made to provide financial oversight or liaison

Recommendation #3: Regional Council cease appointing councillors to the boards of Alderney Landing, Canada Games Centre, Neptune Theatre and the Business Improvement Districts, and to the boards of other organizations which might invite the appointment of councillors.

Organizations included in this category are: Alderney Landing, Canada Games Centre, Neptune Theatre, and the boards of the various organizations which manage the affairs of the Business Improvement Districts.

The Working Group strongly recommends that no appointments of elected officials be made in this category. Currently there is a lack of consistency about why elected officials serve on some boards and not others of a similar nature.

While oversight and liaison with community facility and arts organizations are important to HRM, especially when HRM makes significant financial contributions, the Working Group's position is that appropriate financial oversight and liaison can be achieved through more stringent service agreements and clearer, direct, regular reporting requirements. Such approaches minimize the potential for real or perceived conflict of interest.

The use of a staff Liaison Officer model, currently in place with Trade Centre Limited, is another robust method for understanding and overseeing the operations of external organizations.

To implement this approach, in several cases, changes to the bylaws of the relevant organizations will need to be negotiated.

Invited under the bylaws of the external organization

Recommendation #3 covers the situation of such organizations. The Working Group recommends that Regional Council not appoint elected officials to the boards and committees in this category, too. Good service agreements, where appropriate, and clearer reporting can meet financial oversight and liaison requirements. In several cases, changes to the bylaws of the organizations will need to be negotiated.

Local External Organizations

Recommendation #4: Regional Council advise all councillors who sit on boards or committees to which they have not been appointed by Regional Council to inform the Municipal Clerk of those positions.

Recent case law, as outlined in the January 23rd Private and Confidential Report, is provided under separate cover. If elected officials choose to serve on local boards or committees, they should take appropriate steps in accordance with the Municipal Conflict of Interest Act to identify and deal with Conflicts in accordance with the Act.

The Working Group recommends that Council require Elected Officials to advise the Office of the Municipal Clerk of any and all Boards & Committees on which they serve and to which Regional Council or Community Council has not appointed them. It is further recommended that a public list should be kept with the Office of the Municipal Clerk as part of the Conflict of Interest log required by the HRM Charter.

FINANCIAL IMPLICATIONS

Costs – Several External Boards pay stipends for attendance at Board meetings. To meet the requirements of the HRM Charter, Councillors appointed to those boards do not receive the stipends. They are paid as revenue to the operating budget of the Councillors' Support Office. The same would be the case for staff appointments. Should citizen appointments be made it would result in a reduction in the operating budget of the Councillor's Support Office - Cost Centre E200 estimated at about \$15,000 annually. This reduction should be adjusted for in future HRM operating budgets.

Savings – There would be indirect savings from not appointing councillors to Boards and Committees. The time the councillors spend at these board meetings would be available for other activities. For some boards this time saving could be significant. For example, Councillors who sit on the Bridge Commission also sit on subcommittees of that board, attend planning sessions and otherwise engage heavily with the work of the board. That time would be available for other duties.

COMMUNITY ENGAGEMENT

The Project Manager met with Councillors to develop this proposal but there has been no community engagement to date on the issues presented here. In moving to implement some of the suggestions made, it will be necessary to consult with many organizations to make changes in their bylaws.

ENVIRONMENTAL IMPLICATIONS

There are no significant environmental implications in changing the appointment of councillors to external boards and committees.

ALTERNATIVES

(1) Status Quo: The Executive Standing Committee could recommend that no changes be made to the current practise of appointments to External Boards and Committees

(2) Partial implementation of recommendations: The Executive Standing Committee could choose to implement some of the recommendations only.

ATTACHMENTS

Attachment A – Legislation Covering External Committees

Attachment B – External Boards and Committees – Summary of Recommendations

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.php> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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Attachment A – Legislation Covering External Committees

Halifax Water Commission - The *Halifax Regional Water Commission Act* states that

4 (1) The Commission Board consists of

- (a) the Mayor of the Regional Municipality;
- (b) three members of the Council appointed by the Council;
- (c) three residents of the Regional Municipality, who are not members of the Council, appointed by the Council; and
- (d) one member of the Regional Municipality staff, appointed by the Chief Administrative Officer of the Regional Municipality, who shall be a non-voting member of the Commission Board.

Board of Police Commissioners - The *Police Act* states that

44(1) Every municipality that establishes a municipal police department pursuant to Section 36, 84 or 85 shall, by by-law, provide for a board of police commissioners.

- (4) A seven-member board appointed pursuant to subsection (1) consists of
 - (a) three members of council appointed by resolution of the council
 - (b) three members appointed by resolution who are neither members of council nor employees of the municipality
 - (c) one member appointed by the Minister

HRM Regional Library Board - The *Libraries Act* states

10 (1) Where an agreement for the establishment and support of a regional public library is entered into under this Act there shall be a regional library board for the management and operation of the library.

- (2) A regional library board shall consist of
 - (a) one member appointed by each city, town and municipality that is a party to the agreement
 - (b) two members appointed by the Governor in Council; and
 - (c) additional members appointed in such manner and number as the parties to the agreement agree.

In 1996, HRM and the Province signed an agreement that stated:

the regional library board shall be known as the Halifax Regional Library Board and shall consist of eleven members to be appointed in the following manner:

- (a) the Mayor of the Municipality, ex officio;
- (b) two members appointed by the Governor in Council pursuant to clause 10(2)(b) of the Libraries Act; and
- (c) eight persons appointed by the Council of the Municipality pursuant to clause 10(2)(c) of the Act as follows:
 - (i) four councillors of the Municipality, and

(ii) four citizens of the Municipality.

[In a June 5, 2014 letter to the Mayor, the Chair of the Halifax Regional Library Board suggested reducing the number of councillor appointments from four to three and increasing the number of citizen appointments from four to five.]

Bridge Commission - The *Halifax-Dartmouth Bridge Commission Act* states

3 The Halifax-Dartmouth Bridge Commission consists of

(a) five members appointed by the Governor in Council, one of whom is to be the Chair and one of whom is to be the Vice-chair; and

(b) four members appointed by the Municipality

Shubenacadie Canal Commission - An amendment to the *Shubenacadie Canal Commission* legislation states that membership will include:

(a) Four persons resident in HRM appointed by the Council of HRM for such terms of office as the Council may determine

Community Monitoring Committee - Section 7.01 of the Monitoring Agreement between HRM and the Halifax Waste/Resource Society defines the responsibilities of the Community Monitoring Committee. CMC has the responsibility to:

1. Monitor all operations at the Otter Lake landfill;
2. Report important information about the landfill operation to the local community;
3. Hear concerns from the local community and report those views to the Council of HRM;
4. Report its own views to Council on any other aspect of HRM's waste management facilities that could have an impact on the landfill facilities;
5. Report concerns to any other relevant body (ex. Nova Scotia Department of Environment) regarding any concerns it may have concerning issues inside of its mandate.

Under the agreement with HRM, the CMC comprises:

1. The Mayor;
2. 2 local Councillors;
3. 1 other Councillor appointed by Council;
4. 2 residents of HRM who do not live in the area, appointed by Council;
5. 9 residents of HRM who are elected, with 4 to 6 coming from the local community.

Destination Halifax - The By-Laws of Destination Halifax state

5.04 The following shall each be entitled to be represented on the Board of Directors as long as the organization they represent is providing money for the operation of the Society in an amount no less than that which existed at the time of the organization's incorporation. Any changes to the financial contributions, by way of reduced investment will call for review by a committee comprised of members of the Board, in the elected categories, and may result but not be limited to:

- a) no change to status
- b) modification to voting status
- c) reduction to number of allocated seats on the Board
- d) elimination of entitlement for representation on the Board
- (i) The Mayor of Halifax Regional Municipality or his or her designate;
- (ii) A member of Halifax Regional Municipal Council appointed (not elected) by Council;

- (iii) The Chief Administrative Officer of the Halifax Regional Municipality, or his or her designate;
- (iv) The President of the Hotel Association of Nova Scotia, or his or her designate;
- (v) The President of Trade Centre Limited or his or her designate;
- (vi) The Deputy Minister, of the Nova Scotia government, responsible for Tourism or his or her designate

5.05 Up to two (2) positions on the Board of Directors shall be elected from members who provide accommodation services with at least one facility that has between 20 and 99 rooms and which is located outside the current Districts 7 and 8 of the Halifax Regional Municipality.

5.06 Up to seven (7) positions on the Board of Directors shall be elected from members involved in the Tourism industry in HRM who do not qualify under Bylaw 5.05.

Greater Halifax Partnership - The By-laws of the Greater Halifax Partnership state

23 The composition of the Board of Directors shall be as follows:

- (a) Seven members representing the Investors;
- (b) Two members representing the Municipal Council of HRM; and
- (c) Six members representing the Community at Large.

24 The Board shall have five *ex officio* members. The *ex officio* members have the right to attend Board meetings and to speak at such meetings, but an *ex officio* member shall not have the right to vote at such meetings. The attendance of an *ex officio* member at a Board meeting shall not be included when determining whether a quorum is present. The *ex officio* members of the Board shall be as follows:

- a. The Mayor of the Halifax Regional Municipality, or designate;
- b. The Chief Administrative Officer of the Halifax Regional Municipality, or designate;
- c. The Provincial Minister responsible for Economic Development, or designate;
- d. The Federal Minister responsible for the Atlantic Canadian Opportunities Agency, or designate; and
- e. The Commander of Joint Task Force Atlantic, or designate.

Federation of Canadian Municipalities - The bylaws of FCM state:

4.05 Directors Representing Nova Scotia. There shall be four (4) Directors representing Nova Scotia, one (1) of whom shall be appointed by its Affiliate Member (Union of Nova Scotia Municipalities) being its president, one of whom shall be appointed by the Halifax Regional Municipality and each of the other two (2) Directors shall be elected by the Accredited Representatives of its Municipal Members.

Union of Nova Scotia Municipalities - The Bylaws of UNSM state:

4.1 At each Annual Conference delegates representing towns, rural municipalities and regional municipalities shall meet in their respective caucuses to elect three members to serve on the Board of Directors to replace the members elected by that particular caucus who are completing as of the Annual Conference the second year of their two-year term or were elected between Annual Conferences by that particular caucus to replace a member who was unable or unwilling to continue serving as a member of the Board of Directors. At the Annual Conference voting delegates from each caucus shall elect such members to serve on the Board of Directors as are necessary to ensure that each caucus has elected to service three (3) members on the Board of Directors. One (1) of the three (3) persons elected by each caucus to serve on the Board of Directors shall be elected as Caucus Chair.

Attachment B - External Boards & Committees – Summary of Recommendations

General Definition of Type	Organizations	Recommendation
Mandated under Legislation -	Halifax Water (Halifax Water Act) Police Commission (Police Act)	RECOMMEND NO CHANGES - Appointment of elected officials & citizens by Regional Council fulfills the appropriate governance mandate.
	HRM Library Board (Act & Provincial Agreement)	RECOMMEND CHANGE IN LINE WITH REQUEST FROM LIBRARY BOARD
Intergovernmental Boards & Committees.	Federation of Canadian Municipalities Union of Nova Scotia Municipalities Canadian Urban Transit Association	RECOMMEND NO CHANGES Appropriate role for elected officials
Directed by motion of Council or agreement	Bridge Commission (<i>can implement with no change to legislation</i>) Shubenacadie Canal Commission (<i>no change to legislation required</i>) Community Monitoring Committee (<i>requires change to agreement</i>) Destination Halifax (<i>requires change to bylaws</i>) Greater Halifax Partnership (<i>requires change to bylaws</i>)	CONSIDER CHANGES Move to: 1) competency based citizen appointments as the primary appointments to the named Boards 2) staff appointments second 3) appoint elected official (<i>only if necessary</i>)
Appointed to provide financial oversight or liaison	Alderney Landing Canada Games Centre Neptune Theatre Business Improvement Districts (<i>requires change to some bylaws</i>)	RECOMMEND NO APPOINTMENTS OF ELECTED OFFICIALS TO THESE BOARDS - Liaison/accountability delivered by more stringent service agreement/reporting functions
Invited under the bylaws of the organization	Cole Harbour Place Discovery Centre Halifax Forum Other Multi-District Facility Boards*	RECOMMEND NO APPOINTMENTS OF ELECTED OFFICIALS TO THESE BOARDS - Liaison/accountability delivered by more stringent service

	<i>(may require change to bylaws)</i> *work being done by CRS on this issue	agreements/reporting functions and/or direct staff liaison
General Definition of Type	Organizations	Recommendation
Local External Boards and/or Committees	Councillor dependent. Councillors sit on by choice – through invitation or preference	If elected officials choose to serve on local boards or committees, they should take appropriate steps in accordance with the Municipal Conflict of Interest Act to identify and deal with Conflicts in accordance with the Act. RECOMMEND that Elected Officials advise the Office of the Municipal Clerk of any and all Boards & Committees on which they serve and to which Regional Council or Community Council has not appointed them. A public list shall be kept with the Office of the Municipal Clerk as part of the Conflict of Interest log required by the HRM Charter.