

Executive Standing Committee
January 27, 2014

TO: Mayor Savage and Members of the Executive Standing Committee

SUBMITTED BY: **ORIGINAL SIGNED**

for Chris Bryant

DATE: January 21, 2014

SUBJECT: **Councillor Appointments to 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

The Halifax Regional Municipal Charter states in Section 20 (1) Council may make policies (c) providing for committees and conferring powers and duties upon them, except the power to expend funds

HRM also has a Public Appointment Policy – Governing citizen appointments to HRM Agencies, Boards, Committees and Commissions and to External Bodies

RECOMMENDATION

It is recommended that Executive Standing Committee recommend that Regional Council

- 1) Adopt the recommendations for change re: appointments to external boards and committees as outlined in Attachment B of this staff report, and
- 2) In general, when dealing with appointments to external boards and committees,
 - a. First consider competency based appointment of HRM residents,

- b. Second, consider the appointment of relevant HRM staff members, and
 - c. Third, consider the appointment of elected officials if
 - i. Legislation specifically requires the appointment of elected officials, or
 - ii. Suitable appointments cannot be made under (a) or (b) above.
- 3) Recognizing that appointing HRM residents to some external boards and committees where Regional Councillors currently sit could reduce funds available for the Councillors' Support Office, recommend to staff that an equivalent amount of money be added to the operational budget of the Councillors' Support Office to replace those funds.

It is further recommended that the Executive Committee request that staff review the HRM "Public Appointment Policy – governing citizen appointments to HRM agencies, Boards and Committees and to External Bodies" to:

- a. Ensure it reflects the changes recommended (if adopted by Council) and,
- b. Is adopted as an Administrative Order of Council

BACKGROUND

Regional Councillors sit on a number boards and committees as appointees or representatives of Regional Council. 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. These committees will be dealt with in a separate Report to Executive Standing Committee.

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

The distinctions between "internal" and "external" committees are not always clear cut but the two general categories can help determine what Regional Council should do about them. There are also "regional" external committees 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 (5) broad types for Regional Councillor appointments;

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

A description of each of the five categories of boards/committees and the current situation for the relevant organizations follows:

(A) Mandated under provincial legislation

Three boards/commissions fall in this category. The relevant legislation (See Attachment A) requires Regional Council to appoint elected officials to certain positions.

(A-1) Halifax Water Commission

HRM Appointments: Mayor, three (3) members of Council, three (3) residents, one (1) staff appointed by the CAO.

(A-2) Board of Police Commissioners

HRM Appointments: Three (3) members of Council, three (3) citizens

(A-3) HRM Regional Library Board

HRM appointments: Mayor (Ex officio), four (4) members of Council, four (4) citizens

(B) Directed by motion of Regional Council or by agreement

There are six organizations in this category.

(B-1) Bridge Commission

HRM appointments: (Under the *Bridge Commission Act*): Four (4) members appointed by the municipality.

Recently, these appointments have been four members of Council. There is no requirement to appoint members of Council under the Act.

(B-2) Shubenacadie Canal Commission

HRM appointments: (Under the Shubenacadie Canal Commission legislation): Four (4) residents of HRM.

Currently HRM has appointed two (2) councillors and two (2) residents of HRM. There is no requirement to appoint a member of Council under the legislation.

(B-3) Community Monitoring Committee

HRM appointments: (Under the HRM agreement with CMC): Mayor, two (2) local councillors, one (1) other Councillor (not from the area), two (2) residents of HRM. Any changes would require amendment to the agreement with CMC.

(B-4) Destination Halifax

HRM Appointments (under agreement and bylaws of DH): Mayor (or designate), one (1) member of Council, CAO (or designate).

Changes to HRM appointments would require changes to the DH bylaws.

(B-5) Greater Halifax Partnership

HRM Appointments (Under bylaws of GHP): Two (2) members representing Council. Also as *ex officio* (non-voting) members – Mayor and CAO.

Changes to HRM appointments would require changes to the GHP bylaws.

(B-6) Current Trade Centre Limited

HRM Appointments (Under Agreement and bylaws of TCL): Members: Mayor, two (2) members of Council and CAO (or designate). Greg Keefe currently serves as the CAO designate. Manager of Facilities from CRS acts as “liaison” with TCL.

Note: The new Halifax Convention Centre will have a different governance structure.

(C) Appointed to provide financial oversight or liaison

Three (3) organizations and the business improvement districts fall in this category. Changes to appointments of members of Council would require amendments to the bylaws of these organizations.

(C-1) Alderney Landing

Councillor McCluskey serves, by appointment of Council, on the Alderney Landing board.

(C-2) Canada Games Centre

Councillor Walker serves, by appointment of Council, on the Centre board.

(C-3) Neptune Theatre

Mayor (or designate) and one (1) member of Council. Councillor Fisher currently serves as the “HRM Representative” on the Neptune Foundation Board.

(C-4) Business Improvement Districts

HRM Councillors and staff participate in a variety of ways in BIDs including appointment through Community Council or invitation to the boards of the associations in their districts.

- Downtown Dartmouth Business Commission (Councillor McCluskey)
- Downtown Halifax Business Commission (Councillor Mason & CAO representative)
- Main Street Dartmouth Business Improvement District (Councillor Fisher)
- North End Business Association (Councillor Watts)
- Quinpool Road (Councillors Mosher and Watts)
- Sackville Business Association (Councillors Craig and Johns and an HRM Planning rep)
- Spring Garden Area Business Association (Councillor Mason and an HRP rep)
- Spryfield District and Business Association (Councillors Adams and Mosher)

(D) Invited under the bylaws of the external organization (not appointed by Council)

Councillors, both as elected officials and as engaged residents in their districts, play a variety of roles in local organizations. Members of Council may choose to sit on a Board in a “volunteer” capacity to which Council has made no formal appointments. Currently participation on such Boards is at the discretion of the local Councillor.

Attachment B summarizes the situation for both regional and local external appointments.

(D-1) Cole Harbour Place

Currently Councillor Nicoll serves on this board.

(D-2) Discovery Centre

Councillor Adams serves on the board of the centre.

(D-3) Halifax Forum

Councillor Watts serves on the board of the Forum.

(D-4) Other Multi-district Facilities

Community & Recreation Services is preparing proposals in keeping with those recommended in the report on the management of the Multi-district facilities for discussion by the Community Planning and Economic Development Standing Committee and Regional Council.

(E) Established to deal with intergovernmental issues

There are three organizations in this category:

(E-1) Federation of Canadian Municipalities

Councillor Karsten is on the Board. The Mayor participates in the Big City Mayors Caucus.

(E-2) Union of Nova Scotia Municipalities

HRM is one of three members of the Regional Municipalities caucus. Effectively, HRM always has a member on the board of UNSM. Councillor Karsten represents HRM on the Board. Councillor Walker is also a member of the board as immediate Past President.

(E-3) Canadian Urban Transit Association

HRM can appoint an elected official as a Director to the Transit Committee Board of CUTA. That committee of CUTA is comprised of elected officials from across the country. This appointment is currently made by Council based on the recommendation of the Transportation Standing Committee.

DISCUSSION

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

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

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

There are some legal questions raised by the presence of regional councillors on external boards and committees. The January 23, 2014 private and confidential report from Legal Services to Executive Standing Committee provides details on those questions.

Given the legal issues, what might Regional Council consider doing in the different types of external boards and committees?

A summary of the appointments, by category, follows with suggestions for action.

(A) - Mandated under provincial legislation

The Governance Project Working Group recommends no changes for this category. The appointment of elected officials and residents by Regional Council fulfills the requirements of the relevant legislation.

(B) - Directed by motion of Regional Council or by agreement

The Working Group recommends that Regional Council consider moving to competency based resident appointments as the primary appointments to all boards/committees in this category.

Council should 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 Shubenacadie Canal Commission. If adopted, the changes would require HRM to negotiate amendments to the current agreements and/or bylaws with Destination Halifax, Greater Halifax Partnership and Community Monitoring Committee. Staff do not recommend changes to the HRM appointments to the Trade Centre Limited as that matter will be addressed with the establishment of the new Halifax Convention Centre Board.

(C) Appointed to provide financial oversight or liaison

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 and should be achieved through more stringent service agreements and clearer and more direct regular reporting requirement. Such approaches minimize the potential for real or perceived conflict of interest. In addition 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 outside organizations. In several cases, changes to the bylaws of the organizations will need to be negotiated.

(D) Invited under the bylaws of the external organization

The Working Group recommends that Regional Council not appoint elected officials to the boards and committees in this category. Good service agreements if 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.

(E) Established to deal with intergovernmental issues

The Working Group recommends no changes in this category. The appointment of elected officials is appropriate for FCM, UNSM and the Transit Committee of CUTA (if requested by the Transportation Standing Committee).

Local External Organizations

Recent case law, as outlined in the Private and Confidential Report dated January 23 is provided under separate cover. Should elected officials choose to serve on local boards or committees, they should seek legal advice as to their responsibilities to avoid conflicts of interest with their role as elected officials.

The Working Group recommends that Council, by resolution, 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.

Attachment B summarizes the recommendations of the Working Group.

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 estimated at @ \$15,000 annually. This reduction should be adjusted for in the HRM operating budget.

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

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 councilors 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

A - Background Information on External Committees

B - External Boards & Committees – Recommendations.

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/index.html> 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.

Report Prepared by: Chris Bryant, Project Manager – Governance Project – 490-3729

Attachment A – Background Information on External Committees

(A-1) 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.

(A-2) 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

(A-3) 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.

(B-1) 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

(B-2) 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

(B-3) 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.

(B-4) 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.

(B-5) 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.

(B-6) Trade Centre Limited

The province set up TCL under an order in council. The new Halifax Convention Centre, now under construction, will have a different governance structure featuring a competency based board.

(E-1) 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.

(E-2) 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 - Recommendations

General Definition of Type	Organizations	Recommendation
A – Mandated under Legislation -	A-1 Halifax Water (Halifax Water Act) A-2 Police Commission (Police Act) A-3 HRM Library Board (Act & Provincial Agreement)	NO CHANGE RECOMMENDED . - Appointment of elected officials & citizens by Regional Council fulfills the appropriate governance mandate.
B – Directed by motion of Council or agreement –	B-1 Bridge Commission (<i>can implement with no change to legislation</i>) B-2 Shubenacadie Canal Commission (<i>no change to legislation required</i>) B-3 Community Monitoring Committee (<i>requires change to agreement</i>) B-4 Destination Halifax (<i>requires change to bylaws</i>) B-5 Greater Halifax Partnership (<i>requires change to bylaws</i>) B-6 Trade Centre (<i>changes proposed already for new Halifax Convention Centre</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>)
C – Appointed to provide financial oversight or liaison	C-1 Alderney Landing C-2 Canada Games Centre C-3 Neptune Theatre C-4 Business Improvement Districts (<i>requires change to bylaws</i>)	STRONGLY RECOMMEND NO APPOINTMENTS OF ELECTED OFFICIALS TO THESE BOARDS - Liaison/accountability delivered by more stringent service agreement/reporting functions
D - Invited under the bylaws of the organization – CHANGE RECOMMENDED and SHOULD BE CONSIDERED STRONGLY	D-1 Cole Harbour Place D-2 Discovery Centre D-3 Halifax Forum D-4 Other Multi-District Facility Boards* (<i>may require change to bylaws</i>) *work being done by CRS on this issue	RECOMMEND NO APPOINTMENTS OF ELECTED OFFICIALS - Liaison/accountability delivered by more stringent service agreements/reporting functions and/or direct staff liaison

E - Intergovernmental Boards & Committees.	E-1 Federation of Canadian Municipalities	NO CHANGE RECOMMENDED - Appropriate role for elected officials.
	E-2 Union of Nova Scotia Municipalities	
	E-3 Canadian Urban Transit Association	No Change recommended

		Recommendation
Local External Boards and/or Committees	Councillor dependent. Councillors sit on by choice – through invitation or preference	<p>STRONGLY RECOMMEND, based on current case law, that elected official consider carefully invitations to sit on the Board of Directors of local boards/committees due to challenges in regard to conflict of interest.</p> <p>If elected officials choose to do so they should seek legal advice as to their responsibilities in regard to avoiding conflicts of interest with their role as elected officials.</p> <p>Elected Officials <u>must</u> 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.</p> <p>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.</p>