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Item No.
Community Planning & Economic Development
Standing Committee
December 11, 2014

TO: Chair and Members of the Community Planning & Economic Development
Standing Committee

SUBMITTED BY: Original Signed
Brad Anguish, Director, Parks & Recreation

DATE: December 2, 2014

SUBJECT: Use of the HRM-owned Pavilion by the Pavilion Youth Association

INFORMATION REPORT

ORIGIN

May 8, 2014 – Community Planning & Economic Development Standing Committee passed the following motion:

“The Community Planning and Economic Development Standing Committee request staff prepare a report identifying options and associated budget and access implications for the continued use of the HRM-owned Pavilion by the Pavilion Youth Association (PYA) for the conduct of all ages concerts. The report shall give specific consideration to:

- 1) below market rental costs, potentially \$1.00/night;
- 2) flexible scheduling consistent with industry practice;
- 3) permanent storage and placement of concert equipment (lights, public address system, instruments on stage and in storage); and
- 4) long term, three to five year shared use agreement with HRM or, alternatively, a management agreement whereby PYA manages the Pavilion on behalf of HRM. And further, staff is requested to consider enabling the continued use of the pavilion by the PYA until the current operating agreement is in place or until the end of August (whichever comes first).”

LEGISLATIVE AUTHORITY

Administrative Order 58 – Respecting the Delegation of Certain Authorities, section 14: “... Council hereby authorizes less than market value rent to be charged to a non-profit organization who is carrying on an activity that is beneficial to the Municipality pursuant to clause 13(c) of this Administrative Order.”

HRM Charter, Clause 70(1)(k): “The Council may expend money required by the Municipality for recreational programs.”

HRM Charter, Subclause 70(1)(av)(v): "The Council may expend money required by the Municipality for a grant or contribution to ... any charitable,...cultural, community...recreational...or social organization within the Province.

"BACKGROUND

The building known as "The Pavilion" is owned by the Municipality and is located on the Halifax Commons adjacent to a public baseball field, playground and outdoor pool. The building's lower floor contains mechanical equipment for the pool, changing and washrooms. The premises are not wheelchair accessible. The upper floor has been used for Halifax Community Recreation & Culture (CR&C) programs and special events in the vicinity of the Commons, occasional room rentals, and an "all ages music venue".

From 1998 to 2003 the Pavilion was operated by CR&C staff. In 2003, the building was closed by order of the HRM Fire Marshal for breach of fire code. During the closure, a review by CR&C staff led to a formal Request for Proposals (#04-031) in 2004. The stated objectives of the RFP were as follows:

1. To lease and operate a safe and sustainable all ages music venue
2. To provide youth ages 13-19 with a positive recreational opportunity
3. To provide youth with an opportunity to showcase their musical talents
4. To provide youth with the opportunity to develop leadership and entrepreneurial skills

The successful proponent was PnuWave Entertainment Inc (PNU). As a result, the Municipality entered into a lease agreement for the Pavilion with All Ages Entertainment Incorporated (AAEI). It is not clear from Municipality's records why the lease was not made with PNU, however the PNU and AAEI have common directors and it appears that it was at their request that the lease be with AAEI rather than PNU.

The lease with AAEI made no reference to the RFP or its objectives. It merely stated that "the said premises shall be used for the purposes of an all ages music venue, providing entertainment for youth." Otherwise there were few restrictions on AAEI's use of the facility. The term of the lease commenced August 1, 2004 and ended August 31, 2005. The rental rate was \$0.00 and AAEI was responsible for all costs except for utilities and capital repairs which were to be paid by HRM. There was no reference in the lease regarding event revenues and whether they were to go to AAEI or the Municipality.

Subsequent to the expiry of the initial term of the lease, AAEI continued to use the Pavilion for all-ages music events. In or around August 2005, CR&C staff agreed to provide AAEI with a \$5,000 subsidy towards its annual insurance costs in order to alleviate some of AAEI's financial burdens. There are no written records – it appears that this arrangement was agreed to orally between AAEI and CR&C staff. Over the next 5-6 years, the arrangement was further modified (again, orally) such that the Municipality would reimburse AAEI for 50% of its costs for insurance and event security, as it was difficult or impossible for AAEI to otherwise break-even.

In 2006 and 2007 the Municipalities records indicate that AAEI was charged the standard rate of \$45 per event to rent the Pavilion. It is not clear if these records are accurate. In more recent years, AAEI did not pay anything to rent the Pavilion, but each event was nevertheless recorded in the facilities scheduling system (showing a \$0 charge). During this time, the Municipality also rented out the Pavilion to other users when it was not being used by AAEI.

In late 2010 the arrangement regarding the Pavilion was transferred from AAEI to a newly formed non-profit group, the Pavilion Youth Association (PYA). PYA and AAEI have common directors. From 2010 through 2014 the Municipality continued to reimburse PYA for its insurance and security costs on the same basis that it had done so for AAEI.

In 2014, it was recognized by staff that without a formal agreement for alternative service delivery in place, and without PYA making a formal request for a grant, there was little justification for the Municipality to provide PYA with a subsidy towards its operating fees. In light of this, Community & Recreation Services staff concluded that the arrangement with the PYA should cease. Consequently, the arrangement with PYA was terminated effective May 12, 2014.

DISCUSSION

Parks & Recreation staff recognizes that many residents and visitors have enjoyed the events offered by AAEL and PYA over the past several years. Attendance at the events has generally been strong. However, particularly because of its location on the Halifax Commons, C&RC staff need to make sure that public access to the facility is maximized and that the facility is used to its full potential. In addition to all-ages music events, the Pavilion can be, and is, used for Parks & Recreation programming and by other community groups.

CR&C staff is supportive of PYA's services and sees value in having PYA continuing to provide such services at the Pavilion. The options for PYA's future use of this facility include, but are not limited to the following:

1. Rental Agreement

The Municipality could enter into a per event or recurring facility rental agreement with PYA, either at market rates or at a reduced rate (i.e., no-charge) because PYA is a not-for-profit entity. In order to qualify for reduced rates, PYA must provide its annual financial statements to the Municipality and file its annual financial statements with the Nova Scotia Registry of Joint Stocks in order to confirm its ongoing not-for-profit status. As with similar not-for-profit arrangements throughout the Municipality, the PYA would be responsible for all other reoccurring costs (i.e. insurance, security). Other entities/groups would be able to rent the facility at times that it is not used by PYA.

As a part of this agreement, the Municipality could provide:

- Flexible Scheduling – The Municipality normally requires that cancellations for bookings be reported five (5) working days prior to the event. The Municipality understands that due to the unique nature of the music industry, and the reliance of ticket sales, five (5) working days' notice can be a challenge. The Municipality would therefore request that notice of cancellation be given at least a minimum of (2) days. This practice is in place to ensure that the Municipality is able to maximize its ability to rent space and due to the scheduling of part-time staff. Casual staff employed by the Municipality to monitor the building are given a schedule at the beginning of each week. Last minute changes or cancellations impact the Municipalities costs in terms of guaranteed hours of employment, irrespective of revenues.
- Permanent storage and placement of concert equipment – Although the Municipality cannot provide *permanent* storage space to PYA, staff recognizes due to the amount of equipment needed on a continued basis, the setup of fixed assets and the ability to store non-fixed assets at the Pavilion would be beneficial to PYA. Due to the current configuration and ability to properly secure and section off storage at the Pavilion, staff would be prepared to offer appropriate space (as used in the past) to the PYA as long as insurance coverage is provided to indemnify the Municipality against loss or damage. As mentioned above, all related costs to insurance would be the responsibility of the PYA. This would not be uncommon with other rentals that use space on a regular basis throughout Halifax. The Municipality would request that all equipment that is considered non-fixed would be appropriately secured in the secured space provided. As with other similar arrangements, the Municipality would require the ability to terminate the arrangement on reasonable notice in the event that the Municipality requires the space for other purposes.

Under this scenario, staff would recommend that the Municipality publicly solicit applications for the use of the Pavilion at the beginning of each year/season. Similar to the rental of hockey rinks and soccer fields, all interested groups would have an opportunity to request access at their desired times. PYA could, for instance, request the use of the Pavilion every Friday and Saturday night throughout that year/season. During the year/season, PYA could request additional time for unscheduled events, provided that the facility was not already booked by another group. Due to the nature of the Pavilion being located on the Halifax Commons, staff do not believe that it would be appropriate to give PYA an exclusive lease to the facility or enter into rental agreements extending beyond each year/season.

As a not-for-profit entity, PYA would also be free to apply to the Municipality (i.e. the Grants Committee) in the normal course for financial grants to use towards its operating costs (i.e. security/insurance).

2. Long term, three to five year Shared Use Agreement with HRM

Shared Use Agreements (SUA) have traditionally been used in situations where the Municipality has formally partnered in a major capital project, whereby the Municipality owns and operates a facility in conjunction with another property owner. To date, joint use agreements have been used in relation to enhanced public school facilities and sports facilities (i.e. CP Allen High School/Bedford Hammons Plains Community Centre). Each partner affords the other(s) priority access to their amenities in off-peak hours or by individual agreement (e.g. a special event). The Municipality is the sole owner of the Pavilion and the Pavilion Youth Association has no capital or equity position in the property.

For this reason, a SUA would serve little purpose and would have the same effect as the rental agreement outlined above in which PYA has access to the facility along with the Municipality. Since Rental Agreements are standard practice for Municipal facilities, creation of a separate SUA would create an additional administrative process and could become cumbersome. Since a Rental Agreement provides flexibility for both parties and would still permit the Municipality to provide programming at the site and offer it for use by other groups, a SUA would not be necessary or desirable.

3. Management Agreement whereby PYA manage the Pavilion on behalf of HRM

Property Management Agreements can be used to facilitate alternative service delivery. Rather than operate the Pavilion itself, the Municipality could outsource the operation of the Pavilion to an external entity. Property Management Agreements are typically awarded using an open competitive bidding process through a formal Request for Proposals. The Municipality could choose to issue an RFP similar in intent to its agreement with Nustadia Recreation for the management of the Devonshire Arena. This would allow the Municipality to hire an entity through a competitive process (either for-profit or not-for-profit), to operate the Pavilion on the Municipalities behalf. Alternatively, it may be possible to hire PYA directly using the Municipalities authority under the Procurement Policy (Administrative Order #35) to sole-source PYA as the operator. Procurement staff would need to be consulted in this regard.

Since 2005, the PYA used the Pavilion only occasionally throughout any given week and for limited hours. From April 1, 2013, to March 31, 2014 for instance, the PYA booked the Pavilion for a total of 261 hours, mostly on Fridays and Saturdays. The Municipality currently provides access to other users (i.e. The Spot) at other times. In addition, the Municipality uses the space for its own purposes throughout the year (summer camps, meetings, special events & Emera Oval programming.) With respect to a property management agreement, it is likely that the operator would also be responsible for the coordination/administration of all other uses of the space (i.e. external rental requests). PYA may or may not be interested in performing such a service.

The lower part of the building has washrooms, change facilities and a mechanical room for the outdoor pool, public washrooms for the nearby ball field and other amenities and storage space that the Municipality uses to store year-round equipment. Staff would recommend that these aspects of the Pavilion continue to be managed by the Municipality as they are unrelated to the operation of the facility for all-ages music events and are likely beyond the competency or interest of PYA.

Conclusion

The Rental Agreement option discussed above is consistent with current processes and provides the most flexibility to both the Municipality and PYA. Further, it would be recommended that Halifax retain control of the Pavilion so as to ensure it is utilized to its fullest potential. The Rental Agreement option would appear to give the PYA what they require while allowing other groups to obtain programming at the site and for Halifax to continue to have the flexibility needed for current and future use. Staff do not currently view a shared use arrangement or property management arrangement as being desirable.

FINANCIAL IMPLICATIONS

The current hourly rental rate for the Pavilion is \$30.00 per hour.

Based upon past annual usage by PYAC:

- (a) If Halifax was to provide a Rental Subsidy of 50%, the potential loss of revenue could be:
Rental Rate Subsidy ($\$15/\text{hr} \times 261 \text{ hours}$) = \$3,915
- (b) If Halifax was to provide a No-Charge Rental Subsidy, the potential loss of revenue could be:
Rental Rate Subsidy ($\$30/\text{hr} \times 261 \text{ hours}$) = \$7,830

There are no immediate financial implications associated with this report.

COMMUNITY ENGAGEMENT

None

ATTACHMENTS

None

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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