

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY: Jacques Dubé, Chief Administrative Officer

DATE: November 19, 2018

SUBJECT: Legislative Amendment to HRM Charter AO 2014-007-ADM - ArtsHalifax
Successor Committee

ORIGIN

February 13, 2018 – Halifax Regional Council motion:

MOVED by Deputy Mayor Mason, seconded by Councillor Cleary

THAT the motion be amended as follows:

3. Request a staff report regarding potential legislative amendments to the HRM Charter to allow the Municipality to allow a specific set of arts grants to individuals and business to be governed by by-law, overseen by an arm's length citizen-only advisory committee that shall report annually to Council; MOTION PUT AND PASSED.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, S.N.S. 2008, c.39

20 (1) The Council may make policies

...

(c) providing for committees and conferring powers and duties upon them, except the power to expend funds;

21 (1) The Council may establish standing, special and advisory committees.

(2) Each committee shall perform the duties conferred on it by this Act, any other Act of the Legislature or the by-laws or policies of the Municipality.

(3) The Council may appoint persons who are not members of the Council to a committee and may establish a procedure for doing so.

(4) A committee shall operate in accordance with the procedures provided in this Act and the procedural policy for the Council applies to committees unless the Council, by policy, decides otherwise.

23 The Council may establish, by policy, citizen advisory committees which shall advise the Council, as directed by the Council.

- 79 (1) The Council may expend money required by the Municipality for
...
(av) a grant or contribution to
...
(v) any charitable, nursing, medical, athletic, educational, environmental, cultural, community, fraternal, recreational, religious, sporting or social organization within the Province,

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Include specific consideration of governance models for the professional arts sector within the current Culture and Heritage Priorities Plan process, including dedicated consideration of the *HRM Charter* and other relevant legislation; and
2. Include any subsequent recommendations pursuant to the development of a governance model requiring associated legislative changes as part of an overall approach with respect to municipal arts, culture and heritage governance and advisory priorities.

BACKGROUND

At the May 12, 2015 meeting, Regional Council approved the terms of reference for the ArtsHalifax Advisory Committee under Administrative Order 2014-019-GOV. The Committee was given a three-year mandate to deliver recommendations on Peer Jury review for professional arts grant practices, the development of a cultural awards program, and on the structure and mandate of a successor committee in advance of the 2018-2019 budget planning process. Recommendations regarding the successor committee were delivered to staff on October 22, 2017 and included as part of a report to Regional Council delivered on February 13, 2018.

Other components of the staff report included recommendations from the Arts Halifax Committee to provide remuneration to members of its peer juries, to delegate direct authority for the approval of peer jury recommendations to the CAO, and to increase the overall budget for the Grants to Professional Arts Organizations Program by an additional \$500,000 by 2020-2021. These components of the motion were addressed by Regional Council at the February 2018 meeting.

Regarding the nature of a successor committee, the expressed preference of Arts Halifax was for a Municipally-structured and staffed arms-length (operationally-independent) body similar in some respects to that of the Halifax Regional Library Board. The determination of staff at that time was that such a model was not possible given the absence of enabling legislation similar to that of the *Libraries Act*, and the lack of any precedent for an internally-structured, municipally-resourced, operationally autonomous body. In response to the recommendation, staff recommended pursuing the development an external not-for-profit society, set up with support from the Municipality who would assist in the development of the group's specific mandate, associated funding and contribution agreement, as the best means by which to achieve the desired outcomes of Arts Halifax.

In response to this recommendation, however, an amended motion was tabled at the February 2018 meeting which directed staff to consider existing internal committee models, and specifically to return to Council with a report regarding *potential legislative amendments to the HRM Charter to allow the Municipality to allow a specific set of arts grants to individuals and business to be governed by by-law, overseen by an arm's length citizen only advisory committee that shall report annually to Council.*

DISCUSSION

The amended motion of February 13, 2018 describes an *internally structured, arms-length committee* with specific oversight powers of a municipal funding program. The motion also suggests that this arts-specific municipal grants program would be directly able to fund individuals and businesses, which are understood to be individual arts practitioners as well as arts organizations operating as for-profit entities or social enterprises.

I. Funding Individual Artists

Section 79(1)(av) is the primary provision of the *HRM Charter* that authorizes the Municipality to provide grants. In accordance with this provision, grants may be provided to cultural organizations (79(1)(av)(v)) and registered Canadian charitable organizations (79(1)(av)(vii)). This is the legislative authority for the existing Grants to Professional Arts Organizations Program (AO 2014-007-ADM). The Municipality is further specifically prohibited from providing a tax concession or other form of direct financial assistance to a business or industry under section 71(2) of the *HRM Charter*. There is no legislative authority to permit the Municipality to provide grants to individuals.

In order for the Municipality to develop a specific funding program for individuals and businesses, including an Arts and Cultural Awards Program with monetary recognition to individuals, amendments to section 79 of the *HRM Charter* would be required. Proposed amendments would need to consider in what circumstances HRM would be able to grant to individuals (e.g. limited only to the arts), and how those individuals would be defined. Reference could be made to the Status of the Artist Act (S.N.S. 2012, c. 15), which provides criteria for establishing whether an individual is a professional artist.

II. Governance: Arms-Length Model

The arms-length principle is a commonly used term characterizing a model of government-resourced-but-independently-administered arts funding bodies. Across Canada, this model is most often associated with Arts Councils, examples of which include Winnipeg Arts Council, Toronto Arts Council and Edmonton Arts Council. Arts Councils, as is characteristic of all arms-length bodies, are generally funded under annual or multi-year, renewable funding agreements with provincial or municipal authorities.

1. Arts Council

In researching the development of the February 2018 report, the most commonly found examples of arts councils operating at the municipal level were wholly external not-for-profit entities. The mandate of these organizations varies from jurisdiction to jurisdiction. Generally, arts councils are one of two types:

- funding organizations providing cash grants to municipal artists and arts organizations or,
- non-granting programming and support organizations, offering arts advocacy and resource-based support to the community.

Regardless of mandate, truly 'arms-length' arts councils employ their own staff and manage their own administrative resources. While the service delivery mandates of arts council differ across jurisdictions, many of these bodies allocate core operating and project-based funding to arts organizations which, according to assessment, is independent of the influence of their funders.

One notable variation on the traditional arms-length approach to an arts council is the model employed by Arts Nova Scotia, the Provincial funding agency for professional arts organizations and individual arts practitioners. Governed by an 11-member board of directors, Arts Nova Scotia operates under the Nova Scotia Department of Communities, Culture and Heritage, and was created by legislation in 2011.

The Board of Directors report directly to the Minister of Communities, Culture and Heritage and is responsible for programming and managing the agency's annual budget.

If Council wishes to pursue this model, it would require amendments to existing Legislation such as the *Arts Nova Scotia Act* that would allow for the incorporation of similar models at the municipal level, or amendments that would permit Arts Nova Scotia to administer similar programs on behalf of municipalities.

2. Advisory Committees of Council

The Advisory Committee model is the only existing model available for a citizen-only advisory committee structure. Opportunities afforded to such a body include Clerk's Office support, Councillor appointee(s) and a direct reporting relationship to a Standing Committee of Council or Regional Council directly. Under current operational norms, there is no mechanism that would permit any increased decision-making authority for a prospective Committee, such as the direct, autonomous oversight of the Grants to Professional Arts Organizations Program. Legislative amendments to the powers of committees in the *HRM Charter* would be necessary to permit the committee to expend funds or to select grant recipients.

Section 20(c) of the *HRM Charter* stipulates that Council *may make policies providing for committees and conferring powers and duties upon them, except the power to expend funds*. If the intention of the motion was that the oversight powers of a prospective arts committee include the power to expend municipal funds, this would require an amendment to this section. Prior to making the request of the Province, Council would have to consider how to define what committees may expend funds, and whether the amendment was limited to an Arts committee.

3. The Halifax Regional Library Board Model

As the stated preferred option of Arts Halifax in their February 2018 report, the Library Board model represents a structure that resembles the structure of Arts Nova Scotia, the governing body for arts-specific funding at the Provincial level, often referred to as a hybrid Arts Council model. The model was recommended by Arts Halifax because, based on the understanding of the Committee, it provides for direct, annually approved funding by the Municipality of an external organization. That organization, in turn, operates under the oversight of an independent board who make decisions on the allocation of funds, including those received from the Municipality, program development and other operational matters, independent of Regional Council. Of notable difference between the Library and Arts Nova Scotia is staffing; while Arts Nova Scotia staff are employees of the Province, staff of the Halifax Regional Library are not.

Amendments to permit municipalities to create this type of entity would be required to the *HRM Charter*, and potentially require a piece of stand-alone legislation such as the *Libraries Act*.

III. Conclusion

For ease of consideration the motion has been addressed as two separate-but-related elements:

1. Funding Individual Artists

In order to accommodate funding at the level of the individual artist, amendments would need to be requested to section 79(1)(av) of the *HRM Charter* to specifically allow the Municipality to grant to individuals, and potentially to address section 71(2) of the *HRM Charter* to modify the prohibition against the provision of direct financial assistance to a business or industry. Consideration would need to be given as to how to characterize individual professional artists to create a limited exemption under which grants could be given.

The current level of funding available to the Grants to Professional Arts Organizations Program is \$360,000. In the most recent intake, the program received a total of \$1,072,343 in requests meaning, at current capacity, the program is able to fund roughly 34% of the current ask at the level of the organization.

As part of an amended motion on February 13, 2018 Regional Council approved the consideration of additional funding to the program budget as follows:

THAT Halifax Regional Council:

1. Consider the inclusion of an additional \$100,000 in 2018-19 \$150,000 in 2019-20 and \$250,000 in 2020-21 to the grants operating budget process for the Grants to Professional Arts Organizations Program;

Consideration of additional funding proposed for 2018-2019 was deferred to the following year during Regional Council's annual budget deliberation. A prospective increase to program funding as outlined above would result in an overall budget, subject to Council approval, of \$860,000 in 2020-2021. Based on the current level of applicant demand, this would allow the program to fund approximately 80% of applicant requests.

The current demands on the limited funds available through the Grants to Professional Arts Organizations Program are significant and, at present capacity, the Program is able to fund a modest percentage of the total ask. In addition, introducing a funding program for individual artists would increase the administrative burden on current staff levels, and specifically the ability to process, oversee, assess and measure individual grants as well as overall program outcomes.

Based on the current capacity issues faced by the program in relation to applicant demand and the anticipated burden on program administration, it is therefore not recommended to pursue expanding the program based on existing resources.

2. Legislative Changes to Allow for Arms-Length Governance Model

Council may establish advisory committees; however, they may not be given the authority to expend funds, and by definition they are an advisory, rather than a decision-making body. To accommodate a model similar in scope and scale to the Halifax Regional Library, similar legislation to that of *The Libraries Act* would be required at the Provincial level, in addition to corresponding amendments to the *HRM Charter* to consider the model within specific HRM context.

The scale of this approach goes well beyond a request for legislative amendments to the *HRM Charter* and, in the opinion of staff, there is no amendment or series of amendments of the Charter itself that would allow for a model similar to that proposed by Arts Halifax and reflected in the amended motion of February 13, 2018.

Further, it is difficult to find the basis to support such an undertaking in the absence of a holistic corporate rationale for supporting arts and culture. The Municipality is currently in the midst of its Culture and Heritage Priorities Plan, with Phase 2 of the process scheduled to be complete by August 2019. Part of the current consideration regarding overall scope of the Plan and the development of individual business unit objectives includes the assessment of current municipal programs, mandate and jurisdiction in relation to other levels of government. This assessment will include consideration of whether changes are required to existing policies and legislation in order to better meet municipal objectives. Therefore, as outlined in Recommendations 1 and 2, it is recommended that the proposed development of new legislation or the substantive alteration of existing would be best and most properly considered as part of this overall assessment.

FINANCIAL IMPLICATIONS

There are no financial implications to this report.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered rate Low.

COMMUNITY ENGAGEMENT

The ArtsHalifax Advisory Committee was a citizen only staff advisory committee with representation from across the arts sector of HRM. Their recommendations were informed by the work of a prior committee, the Special Arts and Culture Advisory Committee, in addition to stakeholder engagement and a review of best-practice models for municipal arts administration from across Canada.

ENVIRONMENTAL IMPLICATIONS

Not applicable.

ALTERNATIVES

1. Regional Council may request that the Province make legislative changes to sections 71 and 79 of the *HRM Charter* to allow for the funding of individual artists. Regional Council would need to provide direction on what individuals it would wish to see be eligible for grants, and any restrictions on the authority.
2. Regional Council may direct the Chief Administrative Officer to return to Council with an administrative order for its consideration to create a new Arts Advisory Committee within its existing legislation.
3. Regional Council may request that the Province make legislative changes to the committee provisions of the HRM Charter to allow committees to expend funds. Regional Council would need to provide direction on the circumstances in which this amendment would apply.
4. Regional Council may direct the Chief Administrative Officer to engage with the appropriate provincial representatives to develop new legislation or amend existing legislation to pursue an arts committee modelled on either a library board, or Arts Nova Scotia.

ATTACHMENTS

None

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.

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