



CITY OF HAMILTON
CORPORATE SERVICES
Legal Services Division

TO:	Chair and Members Governance Review Sub-Committee
COMMITTEE DATE:	January 31, 2018
SUBJECT/REPORT NO:	Memorandum of Understanding- City of Hamilton and Royal Botanical Gardens (LS18002)(City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Stacey Wells (905) 546-2424 Ext. 7292
SUBMITTED BY:	Nicole Auty, City Solicitor
SIGNATURE:	

RECOMMENDATION

- (a) That the City of Hamilton appoint a maximum of two members to the board of directors of the Royal Botanical Gardens, to be comprised of elected officials and/or citizens.
- (b) That the Mayor and City Clerk be authorized to execute a Memorandum of Understanding between the City of Hamilton and the Royal Botanical Gardens on terms satisfactory to the City Solicitor to provide for the appointment of a maximum of two members to the board of directors of the Royal Botanical Gardens by the City, subject to The Regional Municipality of Halton entering into a similar agreement with the Royal Botanical Gardens to reduce the number of representatives Halton appoints to the board of directors to a maximum of two members.

EXECUTIVE SUMMARY

The Royal Botanical Gardens ("RBG") has requested that the City of Hamilton (the "City") agree to reduce the number of City appointments to RBG's board of directors (the "Board") to a maximum of two members notwithstanding that the *Royal Botanical Gardens Act, 1989* permits a maximum of six appointees by the City. RBG is also requesting that the Regional Municipality of Halton ("Halton") enter into a similar agreement to reduce the number of appointments made to the Board by Halton to a maximum of two members.

SUBJECT: Memorandum of Understanding- City of Hamilton and Royal Botanical Gardens (City Wide) - Page 2 of 5

RBG has made these requests in order to allow it to redefine the structure and composition of the Board in accordance with a recent Governance Review which has recommended a reduction in the Board's complement.

Staff recommend a Memorandum of Understanding ("MOU") between the City and RBG which would contain content similar to an MOU entered into by the parties in 2004, except that the proposed MOU would reduce the number of City appointees to the Board to a maximum of two. The proposed MOU would terminate at the expiry of the term of Council which will commence on December 1, 2018.

Alternatives for Consideration – See Page 4

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial: N/A

Staffing: N/A

Legal: The proposed Memorandum of Understanding ("MOU") would document the mutual understanding between the City and RBG with regard to the number of representatives the City would appoint to the Board, however the MOU would not create a binding legal obligation on either party which can be enforced by the courts.

HISTORICAL BACKGROUND (Chronology of events)

The Royal Botanical Gardens was originally incorporated by *The Royal Botanical Gardens Act, 1941*. Subsequently the membership of RBG was increased by *The Royal Botanical Gardens Act, 1954*, being chapter 125, and again by *The Royal Botanical Gardens Act, 1959*, being chapter 130. By virtue of the *Royal Botanical Gardens Act, 1989* (the "Act"), being Chapter Pr22, the Board was continued under the name "Royal Botanical Gardens" and *The Royal Botanical Gardens Act, 1941*, *The Royal Botanical Gardens Act, 1954*, and *The Royal Botanical Gardens Act, 1959* were repealed.

The Act currently provides that the Board of RBG shall be composed of:

1. A maximum of six persons appointed by the Council of The Regional Municipality of Hamilton-Wentworth (now City of Hamilton);
2. A maximum of three persons appointed by the Council of the Regional Municipality of Halton;
3. Two persons appointed by the Lieutenant Governor in Council;
4. Two persons appointed by the Governor in Council;

5. The President of McMaster University;
6. The President of the Royal Botanical Gardens Auxiliary;
7. Nine persons appointed by the board of directors.

Pursuant to the Act, members appointed by the City and by Halton are appointed for a term concurrent with the Council's term and until their successors are appointed.

Notwithstanding its entitlement under the Act, in 2004 the City entered into an MOU with RBG wherein it agreed to appoint a maximum of four members to the Board to be comprised of elected officials and/or citizen appointees. The MOU was to be in effect for the term of Council which commenced on December 1, 2003 and has now expired. It is staff's understanding that in 2003/2004 Halton also entered into a similar MOU with RBG which provided that a maximum of three persons be appointed by Halton.

Since that time, the City has appointed only three members to the Board, consisting of one Councillor and two members of the general public, and Halton has appointed five members.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

There are no implications to any city policies.

The Act would remain in force and effect with the MOU being a mutual understanding as to the number of appointments the City would make to the Board.

RELEVANT CONSULTATION

Staff consulted with RBG during the preparation of this report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION (Include Performance Measurement/Benchmarking Data if applicable)

The RBG Board complement permitted by the Act totals twenty-four members, however RBG's current Board comprises nineteen members. The reduction in the Board's complement to date has been occasioned by reductions in the number of appointments made by the City and by the RBG Board. The number of appointments by the Lieutenant Governor in Council, Governor in Council, McMaster University and the RBG Auxiliary have remained in accordance with the Act. Halton has increased its appointments to five.

Following a Strategic Review in 2014 and a recent Governance Review in 2016, RBG is seeking to reduce the size of its Board as it transitions from a Management Board to a Governance Board. With a view to achieving this goal RBG approached the City and Halton and has requested that each Municipality consider reducing the total number of

appointments to the Board to two members, despite current membership and notwithstanding the allowances provided for in the Act.

In 2017 the City provided a total of \$616,095 in funding to RBG and Halton provided funding in the amount of \$759,927. Based on the current monetary contributions provided by the City and Halton, a system of proportionally would dictate that it is appropriate for each of the City and Halton to appoint a maximum of two members to the Board where the total number of appointments between the City and Halton is to be four members.

The creation of a MOU to document the mutual understanding of the parties in relation to the number of appointments to be made by the City is consistent with the approach taken in 2004.

ALTERNATIVES FOR CONSIDERATION

One alternative would be for Council to direct staff to bring a report respecting this matter forward for consideration by the newly elected Council in December 2018.

During its presentation to Council in December 2017, RBG advised that their goal is to obtain Board structural changes by April or May of 2018, in advance of the next major round of Board appointments. As such, delaying a decision in relation to the number of appointments the City will make to the Board would not align with this goal and is not recommended.

As there is no legal requirement for the City to agree to RBG's request to reduce the number of appointments made by the City without an amendment to the Act, and as the 2004 MOU is now expired, a second alternative would be for the City to continue to make appointments to the Board up to the maximum number of appointments permitted under the Act.

It is staff's understanding that funding allocations were used in determining the number of appointees to the Board by RBG's main funding sources, and that when the Act was passed, the City provided a greater proportion of RBG's funding then it does currently. Moreover, a Board of up to 24 members is large and a reduction in the Board complement is consistent with governance best practices. For these reasons, this alternative is not recommended.

(Include Financial, Staffing, Legal and Policy Implications and Pros and Cons for each alternative)

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Not Applicable.