





CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
City Clerk's Office

TO:	Chair and Members of Governance Review Sub-Committee
COMMITTEE DATE:	June 23, 2022
SUBJECT/REPORT NO:	Mandatory COVID-19 Vaccination Verification Policy for Members of Council and Members of Council Appointed Committees (FCS22016/HR22010) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Andrea Holland (x5409) Matthew Sutcliffe (x2655)
SUBMITTED BY:	Andrea Holland City Clerk
SIGNATURE:	
SUBMITTED BY:	Matthew Sutcliffe Director, Employee Health and Labour Relations
SIGNATURE:	

RECOMMENDATION(S)

- (a) That Council approve the amendments to the City of Hamilton Policy respecting the Appointment of Citizens to the City's Agencies, Boards, Commissions, Advisory (Volunteer) Committees and Sub-Committees as outlined in Appendix A of Report FCS22016/HR22010;
- (b) That Council choose between Options A, B, and C as outlined within the section Alternatives for Consideration of Report FCS22016/HR22010 and Appendix B of report FCS22016/HR22010; and
- (c) That Council approve the proposed amendments to the Mandatory COVID-19 Vaccination Verification Policy, substantially in the form attached as Appendix B of

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Report FCS22016/HR22010 with any necessary amendments arising from recommendation (b) above;

EXECUTIVE SUMMARY

On January 12, 2022, Council approved amendments to the Mandatory COVID-19 Vaccination Verification Policy (the “Vaccination Policy”) and directed the City Clerk to report back on the implications of these changes on Members of Council and Appointees. Staff reviewed current recruitment policies against the new requirement for mandatory COVID-19 vaccination and are putting forward amendments to the Mandatory COVID-19 Vaccination Verification Policy and the City of Hamilton Policy respecting the Appointment of Citizens to the City’s Agencies, Boards, Commissions, Advisory (Volunteer) Committees and Sub-Committees (the “Appointment Policy”) to clarify the consequence for Members of Council and Appointees who are not compliant with the Vaccination Policy. Staff are recommending amendments to the eligibility criteria within the Appointment Policy; changes to the Vaccination Policy and options for Committee and Council to consider for Council Appointees who are not compliant with the Vaccination Policy

Alternatives for Consideration – See Page 7

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

At Council’s meeting on January 12, 2022, the following was approved and amended on May 25, 2022:

3.1 Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008(a)) (City Wide) (Partridge/Powers)

(a) That the recommended amendments to the Mandatory COVID-19 Vaccination Verification Policy (attached as Appendix “A” to Report HUR21008(a)), requiring proof of full vaccination in the workplace, and that, those unvaccinated staff, or those staff choosing not to disclose their

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vaccination status, without an approved medical exemption, be subject to discipline up to and including termination of employment, be approved;

(b) That those unvaccinated staff or those who have not disclosed their vaccination status will have until **September 30, 2022** to provide proof of full vaccination, or an approved medical exemption, at which time any failure to do so will result in their termination of employment with the City;

(c) That unvaccinated employees or those who do not disclose their vaccination status, and those employees who are subject to an approved exemption, will be required to continue to participate in the rapid testing program until **September 30, 2022**;

(d) That, in the event the City is unable to secure an adequate and appropriate supply of rapid tests between the date of the amended policy and **September 30, 2022**, any employee who would otherwise be restricted from attendance at work will be placed on a paid leave of absence, pending the continuation of the program at the earliest available opportunity;

(e) That the amended Mandatory COVID-19 Vaccination Verification Policy (attached as Appendix "A" to Report HUR21008(a)), continues to apply to all City employees, including permanent, temporary, full-time, part-time, casual, volunteers, students, members of Council and members of Council appointed committees, as appropriate and except where excluded otherwise, subject to the terms and conditions of applicable collective agreements; and,

(f) That the City Clerk be directed to report to the Governance Review Sub-Committee with recommendations for amendments to the Council Code of Conduct and the Code of Conduct for local Boards and Council mandated Committees to ensure Member compliance with the Corporate Vaccination Policy and how sanctions may be applied to members of Council who do not comply.

During the General Issues Committee meeting on January 12, 2022, Council Members asked how the Vaccination Policy and sanctions for non-compliance would be handled for Members of Council and Appointees, given they are not employees. The City Clerk was asked to report back on how this could be managed for these two groups.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Vaccination Policy approved on January 12, 2022 and amended on May 25, 2022 outlines the scope of application as follows:

This policy applies to all employees of the City of Hamilton, including full-time, part-time, permanent, temporary, casual, volunteers; and students. Including members of Council and members of Council appointed committees. New employees will also be subject to this policy as a condition of their employment contract with the City of Hamilton. It requires employees to be fully vaccinated against the COVID-19 virus and requires employees to provide proof of vaccination satisfactory to the employer by **September 30, 2022**.

The Vaccination Policy clearly outlines the application of the Policy to all employees, including Members of Council and Appointees; however, it is silent on the consequences of non-compliance for Members of Council and Appointees.

Members of Council

Section 2 of the Council Code of Conduct By-Law 16-290 outlines the Key Statements of General Principle Underlying the Code of Conduct.

SECTION 2: KEY STATEMENTS OF GENERAL PRINCIPLE UNDERLYING THE CODE

2. The key statements of principle that underlie the Code of Conduct are as follows:
 - 1) every Member shall serve, and be seen to serve, his or her constituents in a conscientious and diligent manner;
 - 2) every Member shall be committed to performing his or her functions with integrity and to avoiding the improper use of the influence of his or her office, and conflicts of interest, both apparent and real; Council Code of Conduct (Page 6 of 15)
 - 3) every Member shall perform his or her duties in office and arrange his or her private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
 - 4) **Members shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.**

All current Members of Council have publicly stated that they are in compliance with the Vaccination Policy. Any new Members of Council would need to provide proof of vaccination or an approved medical exemption pursuant to the Vaccination Policy after

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taking office. The Office of the City Clerk plans to include the Vaccination Policy in the Candidates package for Municipal Elections.

Due to the elected status of Members of Council, the Vaccination Policy states that termination for non-compliance does not apply. Staff are recommending an amendment to the Vaccination Policy to outline the implications for non-compliant Members of Council as detailed in Appendix B to Report FCS22016/HR22010. As per the amendment, if a Member of Council does not comply with the Policy, they will be subject to the same requirements and restrictions imposed on employees who have an approved exemption.

As the Council Code of Conduct requires compliance with policies established by Council, any complaints regarding non-compliance with the Vaccination Policy could be brought forward to the Integrity Commissioner for investigation.

Members of Council Appointed Committees

The Office of the Clerk and Human Resources informed all Citizen Appointees of the change in Vaccination Policy and the requirements for mandatory vaccination on or about February 10, 2022 through the Staff Liaisons for distribution to committee members.

When the Vaccination Policy was adopted in August of 2021, Appointees were notified and instructed to supply their vaccination status to Human Resources. In September 2021, all recruitment for employment and volunteering opportunities were amended to require compliance with the Vaccination Policy and was reflected on the City's recruitment webpages as follows:

"Effective Thursday, September 23, 2021: Vaccine Verification

As a condition of employment you are required to provide proof that you are fully vaccinated or provide proof of valid exemption satisfactory to the employer prior to your start date. You must acknowledge and agree to comply with any future vaccine policy requirements as an ongoing condition of employment at the City of Hamilton."

Currently, eligibility for application to citizen member positions is outlined in the Appointment Policy as follows:

Eligibility

1. The Selection Process is open to all residents and business owners of the City of Hamilton who are at least 18 years of age, unless otherwise stated (Note: Additional requirements may be requested by the individual Agency,

Board, Commission, Advisory (Volunteer) Committee or Sub-Committee, if they are governed by separate legislation, policies or mandates);

2. City Council wishes to ensure that its Agencies, Boards, Commissions, Advisory (Volunteer) Committees and Sub-Committees reflect the diverse nature of the City of Hamilton's population and encourages all residents to apply for appointment opportunities.

To ensure consistency with the Vaccination Policy, Staff are recommending that the paragraph below be approved for inclusion in the Eligibility criteria section of the Appointment Policy. The draft amendment to the Appointment Policy is included as, Appendix A to Report FCS22016/HR22010:

As a condition of participation within the Selection Process, you are required to provide proof that you are fully vaccinated against COVID-19 or provide proof of valid exemption satisfactory to the City in compliance with the City's Mandatory COVID-19 Vaccination Verification Policy prior to your start date. You must acknowledge and agree to comply with the Mandatory COVID-19 Vaccination Verification Policy and any future vaccine policy amendments as an ongoing condition of participation at the City of Hamilton.

This amendment is consistent with recruitment practices for employees and other volunteer opportunities at the City. Other amendments within the Appointment Policy are bolded and highlighted and are for Committee and Council's consideration. Further, in the Alternatives for Consideration section, staff have provided three options with respect to the consequences for those Appointees who are not compliant with the Vaccination Policy in Appendix B to Report FCS22016/HR22010 for consideration. Staff are seeking direction from Council on how they would like non-compliance managed.

RELEVANT CONSULTATION

Consultations in developing this report and recommendations included the Office of the City Clerk, Legal Services, Human Resources and Principles Integrity, the City's Integrity Commissioner.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Staff recommendation (a) and (c) to this report will bring consistency between the recruitment of Appointees and all employees and volunteers in other areas of the organization.

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Staff have reviewed the Council and Appointees Codes of Conduct and following discussions with the Integrity Commissioner, are recommending the proposed changes to the Vaccination Policy in order to outline compliance.

ALTERNATIVES FOR CONSIDERATION

Staff are providing the following options for consideration and are seeking direction from Committee and Council to administer Council Appointees who are not compliant with the Vaccination Policy.

Staff considered changes to the Code of Conduct, however, in discussions with the Integrity Commission, it was decided that changes to the Vaccination Policy would bring the most consistency and clarity.

Options

- (A) Unvaccinated members of Council appointed committees without an Approved Exemption shall be removed from their positions and shall be replaced accordingly.
- (B) Members of Council appointed committees will be presumed to have an Approved Exemption and shall work with the City to develop a reasonable and appropriate accommodation plan including health and safety measures to protect all Employees and Committee Members, up to the point of undue hardship
- (C) Unvaccinated members of Council appointed committees without an Approved Exemption shall be reported back to Council on a list of non-compliant Appointees by the Clerk.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

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Appendix A – Amendments to the City of Hamilton Policy Appointment of Citizen Members Agencies, Boards, Commissions and Committees

Appendix B – Amendments to the Mandatory COVID-19 Vaccination Verification Policy