



**CITY OF HAMILTON
CITY MANAGER'S OFFICE**

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	September 21, 2022
SUBJECT/REPORT NO:	Conservation Authority Board Composition (CM22017) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Shannon Honsberger (905) 546-2424 Ext. 6524
SUBMITTED BY:	Janette Smith City Manager
SIGNATURE:	

RECOMMENDATION

That the use of the legislative formula for determining board sizes in the Conservation Authorities Act during the review of the Niagara Peninsula and Grand River Conservation Authority's board composition, be supported.

EXECUTIVE SUMMARY

The City of Hamilton participates in four conservation authorities – Hamilton, Niagara Peninsula, Grand River, and Halton. Council representatives are determined by the amount of city watershed in each conservation authority jurisdiction, and in the past, Council has decided to use some seats for citizen representatives. Currently, six Councilors represent Hamilton across the four conservation authorities, alongside nine citizen representatives appointed by council.

The province issued new legislation in 2021 which was implemented, in part, to promote greater municipal oversight, transparency, and focus on core mandates at conservation authorities.

The formula to determine board composition is based on population size within the conservation authority jurisdiction. Despite this formula, section 14.2.1 of the Act

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

provides the authority to determine total number of members, and number of members from each participating municipality, by an agreement that is confirmed by resolution of each municipal Council. Three of the four conservation authorities have used this mechanism to alter their board composition.

New, as of 2021, the Act requires 70% of the municipalities representatives to be Councillors, unless an exception is approved by the Ministry of Environment, Conservation and Parks.

Currently, one of the four conservation authorities have a board composition consistent with the legislative formula, and none are compliant with the requirement for 70% councillor representation.

Hamilton Conservation Authority made an agreement to create a board of eleven members- ten Hamilton members, and one Puslinch member. This was ratified by resolution at both City of Hamilton and Town of Puslinch's Council's on March 31, 2021 and April 27th, 2021, respectively (see Appendices "A" and "B" attached to Report CM22017). This agreement is not time limited and the Hamilton Conservation Authority intends to continue with this board composition.

The City of Hamilton currently has 50% Councillor membership on the board and sought approval to continue with this composition from the Ministry of Environment, Conservation and Parks (MECP) in April 2021. MECP replied that it was too early to seek approval, and to resend the report in Spring 2023 (see Appendices "C" and "D" attached to Report CM22017). A subsequent request for consideration, respecting the *Conservation Authorities Act* – Hamilton Conservation Authority Board of Directors along with a completed Application for the Minister's Exemption Package, was sent to the Ministry on August 17, 2022. A response from the Ministry is pending.

Grand River Conservation Authority's board composition is determined by an Order-in-Council from 1994. The Conservation Authority's position is that this Order can legally continue despite new legislation. Hamilton is currently being represented by one citizen representative but is legislatively entitled to four members per the legislated formula.

The Grand River Conservation Authority is striking an ad hoc committee of their board to review their board composition to determine whether they will continue in line with the 1994 Order or update their board otherwise.

The **Niagara Peninsula Conservation Authority** is revisiting the board size and composition for the new term to better align with the legislation. This would mean five Niagara Region representatives, three from Hamilton, and two from Haldimand. Niagara

Region and Haldimand's Council will be discussing this issue. At the time of writing this report, no official correspondence has been received.

The **Halton Conservation Authority** is compliant with the legislation and no changes are expected from participating municipalities in terms of number of members. However, the current board does not include 70% representation from Council. It is recommended that Council address this in the new term of Council.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The levy burden the City carries for each conservation authority is calculated separately from board membership and composition. There are not direct financial impacts as a result of the recommendations in this report. Additional information with respect to municipal funding of Conservation Authorities is included in Appendix "E" attached to Report CM22017.

Staffing: None.

Legal: None.

HISTORICAL BACKGROUND

In 2001, the *Conservation Authority Act*, was updated to include a population-based formula to determine board membership. Also included, was a clause that allows participating municipalities to adopt another board composition, provided it was mutually agreed upon and ratified by resolution of each participating municipality. Many boards have taken this approach in the last twenty years.

Conservation authorities are funded through a mixture of self-generated revenue, grants, and levies supplied by the participating municipalities. Levy burden is determined by the assessed land value of the municipality, and the ratio of those lands against the total assessed value of the conservation authority jurisdiction. In 2001, when Hamilton amalgamated, the assessed land value of the municipality increased substantially and caused a significant increase in levy burden. To redress the situation, an agreement was made with conservation authorities to continue the levy allocation on the basis that existed prior to amalgamation.

In 2014, Niagara Peninsula Conservation Authority advised that it would no longer honour the 2001 agreement and reverted to the formula defined in regulation. The City appealed this decision and lost. Since this time, the City has paid levies to all conservation

authorities according to the regulation. Information on how levies are apportioned can be found in Appendix E.

Between 2019 and 2020, the province conducted consultations on the operation of conservation authorities. Legislative updates were made, in part, to provide additional oversight for municipalities and the province. To improve this oversight, the province introduced a requirement that 70% of the conservation authority members be members of municipal Council.

In spring 2021, the province began a two-phase consultation process on a series of regulatory proposals to implement changes to the Act. These were focused on encouraging a focus on core mandate, providing municipalities greater control over funding of non-mandatory programs, and consolidate the regulations regarding authority-owned land.

Also in Spring 2021, Hamilton and Puslinch passed resolutions to honour the Hamilton Conservation Authority's existing board composition, see Appendix A and B. Correspondence was sent to MECP (see Appendix C). The response received was that the request was sent in too early, and to wait for 3-4 months ahead of the end of citizen appointments which end in June 2023. The province's response is listed in Appendix D.

In January 2022, MECP initiated phase two consultations concerning funding and levies (ERO#: 019-4610). The City of Hamilton has submitted relevant comments regarding the levy burden on February 25, 2022 which were detailed in the March 14, 2022 Communication Update to Council (Appendix "F" to Report CM22017).

Phase two regulations were released April 22, 2022 to address additional funding considerations around budgets, apportionments, amounts owing from specified municipalities, information requirements, and transition planning.

The upcoming municipal elections will initiate the refreshing of board membership across all conservation authorities for the first time since the legislative and regulatory updates have been made. Some conservation authorities are using this as an opportunity to better align with statutory requirements.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Approving the recommendation in this report will not affect any corporate policies. However, the current board membership at all four conservation authorities that Hamilton participates in do not satisfy the new requirement that 70% of the board be municipal Councillors. Should the City wish for put forward less than 70% city Councillors, the City is legislatively required to seek approval from MECP 3-4 months ahead of the end of the citizen term, in June 2023.

RELEVANT CONSULTATION

In preparation for this report, the Chief Administrative Officers of each conservation authority that the City participates in was consulted. This was to determine their intended board composition for next term and current board compositions.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

In reviewing the options available staff considered the goal of the province to have more municipal oversight on conservation authority boards.

For instance, the **Grand River Conservation Authority** has yet to determine their next steps as it relates to board composition and is currently following an Order in Council from 1994. Due to significant statutory changes since that time, including the 70% Councillor requirement, general updates may be warranted. Currently, Hamilton has one citizen representative but has been entitled to four since 2001. Grand River weights their votes based on the amount of levy burden paid, so the current individual carries the same weight as four would collectively.

In the case of **Niagara Peninsula Conservation Authority (NPCA)**, their board currently has twenty-two members aligned with levy apportionment between Niagara Region, Haldimand County, and City of Hamilton. Hamilton has four members on the board, or 18%, and pays 21% of the NPCA levy burden. Following the legislative formula, Hamilton would retain a similar percentage of votes (27%).

The decision to maintain the **Hamilton Conservation Authority's** 11-member board was approved by resolution in 2021, see Appendix A and B, and is currently satisfied by five Councillors and five citizen representatives from Hamilton. There is one representative from Puslinch. Following the legislative formula would reduce the board size to 7, with 6 members being representatives of Hamilton. Due to the Council decision in April 2021, and Hamilton Conservation Authority's desire to keep the current board composition, it is recommended that Council request no changes to this board. Should the Hamilton Conservation Authority seek to update their composition in the future, Council can request they comply with the legislative formula at that time.

The **Halton Conservation Authority** is currently compliant with the legislative formula, but not the 70% requirement. This will need to be considered as part of appointments in the next term of Council.

For a full list of current board composition and legislative entitlements by municipality, please see Appendix "G" attached to Report CM22017.

ALTERNATIVES FOR CONSIDERATION

Alternative 1

That council consider board composition on a case by case basis

This option would allow more flexibility to address local issues, however different board options may lead to inconsistencies across the municipality. The implications of this alternative are the same as the recommendation.

Alternative 2

That council direct all conservation boards that Hamilton participates in to align with the legislative formula, regardless of any previous arrangements.

This approach would be the most uniform but would reverse a decision made by this Council in 2021 regarding the Hamilton Conservation Authority, which would require a two thirds majority vote to reopen the issue. The implications of this alternative are the same as the recommendation.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and 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.

Healthy and Safe Communities

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

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report CM22017: City of Hamilton Council Resolution Approving Hamilton Conservation Authority Board Membership

Appendix “B” to Report CM22017: Town of Puslinch Council Resolution Approving Hamilton Conservation Authority Board Membership

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Appendix “C” to Report CM22017: Correspondence to the Ministry of Environment, Conservation, and Parks requesting 50% Councillors on the Hamilton Conservation Authority

Appendix “D” to Report CM22017: Ministry of Environment, Conservation and Parks response to correspondence

Appendix “E” to Report CM22017: Conservation Authority Funding Details

Appendix “F” to Report CM22017: Communications Update: Submission for Regulatory and Policy Proposals (Phase 2) Under the Conservation Authorities Act

Appendix “G” to Report CM22017: Board Composition and Legislative Entitlements