





Hamilton

# INFORMATION REPORT

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	February 1, 2023
<b>SUBJECT/REPORT NO:</b>	Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008(d)/LS23013) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Yakov Sluchenkov (905) 546-2424 Ext. 2655
<b>SUBMITTED BY:</b>	Lora Fontana Executive Director Human Resources  Lisa Shields City Solicitor Legal Services
<b>SIGNATURE:</b>	 

## COUNCIL DIRECTION

At its December 7, 2022 meeting, Council referred deliberations of Motion 7.12 relating to the Mandatory Vaccine Verification Policy (“the Policy”), to the February 1, 2023 meeting of the General Issues Committee. In addition, the Executive Director of Human Resources or Designate and the City Solicitor or designate were directed to report back on the implications of Motion 7.12 (“the Motion”) and alternatives for consideration. Finally, the Executive Director of Human Resources or Designate was directed to report back on the policies in place at other Ontario Municipalities.

## INFORMATION

### Background Timeline:

- The City implemented its Mandatory COVID-19 Vaccination Verification Policy in August 2021, which remains in effect.
- The Policy was amended in January 2022 to include termination of employment for employees who fail to comply with the Policy by May 31, 2022.

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OUR Vision: To be the best place to raise a child and age successfully.

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.

- On April 27, 2022, a Council motion on the staff recommendation to remove language in the Policy regarding termination for employees who have not complied with the Policy, was defeated by a 6-6 vote.
- In May 2022, Council voted to extend the deadline for employees to provide proof of vaccination, or face termination of employment, to September 30, 2022.
- On August 12, 2022, Council voted to amend several provisions of the policy including but not limited to the termination provision, the requirement for unvaccinated employees to rapid test, and returning unvaccinated employees who refused to rapid test to the workplace except for Lodges, Hamilton Paramedic Service and the Red Hill Child Care Centre.
- On December 7, 2022, Council voted to refer motion 7.12 amending the Policy to the February 1, 2023 meeting of the General Issues Committee.

### **Current State:**

The City of Hamilton's Policy continues to require all new employees to be fully vaccinated (i.e. 2 doses) as a condition of employment. These requirements for full vaccination for new hires under the Policy also apply to current employees in our Long-Term Care Homes, the Hamilton Paramedic Service, and the Red Hill Child Care Centre.

Current staff who have disclosed that they are unvaccinated, other than in those specialized areas noted earlier, are permitted to work without such disclosure. This is as a result of Council's direction to staff to suspend the application of the policy for all existing staff except those in the Lodges, Hamilton Paramedic Service and the Red Hill Child Care Centre on August 12, 2022. Further, the current Policy also contains provisions that continue to apply to Members of Council respecting requirement to provide proof of vaccination.

Generally speaking, Labour Arbitrators have found vaccination policies to be "reasonable", including keeping unvaccinated employees out of the workplace on unpaid leave. By contrast, "vaccination-or-termination" policies have received differing outcomes depending on the facts of the case.

### **Impacts of Motion 7.12 from December 7, 2022 Council meeting if passed as written:**

1. The Motion amends the Policy to apply only to those employees at the Lodges, Hamilton Paramedic Service and the Red Hill Child Care Centre.
2. Under the Scope section of the Policy, the motion removes the requirements for new employees at the City of Hamilton other than at the Lodges, Hamilton Paramedic Service and the Red Hill Child Care Centre, to be subject to the policy, including but not limited to the requirement to be fully vaccinated (2 doses) against the COVID-19 Virus and providing proof of said vaccination to the employer.
3. The Motion removes language describing the incorporation of language in new hire offer letters requiring compliance with any future vaccine policy requirements as an ongoing condition of employment.
4. The Motion amends the Policy to remove the requirement of new employees at the Lodges, Hamilton Paramedic Service and the Red Hill Child Care Centre, to be fully vaccinated and provide proof of such, as well as removing the requirement in their offer letters to acknowledge the requirement to comply with any future vaccine policy requirements as an ongoing condition of employment. This amendment appears to be an inadvertent contradiction with the earlier intent of Motion 7.12, that is, to maintain the application of the policy to existing and new employees at the Lodges, Hamilton Paramedic Service, and the Red Hill Child Care Centre.
5. The Motion amends the Policy to exclude Members of Council from being covered by the Policy and removes the requirement to forward a complaint to the Integrity Commissioner in instances of non-compliance.
6. The Motion amends the Policy to exclude employees, other than those at the Lodges, Hamilton Paramedic Service, and the Red Hill Child Care Centre, from accessing COVID-19 vaccination clinics during work time.

### **Ontario Comparators:**

A review conducted of the provincial comparators, attached as Appendix “A”, identified several municipalities that have removed vaccination requirements for new hires. In addition, some municipalities that continue to have them in place indicated that they are currently reviewing their approach.

As an alternative to Motion 7.12 from December 7, 2022, Council may decide to leave the policy as it is in favour of a “wait and see” approach as other municipalities discuss the same topic and arrive at their conclusions.

From a talent management perspective, human resources has not encountered challenges with respect to recruitment and retention as a result of the vaccination policy being in effect. In reviewing recruitment data, from September 1, 2021 to December 7, 2022, only 5 offers of employment were rescinded as a function of candidates being unable to comply with the policy. The City hired 2,162 new and rehired 816 employees in the same period. The need for vaccine verification has not been detrimental to the City's recruitment efforts to date, but may be impacted as more comparator municipalities amend their vaccination requirements.

Due to the fact that municipal comparators appear to be status quo or moving away from COVID-19 vaccination requirements for new hires, Staff have not contemplated as an alternative an enhancement of current measures beyond those currently in effect.

**Other Considerations:**

The Occupational Health and Safety Act, RSO 1990, c O.1 (the "OHSA"), requires an employer to take every precaution reasonable in the circumstances for the protection of a worker. While the institution of the Policy initially (and maintaining it until this point), along with other controls like masking, physical distancing and daily health screening, was arguably necessary for the City to meet its obligations under OHSA earlier in the pandemic, the risk of a successful claim that the City would be breaching this obligation if it amends its Policy is not the same as it were at the height of the pandemic, especially so in light of the general trend amongst municipal comparators.

Municipal employers in the province have not been directed to maintain a mandatory COVID-19 vaccination and/or rapid testing policy for staff generally, and many similarly-situated employers have elected to implement more lenient policies or no policy at all without issue. Further, in light of the currently available data surrounding infection with and transmission of COVID-19 by vaccinated individuals, there is some question about whether requiring COVID-19 vaccination will further protect the workforce from COVID-19.

A legal analysis of the risks associated with various Policy modification options was provided to counsel previously under Confidential Report HUR21008(c)- Amendments to the Mandatory COVID-19 Vaccination Verification Policy – Legal Assessment.

**APPENDICES AND SCHEDULES ATTACHED**

Appendix "A" to Report HUR21008(d)/LS23013 - Municipal Comparators; New Hire Vaccination Status – As of January 11, 2023

