





CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
 City Clerk's Office

TO:	Governance Review Sub-Committee
COMMITTEE DATE:	March 27, 2023
SUBJECT/REPORT NO:	Fixing Long-Term Care Act – Governance Requirements (FCS23033 / HSC23025)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Andrea Holland (905) 546-2424 ext. 5409 Holly Odoardi (905) 546-2424 ext.
SUBMITTED BY:	Andrea Holland City Clerk, Corporate Services Department
SIGNATURE:	 Holly Odoardi Senior Administrator Lodges, Healthy and Safe Communities 

RECOMMENDATION(S)

- (a) That in accordance with the requirements of the *Fixing Long-Term Care Act, 2021* and Ontario Regulation 246/22 (as amended) which requires the municipality to establish a committee of management, and the corresponding qualifications for same, from among members of council for its Long Term Care Homes, that the Emergency and Community Services Committee comprised of members of Council who have completed the required screening measures as mandated in the legislation shall be the Committee of Management for the City of Hamilton's Long Term Care Homes; and
- (b) That the draft By-law attached as Appendix "A" to Report (FCS23033 / HSC23025) respecting amendments to By-law 21-021, A By-law to Govern the Proceedings of Council and Committees of Council, to establish a Long-Term Care Homes Committee of Management for the City of Hamilton be enacted by Council.

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.

EXECUTIVE SUMMARY

On April 11, 2022, the *Fixing Long-Term Care Act, 2021*, S.O. 2021, c.39, Sched. 1 was proclaimed (the Act) enacting various requirements for long term care facilities including governance committees and the screening of the members on governance committees. As part of staff's review of the requirements, the need to formally establish a Committee of Management was identified to oversee the management of the City's Long-Term Care Homes (LTC Homes). Specifically, the Act states that the council of a municipality shall appoint from among its members, a Committee of Management with no fewer than three members and that the members on the Committee of Management are required to undergo a police records check and provide a signed declaration indicating any charges, orders, convictions, professional misconduct, commencement of proceedings or any finding of guilt, as set out in Ontario Regulation 246/22.

Currently, the Senior Administrator for the Lodges reports to the Emergency and Community Services Committee ("ECS Committee") with regards to the operation of the LTC Homes. In order to maintain regular business and reporting operations, and to comply with the requirements of the Act and its Regulations, it is recommended by staff that the ECS Committee shall be the Committee of Management. This change would require that all members of Council appointed to sit on the ECS Committee would be required to submit a police record check and provide a signed declaration as indicated above.

The role of the Committee of Management is to provide governance oversight of the management of the LTC Homes, namely, ensuring that the LTC Homes:

- Are in compliance with applicable legislation;
- Meet the requirements of the funding from the Ministry of Long-Term Care;
- Maintain appropriate service standards for the residents; and
- Provide oversight of finance, audits and general operations.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: The Committee of Management is required to meet legislative requirements under the *Fixing Long-Term Care Act, 2021* and Ontario Regulation 246/22 (as amended).

HISTORICAL BACKGROUND

The Act came into force on April 11, 2022 and is meant to bring greater attention to quality and accountability in the long-term care sector given the issues experienced as a result of COVID.

The City of Hamilton operates two long-term care homes – Macassa and Wentworth Lodges, both of which are well positioned to implement the requirements of the Act, given their focus on high quality care, accountability to residents and their families and operational transparency. Historically, the City’s “ECS Committee”, and its predecessor committees, have been acting as a “committee of management” since the ECS Committee’s mandate includes reporting and making recommendations to Council on matters relating to the LTC Homes. The Act requires the formalization of a Committee of Management and compliance with the screening requirements for the members of the Committee of Management. As a result, staff are recommending that the ECS Committee be the Committee of Management and therefore that all members of the ECS Committee would be required to complete the required screening measures and provide the necessary documentation (the “Screening Measures”). As the documentation of a Committee of Management member needs to be readily available at each home to which the member’s responsibilities apply, staff are going to follow the same policies and procedures regarding security and privacy that are applicable to City staff members who also need to provide the same documentation for compliance requirements – all of which will be in accordance with the Act and the *Municipal Freedom of Information and Protection of Privacy Act*.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The Act requires that the Council of a municipality establishing and maintaining a municipal home must appoint a Committee of Management to oversee the management of the home.

Specifically, the Act states that:

135 (1) The council of a municipality establishing and maintaining a municipal home or the councils of the municipalities establishing and maintaining a joint home shall appoint from among the members of the council or councils, as the case may be, a committee of management for the municipal home or joint home.

Further to the Act, Ontario Regulation 246/22 states that:

330. (1) A committee of management appointed under section 135 of the Act shall,
(a) in the case of a municipal home, be composed of not fewer than three members; and
(b) in the case of a joint home, be composed of not fewer than two members of the council of each of the municipalities maintaining and operating the joint home.

Section 256 (1) states that “every licensee of a long-term care home shall ensure that screening measures are conducted before permitting any person to be a member of the licensee’s board of directors, its board of management or committee of management or other governing structure.”

The screening measures include police record checks and declarations.

With regards to police record checks, section 256 (4) provides that “the person must provide a police record check in accordance with this section that was conducted no earlier than six months prior to the date their term of office begins and no later than one month after their term of office begins”.

In addition to police records checks, the member of the committee of management must also provide a signed declaration disclosing the following:

Section 253 (1):

1. All the following that occurred with respect to the person:
 - i. every charge for an offence prescribed under [subsection 255 \(1\)](#) with which the person has been charged,
 - ii. every order of a judge or justice of the peace made against the person in respect of an offence prescribed under [subsection 255 \(1\)](#), including a peace bond, probation order, prohibition order or warrant to arrest, and
 - iii. every conviction for an offence prescribed under [subsection 255 \(1\)](#) or any other outcome of a charge for such an offence.

2. All the following that occurred with respect to the person:
 - i. every commencement of a proceeding that could lead to a finding of guilt of an act of misconduct prescribed under [subsection 255 \(2\)](#), and
 - ii. every finding of guilt of an act of misconduct prescribed under [subsection 255 \(2\)](#).

The obligation to provide signed declarations is on-going. Section 253 (2) states that “declarations under subsection (1) apply with respect to any charge, order, conviction or other outcome, commencement of a proceeding or finding of guilt that the person became aware of since this section came into force and shall be provided promptly after the person became aware.”

Additional declaration forms are available from the Senior Administrator for the Lodges for any member of the Committee of Management whose situation may change after submitting the initial declaration and criminal record check.

RELEVANT CONSULTATION

Staff consulted with other municipal long-term care home operators in Ontario and found a mix of those with a Committee of Management in place and those working to establish one. Municipalities varied on the number of Councillors serving on the Committee of Management.

- Region of Peel- all members of Regional Council were appointed to serve as the Committee of Management.

- Region of Durham -those members of Regional Council who completed the screening requirements under the Act were on the Committee of Management.
- Ottawa- the members of the Community Services Committee comprise the Committee of Management.
- Windsor- three councillors are appointed to the Committee of Management.
- Oxford County- all County Council members are on the Committee of Management.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

A Committee of Management is required by the Act as are the Screening Measures as set out in the Regulations to the Act.

Training opportunities are available (at a cost) for Council and staff, designed specifically for long-term care Committee of Management members that provides insight into the current Long-Term Care environment and an understanding of the provincial government's expectations for the sector. Staff will bring opportunities forward to the Committee of Management Committee as they arise.

Liability Covered by Insurance

With the Act, the duties of the Committee of Management become mandatory, such that they can attract civil liability for an individual director. The Act also makes it an offence not to meet the required standard of care or to fail to ensure that legal obligations under the Act and its regulation are met.

Applying this standard to individual Councillors exposes them to an added level of potential personal liability that exceeds that under the *Municipal Act, 2001*, which provides Councillors with a defence based upon good faith.

A review of existing insurance coverage for City Council was completed by Risk Management. This review determined that Councillors are protected in their capacity as members on a Committee of Management for City Long-Term Care Homes.

ALTERNATIVES FOR CONSIDERATION

Similar to other jurisdictions, the City of Hamilton could designate all members of Council as the Committee of Management, however, this recommendation does not give Councillors the same level of flexibility to choose whether they want to be on the Committee of Management.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" – Draft Amending By-law