



CITY OF HAMILTON
PUBLIC HEALTH SERVICES
 Office of the Medical Officer of Health

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| TO: | Chair and Members Governance Review Sub-Committee |
| COMMITTEE DATE: | November 17, 2023 |
| SUBJECT/REPORT NO: | Options for the City of Hamilton's Board of Health Governance (BOH23039) (City Wide) (Outstanding Business List Item) |
| WARD(S) AFFECTED: | City Wide |
| PREPARED BY: | Rachel Harris (905) 546-2424 Ext. 4239 Nancy Sullivan (905) 546-2424 Ext. 5752 Ashley Vanderlaan (905) 546-2424 Ext. 4718 |
| SUBMITTED BY: | Dr. Elizabeth Richardson, MD, MHSc, FRCPC Medical Officer of Health Public Health Services |
| SIGNATURE: | |

RECOMMENDATION

- (a) That Council approve, in principle, a semi-autonomous Board of Health governance structure with features similar to the City of Toronto and City of Ottawa;
- (i) That Council direct staff to prepare and submit an application to the Province of Ontario for special legislation amending the *City of Hamilton Act, 1999* and the *Health Promotion and Protection Act* to authorize the City to implement a semi-autonomous Board of Health governance model, with features similar to the City of Toronto and City of Ottawa Board of Health governance structures; and,
- (ii) That Council direct staff to report back to the Public Health Committee, following approval of legislative changes with a plan to implement legislative changes and establish a semi-autonomous Board of Health for the City of Hamilton;
- (b) That as an interim solution until legal authorization is received to implement a semi-autonomous Board of Health governance model, a change be made to the membership of the Public Health Standing Committee to include six City Council members, six community representatives, and one education representative,

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using the City of Hamilton's existing selection processes, and that for the foregoing purposes staff be directed to report back to the Public Health Committee to; and,

- (i) Prepare any amendments to the Procedure By-law that shall create a new Public Health Standing Committee, which By-law shall be drafted to become effective not earlier than the date on which the existing Public Health Standing Committee has been dissolved by the Mayor pursuant to section 284.8(1) of the *Municipal Act*, and,
 - (ii) Prepare for approval the qualifications and criteria for the selection of the community representatives to ensure that the Public Health Standing Committee members represent the community and have the necessary skills and competencies.
- (c) That Item 2023-C, respecting a consultation with stakeholders to identify issues, opportunities, and options for Board of Health governance, be removed from the Public Health Committee Outstanding Business List.

EXECUTIVE SUMMARY

The City of Hamilton's Board of Health is currently comprised of all members of City Council. Beginning in March 2021, delegations were received from community members about restructuring the Board of Health so that it would also include community representatives. Delegates advocated that both City Council members and community representatives with health expertise and lived experience needed to be a part of public health decisions.

As directed via a motion at the February 8, 2023 City Council Meeting¹ and an amending motion at the April 12, 2023 City Council Meeting,² Public Health Services were asked to consult with appropriate City of Hamilton Advisory Committees, community partners, healthcare professionals, and members of the public about Hamilton's current Board of Health structure and alternate governance options. Options explored in the consultation included:

¹ City of Hamilton Council Meeting Minutes (February 8, 2023). Item 7.7: Motion on Recommendations for a Board of Health Advisory Committee. <https://pub-hamilton.escribemeetings.com/FileStream.ashx?DocumentId=352532>

² City of Hamilton Council Meeting Minutes (April 12, 2023). Revised Audit, Finance, and Administration Committee Report 23-005 Amended Item 6.0 (a)(ix): Restructuring the Board of Health Standing Committee. <https://pub-hamilton.escribemeetings.com/FileStream.ashx?DocumentId=361310>

- **Option 1: Advisory Committee**
Adding an Advisory Committee to advise on issues directed to them by the current Public Health Standing Committee, which would consist of community representatives and an education representative;
- **Option 2: Changing the Current Public Health Standing Committee**
Changing the current Public Health Standing Committee membership to include City Council members, community representatives, and an education representative; and,
- **Option 3: Semi-Autonomous Board of Health Structure**
Changing the structure and membership of the Board to Health so it is partially (i.e., semi-autonomous) or fully (i.e., autonomous) separate from City Council, with membership that includes City Council members, community representatives, and an education representative.

The consultation consisted of a public survey posted on the Engage Hamilton platform,³ key informant meetings and interviews, and a community-led public meeting. In total, 928 members of the public participated in the online survey, 63 key informant interviews and meetings were conducted with Advisory Committees, community partners, healthcare professionals, and City Council members, and approximately 50 community members attended the community-led public meeting. Appendix "A" to Report BOH23039 details the consultation methods, participants, and results.

Across the public survey, interviews, and meetings, there was strong support to change the structure and membership of the Board of Health. Consultation participants felt that while there are merits of the current governance structure, systemic change requires decision-making to be shared between elected members of City Council and community representatives with health expertise and lived experience. Consultation participants expressed the most support for a semi-autonomous Board of Health structure consisting of six City Council members, six community representatives with health expertise and lived experience, and an education representative (i.e., Option 3). This Recommendation will require changes to the *City of Hamilton Act, 1999*⁴ and potentially the *Health Protection and Promotion Act*.⁵ As such, changing the membership of the Public Health Standing Committee is recommended as an interim solution until these legislative changes are made.

³ City of Hamilton. (2023). Changing the Structure of the Board of Health.

<https://engage.hamilton.ca/bohgovernance>

⁴ City of Hamilton Act, 1999, S.O. 1999, c. 14, Sched. C. (1999).

<https://www.ontario.ca/laws/statute/99c14c>

⁵ Health Protection and Promotion Act, R.S.O. 1990, CHAPTER H.7. (1990).

<https://www.ontario.ca/laws/statute/90h07>

Alternatives for Consideration – See Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Recommendation (a) Semi-Autonomous Board of Health Structure
Section 49 of the *Health Protection and Promotion Act* provides that each member of the Board of Health who is not a member of City Council is entitled to remuneration on a daily basis, as well as reasonable and actual expenditures. For reference, the two peer jurisdictions that currently function under a semi-autonomous Board of Health structure compensate their citizen members \$125-\$200 per meeting attended, as well as associated parking and mileage expenses.

Staffing: Not Applicable.

Legal: Recommendation (a): Semi-Autonomous Board of Health Structure
The *Health Protection and Promotion Act* is provincial legislation that creates Boards of Health and establishes Board of Health power and authority. Under Section 11 of the provincial *City of Hamilton Act, 1999*, the City has the “powers, rights and duties of a Board of Health under the *Health Protection and Promotion Act*”. In order to provide the legislative authority necessary to implement the recommended semi-autonomous Board of Health structure with membership that includes City Council members, community representatives, and an education representative, the *City of Hamilton Act, 1999* must be amended. The *Health Protection and Promotion Act* may also require amendments.

In order to amend provincial legislation, the City is required to submit an application to the Province of Ontario. Further discussions by City staff with representatives from the Ministry of Municipal Affairs and Housing and the Ministry of Health will be required to determine the best approach for implementing the necessary legislative changes. A local Member of Provincial Parliament will then be required to table a Bill in the Legislative Assembly of Ontario with the legislative amendments that will enable the establishment a new governance model for the Board of Health.

Following approval of legislative amendments, staff will be required to amend or develop appropriate by-laws and City policies to establish and implement the new Board of Health governance structure. Amendments will be dependent on final legislative changes, and staff will report back with an implementation plan at that time.

Recommendation (b): Change to the Membership of Public Health Standing Committee

No legislative changes are required to implement this change. Pursuant to section 284.8(1) of the *Municipal Act*, the Mayor can dissolve the existing Public Health Standing Committee. Council has the power to establish a new Public Health Standing Committee that has a mixed Council and community member composition. Establishing a Public Health Standing Committee with changed membership can be implemented with amendments to City by-laws and corporate policies. Refer to Policy Implications and Legislative Requirements Section for details.

HISTORICAL BACKGROUND

Under Section 11 of the provincial *City of Hamilton Act, 1999* the City has the “powers, rights and duties of a Board of Health under the *Health Protection and Promotion Act*”. The City of Hamilton’s Board of Health uses a single-tier governance model, which means that the Board of Health is comprised of all members of City Council and the administrative structure of the public health unit is incorporated within the municipality. As such, City Council, when acting as the Board of Health, is responsible for making decisions related to public health in Hamilton and fulfilling the Ontario Public Health Standards⁶ and other legislative requirements under the *Health Protection and Promotion Act* as well as other Acts.

Hamilton and Haldimand-Norfolk are the only two public health units that use this single-tier governance model. Most (24 health units) of Ontario’s 34 health units are governed by autonomous Boards of Health, which means that the administrative structure of the public health unit is separate from the municipality or municipalities. Autonomous Boards of Health are comprised of elected officials appointed by the municipality or municipalities and citizen representatives that are appointed by the Province of Ontario. There are also six regional Boards of Health in Ontario, where the regional government serves as the Board of Health and the administrative structure of the public health unit operates under the regional government. Regional Boards of Health are comprised of elected representatives and have no community representatives or Provincial appointees. Lastly, two health units, Toronto Public Health and Ottawa Public Health, are governed by a semi-autonomous Board of Health. These Boards function administratively as single-tier governance models (i.e., the public health unit is part of the municipality) but their Board of Health consists of both City Council members and community representatives. In these semi-autonomous model, City Council may retain a limited authority to make certain decisions, such as budget and the appointment of Medical Officers.

⁶ Ministry of Health. (2021). Ontario Public Health Standards: Requirements for Programs, Services, and Accountability (Standards). https://www.health.gov.on.ca/en/pro/programs/publichealth/oph_standards/docs/protocols_guidelines/Ontario_Public_Health_Standards_2021.pdf

Procedurally, public health governance in Hamilton follows a two-step process. The governance and delivery of public health programs and services are first discussed at the Public Health Standing Committee, which is comprised of all members of City Council. Reports from these meetings are then submitted to City Council acting as the Board of Health for further consideration and decision-making. This approach has remained consistent since 2006, when changes were made following reviews of public health's response to the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak in Ontario. At this time, City Council began meeting monthly as the Board of Health Standing Committee to discuss the governance and delivery of public health programs and services (now called the Public Health Standing Committee). Historically, Board members have generally agreed that the Board has the appropriate committee structure in place (see BOH20021(a), BOH18011(a), BOH16033).

While Hamilton's Board of Health governance model has remained consistent, discussions about effective public health governance have continued locally, provincially, and nationally. Several provincial and national reports between 2019 and 2023 have recommended that public health governance and decision-making be informed by evidence, public health expertise, local expertise, and community engagement.^{7,8,9,10} Locally, beginning in March 2021, Hamilton community members have delegated in support of restructuring the Board of Health. Delegates advocated for the need to include health expertise and the perspectives of community members from equity-deserving groups when making public health decisions (e.g., the perspectives of Black, Indigenous, racialized, and 2SLGBTQ+ communities, women, people with disabilities, and people living with low-income). Delegates shared that this was especially important in the context of the COVID-19 pandemic, since the pandemic disproportionately impacted racialized and low-income community members, as well as

⁷ Ministry of Health. (2019). Discussion Paper: Public Health Modernization. https://health.gov.on.ca/en/pro/programs/phehs_consultations/docs/dp_public_health_modernization.pdf

⁸ Public Health Agency of Canada. (2021). A Vision to Transform Canada's Public Health System. <https://www.canada.ca/content/dam/phac-aspc/documents/corporate/publications/chief-public-health-officer-reports-state-public-health-canada/state-public-health-canada-2021/cpho-report-eng.pdf>

⁹ Di Ruggiero, E., Bhatia, D., Umar, I., Arpin, E., Champagne, C., Clavier, C., Denis, J-L., & Hunter, D. (2022). Governing for the Public's Health: Governance Options for a Strengthened and Renewed Public Health System in Canada. <https://nccph.s3.amazonaws.com/uploads/2022/06/OCPHO-Report-Governance-2022-En.pdf>

¹⁰ Chief Medical Officer of Health of Ontario. (2023). Being Ready: Ensuring Public Health Preparedness for Infectious Outbreaks and Pandemics. <https://files.ontario.ca/moh-cmoh-annual-report-2022-en-2023-03-15.pdf>

worsened existing health and social inequities.¹¹ Delegates also expressed support for the semi-autonomous governance models used by Ottawa Public Health and Toronto Public Health. Concurrent to these delegations, Karima Kanani, Partner at Miller Thomson LLP, provided a governance education session to Public Health Standing Committee members. This session outlined good governance principles, described how public health is governed across Ontario, and identified options, considerations, and implications for changing the City of Hamilton's Board of Health.¹²

Recognizing this local, provincial, and national context and direction was first provided via a motion at the February 8, 2023 City Council Meeting¹

- (a) That staff engage in consultation with appropriate City of Hamilton Advisory Committees, community partners, healthcare professionals, members of the public and other interested stakeholders to identify issues and opportunities with the current Board of Health's governance process;
- (b) That based on the results of the consultation, staff report back with options for the Board of Health's governance which will include as an option a dedicated Board of Health Advisory Committee as well as an option for a semi-autonomous board of health, and report back to the Governance Review Sub-Committee with recommendations prior to the end of Q3 of 2023;

And additional direction was provided via an amending motion at the April 12, 2023 City Council Meeting².

- (a) That the consideration of either a semi-autonomous or autonomous Board of Health and the following model for the Public Health Committee be put forward as a suggested model during the consultation: (i) through (iii)
- (b) That the following Selection Process for the appointment of the 6 community members and the 1 education representative to the Public Health Committee, be put forward as a suggested model during the consultation: (i) through (iv)

¹¹ City of Hamilton. (2023). Social Determinants of Health Data Collection (SDOH) in Hamilton during COVID-19. <https://www.hamilton.ca/people-programs/public-health/diseases-conditions/coronavirus-covid/covid-19-data#social-determinants>

¹² Kanani, K. (2022). Hamilton Board of Health Governance Education Session. <https://pub-hamilton.escribemeetings.com/filestream.ashx?DocumentId=354790>

Through this direction, staff were asked to consult with Advisory Committees, community partners, healthcare professionals, and members of the public about issues and opportunities related to the Board of Health's governance, including exploring alternative governance models.

For reference, the following three alternative governance models were explored during this consultation. The options include:

- **Option 1: Advisory Committee**
Adding an Advisory Committee to advise on issues directed to them by the current Public Health Standing Committee, which would consist of community representatives and an education representative;
- **Option 2: Changing the Current Public Health Standing Committee**
Changing the current Public Health Standing Committee membership to include City Council members, community representatives, and an education representative; and,
- **Option 3: Semi-Autonomous Board of Health Structure**
Changing the structure and membership of the Board to Health so it is partially (i.e., semi-autonomous) or fully (i.e., autonomous) separate from City Council, with membership that includes City Council members, community representatives, and an education representative.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

As stated in the Legal Implications section above, if Council approves Recommendation (a) to Report BOH23039, to transition to a semi-autonomous Board of Health structure, amendments to the *City of Hamilton Act, 1999* will be required to provide the legal authority to implement a semi-autonomous Board of Health structure. The legislative authority for the semi-autonomous Board of Health structure in the Cities of Ottawa and Toronto is provided under Section 12 of the *City of Ottawa Act, 1999*¹³ and Section 405 of the *City of Toronto Act, 2006*.¹⁴ The sections of the two acts are very similar and can be used as a guide to inform the amendments to the *City of Hamilton Act, 1999*. The application to the Province will request that the *City of Hamilton Act, 1999* be amended to provide for and require the following:

- Provide for the establishment of the Board of Health for the City under the *Health Protection and Promotion Act*,

¹³ City of Ottawa Act, 1999, S.O. 1999, c. 14, Sched. E. (1999).

<https://www.ontario.ca/laws/statute/99c14e#BK16>

¹⁴ City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A. (2006).

<https://www.ontario.ca/laws/statute/06c11#BK555>

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- Require the City to establish, by by-law, the Board’s size in accordance with subsection 49(2) of the *Health Protection and Promotion Act*;
- Require the City to appoint all of the members of the Board of Health;
- Provide for the City as the Board of Health’s area of jurisdiction;
- Provide for additional functions of the City in relation to the Board of Health: and,
 - The City will provide the employees to the Board of Health necessary to enable the Board to carry-out its functions and those employees are employees of the City; and,
 - The City will have the functions in respect of the appointment, re-appointment, or dismissal of the Medical Officer of Health, Associate Medical Officer of Health and its Auditor;
- Provide for additional functions of the Board of Health in relation to the City, in addition to its duties and responsibilities under the *Health Promotion and Protection Act* at the request of the City:
 - Make recommendations on any issues within the City’s jurisdiction that involve public health considerations; and,
 - Provide an annual report to the City on Board operations.

As part of the Ontario Public Health Standards, Boards of Health are accountable for executing good governance practices and ensuring the effective functioning of Boards of Health and management of the public health unit. Currently, some of these requirements do not apply to the City of Hamilton’s Board of Health due to its single-tier governance structure (e.g., requirements related to the selection of Board of Health members). Should Council approve Recommendation (a) to Report BOH23039 and subsequently receive legislative approval to transition to a semi-autonomous governance model, the City will need to ensure that it has the appropriate by-laws and corporate policies in place to comply with the Ontario Public Health Standards. Following legislative approvals, staff will prepare for Council approval the by-laws and corporate policies required to implement the legislative changes.

If Council approves Recommendation (b) to Report BOH23039 to change the membership of the Public Health Standing Committee, the Mayor would need to dissolve the existing Public Health Standing Committee before a new Standing Committee can be established by Council. Further, amendments will need to be made to By-law No. 21-021 a By-law to Govern the Proceedings of Council and Committees of Council.¹⁵ These include amending the Terms of Reference to change the composition of the Public Health Standing Committee to include six members of City Council, six community representatives with health expertise and lived experience and an education representative. Staff will return with final recommendations for the appointment process for community members, with the following considerations:

¹⁵ City of Hamilton. (2023). By-Law N.21-021 – By-law to Govern the Proceedings of Council and Committees of Council. <https://www.hamilton.ca/sites/default/files/2023-07/21-021-consolidation-july142023.pdf>

- The existing selection process under Corporate Policy: Hamilton City Council – Appointment of Citizens to the City’s Local Boards,¹⁶ which is similar to the processes used by peer jurisdictions;
- The skills and competencies outlined in the Amending Motion, feedback received during the consultation, and the Ontario Public Health Standards which included criteria such as having an interest or background in issues affecting municipal public health programs and services, having an understanding of diversity, equity, inclusion, anti-racism, anti-oppression, and health equity, and having interest or skills in planning and policy development;
- Requesting that the Hamilton-Wentworth District School Board and the Hamilton-Wentworth Catholic District School Board nominate one or more qualified candidate(s) to be considered for as the one education representative to be appointed to the Public Health Standing Committee; and,
- Requesting that the Advisory Committee for Persons with Disabilities and other listed Advisory Committees in the Amending Motion, if resumed, submit confidential interview questions for applicants to help identify qualified candidates.

RELEVANT CONSULTATION

MASS LBP, a public policy firm with governance and consultation expertise, was contracted to undertake this consultation. In May 2023, MASS LBP began consulting with Advisory Committees, community partners, healthcare professionals, City Council members, and members of the public. The consultation methods included a public survey, a series of interviews and meetings, and a community-led public meeting hosted by the Hamilton Anti-Racism Resource Centre and the Hamilton Centre for Civic Inclusion.

In total, 928 members of the public participated in the online survey, 63 key informant interviews and meetings were conducted with Advisory Committees, community partners, healthcare professionals, and City Council members, and approximately 50 community members attended the community-led meeting to provide their feedback. MASS LBP, along with Hamilton Public Health Services, reviewed the consultation results with the Hamilton Anti-Racism Resource Centre and the Hamilton Centre for Civic Inclusion to ensure the findings from the community-led meeting and previous organizational delegations about restructuring the Board of Health were accurately described in the final report. Appendix “A” to Report BOH23039 details the consultation methods, participants, and results.

¹⁶ City of Hamilton. (2023). Corporate Policy: Hamilton City Council – Appointment of Citizens to the City’s Local Boards. https://www.hamilton.ca/sites/default/files/2023-02/Corp-policy_Appointment-of-Citizens-to-the-City'-Local%20Boards-Policy.pdf

In the course of carrying out the consultation and preparing the report, Legal and Clerks were consulted and provided advice on the legal implications of the Recommendations. In addition, the Office of the Chief Medical Officer of Health of Ontario was consulted, and indicated they were supportive of the Recommendations subject to legislative approval. The Office of the Chief Medical Officer of Health also indicated they would support coordination with the Ministry of Municipal Affairs and Housing and the Ministry of Health and facilitate the legislative changes. It is anticipated there will be opportunity to make changes to the *City of Hamilton Act, 1999* and the *Health Protection and Promotion Act* in 2024.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Overall, consultation with Advisory Committees, community partners, healthcare professionals, City Council members, and members of the public revealed there is substantial and widespread support for changing the membership and structure of the Board of Health to a semi-autonomous structure that includes six City Council members, six community representatives with health expertise and lived experience, and one education representative. Consultation participants felt that while there are merits of the current governance structure, systemic change requires decision-making to be shared between elected members of City Council and community representatives with health expertise and lived experience. Appendix “A” of Report BOH23039 fully details the consultation findings.

Making these changes to the structure and membership of Hamilton’s Board of Health will require amendments to the *City of Hamilton Act, 1999* and potentially the *Health Protection and Promotion Act*. As a result, key informants suggested that making changes to the membership of the Public Health Standing Committee could be undertaken as a first step, since these changes are within the purview of the City of Hamilton.

Key informants also outlined considerations for implementing changes to either the Public Health Standing Committee or Board of Health governance structure. Participants shared that there needed to be a transparent selection process for the Public Health Standing Committee and/or the Board of Health to ensure that members had the necessary competencies. Participants generally agreed that the selection process should consist of best practices, a skills matrix, demographic data to ensure representation, and community consultation. Other considerations for more effective public health governance included providing Board of Health members with training and education, building trust between the Board and the community through stronger collaboration and partnerships, and increasing the Board’s accountability and reporting.

ALTERNATIVES FOR CONSIDERATION

Instead of making the interim changes to the Public Health Standing Committee composition, focusing solely on advancing the legislative changes required to transition to a semi-autonomous Board of Health could be considered. While this would not immediately include health expertise, lived experience, and an education representative in public health discussions, it could potentially avoid duplicating nomination and selection processes should changes to the *Health Protection and Promotion Act* and the *City of Hamilton Act, 1999* be made quickly.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report BOH23039

MASS LBP Hamilton Board of
Health Governance What We
Heard Report