



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

<b>TO:</b>	Mayor and Members Board of Health
<b>COMMITTEE DATE:</b>	July 10, 2020
<b>SUBJECT/REPORT NO:</b>	Face Coverings in Enclosed Public Spaces (BOH20014) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Ninh Tran (905) 546-2424 Ext. 7113 Michael Kyne (905) 546-2424 Ext. 4716 Jennifer Sheryer (905) 546-2424 Ext. 2023 Monica Ciriello (905) 546-2424 Ext. 5809
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Dr. Elizabeth Richardson, MD, MHSc, FRCPC Medical Officer of Health Public Health Services

**RECOMMENDATION**

- (a) That City Council enact a by-law to Require the Wearing of Face Coverings Within Enclosed Public Spaces and to amend City of Hamilton By-law 17-225, being a By-law to Establish a System of Administrative Penalties”, as outlined in Appendix “A” to Report BOH20014:
- (i) Requiring all person(s) or organization(s) with custody or control over an enclosed space open to the public to ensure that all persons attending wear face coverings (e.g. masks) as a condition of entry to the enclosed space. The by-law shall also require the posting of sufficient and appropriate signage notifying staff and members of the public of this requirement;
  - (ii) Requiring all person(s) attending an enclosed space open to the public, to ensure that they wear face coverings (e.g. masks) as a condition of entry to the enclosed space; and,

- (iii) That permits appropriate exemptions for individuals who are unable to wear a face covering for medical reasons, children under two years old (or up to five years old if the child refuses), and other reasonable accommodations;
- (b) That the by-law shall come into force at 12:01 a.m. on July 20, 2020 and shall be reviewed by the Board of Health every 3 months unless directed otherwise by City Council.
- (c) That the Mayor be directed to request that the Province of Ontario impose requirements substantially similar to those outlined in this by-law to all public spaces and facilities regulated or owned by the Province within the City of Hamilton.
- (d) That the Mayor be directed to request that the federal government impose requirements substantially similar to those outlined in this by-law to all public spaces and facilities regulated or owned by the federal government within the City of Hamilton.

## **EXECUTIVE SUMMARY**

The COVID-19 Pandemic was declared by the World Health Organization on March 11, 2020. To date, Hamilton Public Health Services (PHS) has investigated over 842 cases of COVID-19 in the city. While cases are currently stable, and Hamilton has entered Stage 2 of the re-opening process, the risk for the ongoing spread of COVID-19 continues. Some jurisdictions around the world, including many in the United States, are experiencing a resurgence of cases since re-opening.

PHS continues to recommend public health measures to be practiced by all residents of the City in order to reduce the spread of COVID-19. These include cleaning hands often, staying home if sick, keeping a physical distance from others and wearing a mask or face covering, especially in settings where it is difficult to maintain a physical distance from others.

As Hamilton continues to ease public health restrictions, in accordance with the Provincial Framework for re-opening, additional public health measures should be considered to prevent a resurgence of COVID-19 cases. Therefore, this report recommends that City Council enact a bylaw requiring the wearing of masks or face coverings in enclosed public settings, as members of the public once again frequent businesses and other facilities.

While the science on the use of non-medical masks by the general public is not definitive, there is a growing body of evidence on the effectiveness of these masks to act as a barrier to prevent the spread of COVID-19. Further, jurisdictions that have

mandated the use of non-medical masks in public settings have seen more people complying with the wearing of masks. The use of masks and face coverings is inexpensive, acceptable and a non-invasive measure to help control the spread of COVID-19. More widespread wearing of masks and face coverings may act as a visual cue that public health measures, including maintaining a physical distance from others, are still required, that the COVID-19 Pandemic is on-going and that resurgence of local disease activity remains an ongoing threat. PHS recommends that City Council enact a bylaw requiring face coverings in enclosed spaces open to the public. This by-law will require that businesses or facilities ensure face coverings are worn by the public in the enclosed spaces under their control. This shall include corresponding signage and notifying staff on the requirements of this by-law.

### **Alternatives for Consideration – See Page 10**

### **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

- Financial: No additional funding is required for enforcement, as it will utilize existing Licensing and By-Law Enforcement Officers.
- Staffing: This report does not recommend any additional staff. The education and enforcement of the By-law will be completed by existing Licensing and Bylaw Enforcement Officer's, however depending on the workload and enforcement additional City staff through redeployment may be required. In addition, police officers and public health inspectors would also be authorized to enforce this By-Law. It is anticipated that they would use this authority if by-law issues are noted during the course of their regular inspections/duties.
- Legal: The *Municipal Act, 2001* empowers municipalities to pass by-laws with respect to the health, safety and well-being of persons.

### **HISTORICAL BACKGROUND**

On March 11, 2020, the COVID-19 Pandemic was declared by the World Health Organization and the first case in Hamilton was detected. Two weeks later there were 35 confirmed cases. One month later, the number of cases had increased more than fivefold, totalling 198 confirmed cases in Hamilton. Since then, Hamilton has seen over 800 cases and more than 40 deaths due to COVID-19.

On March 17, 2020, the Government of Ontario made an order declaring an emergency under s. 7.0.1. (1) the *Emergency Management and Civil Protection Act* requiring immediately closure of a wide range of facilities and establishments.

On April 6, 2020, Canada's Chief Public Health Officer, Dr. Theresa Tam, recommended the use of non-medical masks by the public as an additional measure to prevent the spread of COVID-19.

On June 19, 2020, Hamilton entered Stage 2 of Ontario's easing of COVID-19 restrictions allowing for public access to restaurant patios, malls as well as many other retail locations.

On June 22, 2020, mandatory face coverings became effective on the City of Hamilton's public transit Hamilton Street Railway (HSR).

On June 29, 2020, the mayors of the Greater Toronto Hamilton Area (GTHA) called for the province of Ontario to enact provincial legislation mandating the use of non-medical masks and face coverings. The GTHA mayors also committed to working with their local Medical Officers of Health to increase the uptake of masks or face coverings including the use of local medical masking legislation.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The *Municipal Act, 2001* empowers municipalities to pass by-laws with respect to the health, safety and well-being of persons.

## **RELEVANT CONSULTATION**

An environmental scan was done to determine which Ontario Health Units had existing or were proposing legislation requiring face coverings. The preliminary findings are listed in Table 1.

Table 1: Mandatory face coverings by Ontario jurisdictions (current and proposed).

<b>Jurisdiction</b>	<b>Establishment covered</b>	<b>Status</b>
Wellington Dufferin Guelph	Commercial only	Effective June 12, 2020
Windsor Essex County	Commercial only	Effective June 26, 2020
Kingston Frontenac Lennox Addington	Public, commercial and municipal establishments	Effective June 27, 2020 (originally commercial only)
City of Toronto	Public, commercial and municipal establishments	Passed June 30, 2020. In effect as of July 7, 2020
Sudbury	Commercial establishments	Effective as of July 8, 2020
Region of Peel	Public, commercial and municipal establishments	Proposed – in development
Region of Waterloo	Public, commercial and municipal establishments	Proposed – to be decided at July 6, 2020 Regional Council Meeting

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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.

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York Region	TBD	To be discussed and decided at Regional Council Meeting on July 9, 2020
City of Ottawa	Indoor public places	Motion for by-law to be discussed at July 15, 2020 Council meeting
Middlesex London	Businesses that provide direct face-to-face services less than 2 metres away from a customer for more than 15 minutes	Effective July 20, 2020

Consultation was done with other health units who had already put in place legislation mandating non-medical masks and face coverings regarding their current experience. All reported overall satisfaction and support from their community and/or businesses and reported increased uptake of use of masks in these settings without the need to issue any charges at the time of this report.

Consultation was done with other health units who were in the process of mandating masks or face coverings to determine their planned approaches to help better align with neighbouring or regional municipalities. At the time of writing this report, Toronto, York Region, Peel Region and Waterloo Region were using or considering a by-law approach.

Legal Services and the Licensing and By-law Services Division were consulted regarding the Legal and Enforcement Implications of having a by-law on mandatory non-medical masks and face coverings. Legal Services developed a draft by-law (Appendix “A” to BOH20014).

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

As of July 2, 2020, there have been 842 cases of COVID-19 in Hamilton, including 44 deaths. While COVID-19 case counts are currently stable, there are still several cases reported each day. COVID-19 is still circulating in the City, and the risk for its continued spread remains.

Preventive measures that are currently adopted will need to continue to be expanded as required. One such measure includes increasing the use of non-medical masks or face coverings by the general public in public settings.

The re-opening of businesses and other services will result in more people circulating in public, returning to the workplace, gathering and taking public transit, which will make the ability to physically distance difficult, or in some cases, impossible. The benefits of reopening businesses and services must be balanced, to the extent possible, with

measures to ensure the safety of employees and the public. The wearing of masks or face coverings by members of the public is one measure that can be taken to help mitigate these risks.

Currently the Medical Officer of Health, the Chief Medical Officer of Health for Ontario, Chief Public Health Officer for Canada and the World Health Organization strongly recommend the wearing of masks or face coverings where physical distancing cannot be maintained, in addition to other public health measures. Preliminary evidence shows that if a sufficient proportion of the public wear effective masks, transmission levels can be reduced. Mandating mask use has been shown to increase levels of mask or face covering use.

### **The Science on Face Coverings Continues to Evolve**

Face coverings can be important for containing COVID-19 since it is increasingly clear that a substantial proportion of infections are transmitted by people with no symptoms of illness, or those who are pre-symptomatic [1]. Early in the pandemic, asymptomatic transmission was not known to be significant. To prevent the spread from those who are contagious but without symptoms (or with very mild symptoms), masking needs to be universal and not restricted to individuals who think they may have COVID-19.

Medical masks are traditionally worn for two-way protection: to protect the health care worker from being infected by a sick patient, and as source control to keep a health care worker's germs from spreading to a patient. Non-medical masks have not been shown to be effective in protecting the person wearing the mask, but can be beneficial for source control [2,3]. Source control prevents the spread of respiratory droplets from coughing, sneezing or talking from the person wearing the mask to others. There is evidence that cloth masks can reduce the expulsion of respiratory droplets into the air and onto surfaces [3].

In modelling studies, evidence is showing that higher compliance in the wearing of masks is required to achieve a significant positive impact. One study estimated that 50% compliance on the use of masks in public settings is not sufficient to prevent continued spread of COVID-19. However, at 80% public compliance, COVID-19 spread can be reduced [4]. Another model suggested that broad adoption of even relatively ineffective face masks may meaningfully reduce community transmission of COVID-19 and decrease peak hospitalizations and deaths [5].

An ecological study found societal norms and government policies supporting the wearing of masks by the public are independently associated with less mortality from COVID-19 [6]. Another ecological study from Germany showed that regions where masks were made mandatory earlier in the Pandemic had lower new infections subsequent to the introduction of the masking policy compared to those that adopted policies later on in the outbreak. The greatest drop in new cases was seen in those aged 60 years and older [7].

### **Spread of COVID-19 Enclosed Versus Outdoor Spaces**

The risk for spreading COVID-19 appears to be higher in enclosed settings compared to outdoors. Living in the same household with someone who has COVID-19 is clearly a high risk for spread. Enclosed settings may also be more important for spreading COVID-19 since they are often more crowded compared to outdoor settings, the respiratory droplets from a person who is talking, coughing or sneezing can contaminate surfaces and may not fall as quickly to the ground when in the air due to less air ventilation, and the flow of air in an enclosed setting may contribute to the spread of the virus in a particular direction [8]. In outdoor settings, there is often less crowding, good air circulation, and surfaces are less likely to be contaminated.

Given that all enclosed settings are higher risk, requiring wearing a mask in enclosed spaces open to the public, including commercial and non-commercial settings, will be essential to prevent additional spread of COVID-19. Temporary removal of masks may be necessary for the purpose of receiving a service at a business or facility but should be minimized where possible.

### **Global Masking and Face Covering Policies to Slow the Spread of COVID-19**

Currently, there are over 100 countries which have adopted some form of legislation for universal masking. Many countries or regions that have contained COVID-19 outbreaks have higher rates of public mask and face covering usage. Some countries had "masking cultures" before the pandemic, where people would wear masks in public to prevent the spread of infections routinely. Other countries issued government orders for public masking in response to the pandemic.

Face masks are used extensively by the general public in Asian countries, for example China, Singapore, South Korea and Japan. Face-mask use has been increasingly common since the 2003 SARS epidemic. In Hong Kong, 76% of the population was wearing a face mask during the SARS epidemic [9].

### **Masks and Face Covering Use in Transit Systems**

Many jurisdictions have enacted mandatory legislation for mask or face covering use on transit systems, recognizing that using transit can often not be avoided, and maintaining a physical distance on transit systems is difficult [10]. Beginning June 22, 2020, masks or face coverings became mandatory when travelling on the HSR, with some exceptions. Other transit systems in Ontario, including Ottawa, Brampton, Mississauga, Guelph and Toronto, have also enacted legislation requiring mask use. However, not all transit systems that serve in the City have a by-law such as the GO transit, which is under provincial jurisdiction. It would be preferable that the Province enact a complementary mask regulation applicable within the City of Hamilton including on all public transit systems under provincial jurisdiction including the GO transit.

### **Acceptability of Face Coverings**

The effectiveness of universal masking or face coverings may be dependent on the type of face coverings used, societal acceptance of face coverings, and other interventions applied. Face covering techniques and norms need to be taught with targeted information to different demographics.

Leger and the Association for Canadian Studies publishes a Weekly COVID-19 Pandemic tracker. In their June 30, 2020 survey, the online poll surveyed 1,521 adult Canadians. More than half of Canadian respondents (58%) said that masks should be mandatory in public and confined spaces, like shopping malls and public transit, with the highest level of support in Ontarians at 68% with only 24% in opposition [11]. This support is higher than it was the previous week (54% overall and 58% in Ontario). In the June 9th survey, eighty per cent of respondents felt it is each Canadian's individual responsibility to try to prevent a second wave of the Pandemic [12].

### **Face Coverings as a Visual Cue for Preventive Behaviours**

Where more routinely used, face coverings may serve as a visual cue for adopting this preventive measure, and act as a reminder to the public to perform other preventive behaviours. One study from Italy showed that mask use increases compliance with physical distancing, likely as a visual cue to maintain preventive behaviours [13]. Ensuring that preventive measures are top of mind is important, as fatigue of restrictions or the false perception that the risk for transmission of COVID is low can be concerning.

### **Universal Face Coverings for Source Control**

Face coverings for source control can be a personal hygiene measure and needs to be part of a broader strategy to reduce transmission risk. Cloth masks or face coverings are low-cost, reusable and non-invasive. It is critical to emphasize that wearing a face covering alone will not prevent the spread of COVID-19. Practising physical distancing and frequent hand washing are still the most effective methods to limit the spread of the virus.

### **Need for Provincial Legislation**

The most efficient way to enact mandatory face covering legislation would likely be through a provincial order through the *Emergency Management and Civil Protection Act* as has been done with other measures related to the re-opening process.

Provincial legislation would lead to a consistent approach across the province given that some municipalities/regions have mandatory policies, whereas many others do not. There also exist significant differences between the jurisdictions that have mandated masking in terms of scope: commercial only vs. all enclosed public spaces; owners and operators vs. individual citizens; exemptions for individuals; and requirements such as policy, signage, and provision of hand sanitizers.



However, as there has been a preference expressed for local decision making on this issue, a City bylaw at the recommendation of the Medical Officer of Health is appropriate at this time to proceed with requiring face coverings in enclosed spaces open to the public in the City of Hamilton.

**Rationale for Limiting Scope to Enclosed Spaces:**

- **Outdoor:** The risk of COVID-19 spread is significantly lower in outdoor settings, where there is often less crowding, good air circulation, disinfection through UV light and surfaces are less likely to be contaminated;
- **Workplaces / Occupational Health and Safety:** Workplaces without public access would be governed by Occupational Health and Safety requirements and needs. In addition, non-medical masks or face coverings may not be suitable for to meet occupational health and safety requirements. Employers should consult with Occupational Health and Safety guidelines to ensure that measures that are appropriate to their particular work setting – which may or may not include mask-wearing policies – are properly implemented; and,
- **Excluding Provincial and Federal Buildings and Facilities:** Many buildings and facilities are either under direct provincial and federal control or are regulated and governed by provincial and federal ministries and would be not covered in the by-law. This would include schools, universities and independent health facilities.

**Potential Negative Unintended Consequences:**

- There may be in individual level impacts such as facial dermatitis, facial lesions, itchiness and skin irritation, worsening acne, fogging of glasses, difficulty in clear communication;
- If worn improperly, facial coverings use can present the opportunity to contaminate the wearer; lack of hand hygiene may also cross contaminate the environment
- Individuals who may not be able to tolerate face coverings (e.g. underlying medical conditions) may be stigmatized;
- Depending on how policies are enforced, income and other inequities may be exacerbated (e.g. for those who lack access to masks and face coverings); and,
- Impact on the PPE supply chain should individuals use medical masks in non-health care settings.

**Mitigating Negative Unintended Consequences:**

- **Education on Face Covering Use:** Continued education on appropriate use of face covering including: covering of nose, mouth and chin; appropriate materials; appropriate hand hygiene and avoiding cross contamination; use of non-medical masks to preserve medical masks for health care providers; appropriate cleaning, replacement and non-shared use; and that this is done in addition to physical distancing and hand hygiene;

- **Provision of Face Coverings:** Although the mandating of wearing of non-medical masks and face coverings will increase and support usage, this needs to be supplemented by ensuring access, particularly for those who have barriers acquiring them such as financial barriers. Currently the City of Hamilton HSR service provides non-medical masks free of charge for its users. Public Health Services will work with community support agencies to increase accessibility of masks for those who have financial barriers acquiring masks or face coverings; and,
- **Progressive Enforcement:**  
Licensing and By-law Officers, or other authorized staff will use a progressive enforcement approach. Acting as ambassadors on behalf of the City, Officers will begin with education in an attempt to achieve compliance with the By-law. If they do not obtain compliance, or if there is a repeated offense, charges under the By-law may be laid.

## **ALTERNATIVES FOR CONSIDERATION**

### **Reduce Scope of By-Law to Commercial Establishments:**

A number of other Ontario jurisdictions have mandated masks or face coverings in commercial establishments only (Wellington Dufferin Guelph, Windsor Essex County)

**Pros:** Less staff time required to implement bylaw as there would be fewer establishments under this bylaw.

**Cons:** Would not achieve benefit of increased mask usage in non-commercial establishments

## **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.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report BOH20014:	A by-law to Require the Wearing of Face Coverings Within Enclosed Public Spaces and to amend City of Hamilton By-law 17-225, being a By-law to Establish a System of Administrative Penalties
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