



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

TO:	Mayor and Members Board of Health
COMMITTEE DATE:	September 21, 2020
SUBJECT/REPORT NO:	Face Coverings in Enclosed Public Spaces (BOH20014(a)) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Dr.. Elizabeth Richardson, MD, MHSc, FRCPC Medical Officer of Health Public Health Services
SIGNATURE:	

RECOMMENDATION

- (a) That the amending By-law attached as Appendix “A” to Report BOH20014(a) which amends By-law 20-155 “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”, each of which has been prepared in a form satisfactory to the City Solicitor, be enacted and effective as of 12:01 a.m. on September 21, 2020; and,
- (b) That these amended By-laws shall be reviewed by the Board of Health every three months unless directed otherwise by City Council.

EXECUTIVE SUMMARY

On July 10, 2020, Hamilton’s Board of Health (BOH) approved a recommendation report (BOH20014) to enact a Face Covering By-Law in public enclosed spaces that became effective as of July 20, 2020 in an effort to prevent cases of COVID-19 given

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the additional re-opening of various venues throughout the Province. This By-law is to be reviewed every three months unless directed otherwise by City Council. As per the August 10, 2020 General Issues Committee meeting, a request was made to amend the By-law prior to the October BOH meeting so that it applied to common areas within apartment buildings and condominium complexes.

Emerging evidence continues to support the need for using face coverings in situations where physical distancing may be challenging. In addition to mandatory masking in enclosed public settings, other public health measures that Public Health Services (PHS) continues to recommend to all residents of the City include: cleaning hands, staying home if sick, keeping a physical distance from others, disinfecting high touch surfaces, and wearing a mask or face covering in all cases where physical distancing is challenging.

This report provides rationale for renewing the Face-Covering By-law as well as expanding its application to common spaces in apartment buildings and condominiums. This report also evaluates the implementation process of the current By-law as well as the impact of this policy on our institutions and the public.

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

Alternatives for Consideration – See Page 3

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 and continues to rely on education and enforcement of the By-law by existing Licensing and Bylaw Enforcement Officers, unless there is excessive workload and enforcement requiring additional City staff through redeployment. In addition, police officers and public health inspectors are authorized to enforce this By-law. It is anticipated that they would use this authority if 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. Since then, Hamilton has seen over 900 cases and more than 40 deaths due to COVID-19.

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.

On July 10, 2020, Hamilton's Board of Health (BOH) approved a recommendation report (BOH20014) to 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" that would be effective as of July 20, 2020.

On July 17, 2020, Hamilton City Council ratified the decision and enacted a Face-Covering By-law that was enacted as of July 20, 2020 with a primary educational approach for the first three weeks of implementation.

As of August 20, 2020, the vast majority of municipalities and regions within Ontario had face covering legislation applicable to indoor public spaces.

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 changed their scope of legislation requiring face coverings. The findings are listed in Table 1. Currently, most municipalities in Ontario have legislated policies to support mandatory face coverings in indoor spaces.

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

Jurisdiction	Establishment originally covered	Additional establishments	Status
City of Toronto	Public, commercial and municipal establishments	Common areas of apartments and condominiums	Effective as of August 5, 2020
City of Burlington	Public, commercial and municipal establishments	Common areas of apartments and condos	Effective as of August 20, 2020
Region of Peel	Public, commercial and municipal establishments	Common areas of apartments and condominiums	Effective August 5, 2020
York Region	Public, commercial and municipal establishments	Common areas of apartments and condominiums	Effective August 7, 2020
Ottawa Public Health	Public, commercial and municipal establishments	Common areas of apartments and condos and designated outdoor 'zones'	Effective August 26, 2020
Province of Ontario	N/A	Go Transit Schools (Staff, Students in grade 4 to 12)	
Hamilton Catholic School Board	School Staff Students Grade 4 to 12 (as per provincial policy)	K-12 on bus K to 3 in schools	Confirmed Confirmed
Hamilton District School Board	School Staff Students Grade 4 to 12 (as per provincial policy)	K-12 on bus K to 3 in schools	Confirmed Confirmed

Legal Services and the Licensing and By-law Services Division were consulted regarding the Legal and Enforcement Implications of amending the City's Face-Covering By-law. By-law Services Division was also consulted regarding the inquiries

and compliance with the By-law as well as any implementation challenges. Legal Services developed a draft amended By-law (Appendix “A” to BOH20014(a)).

ANALYSIS AND RATIONALE FOR RECOMMENDATION

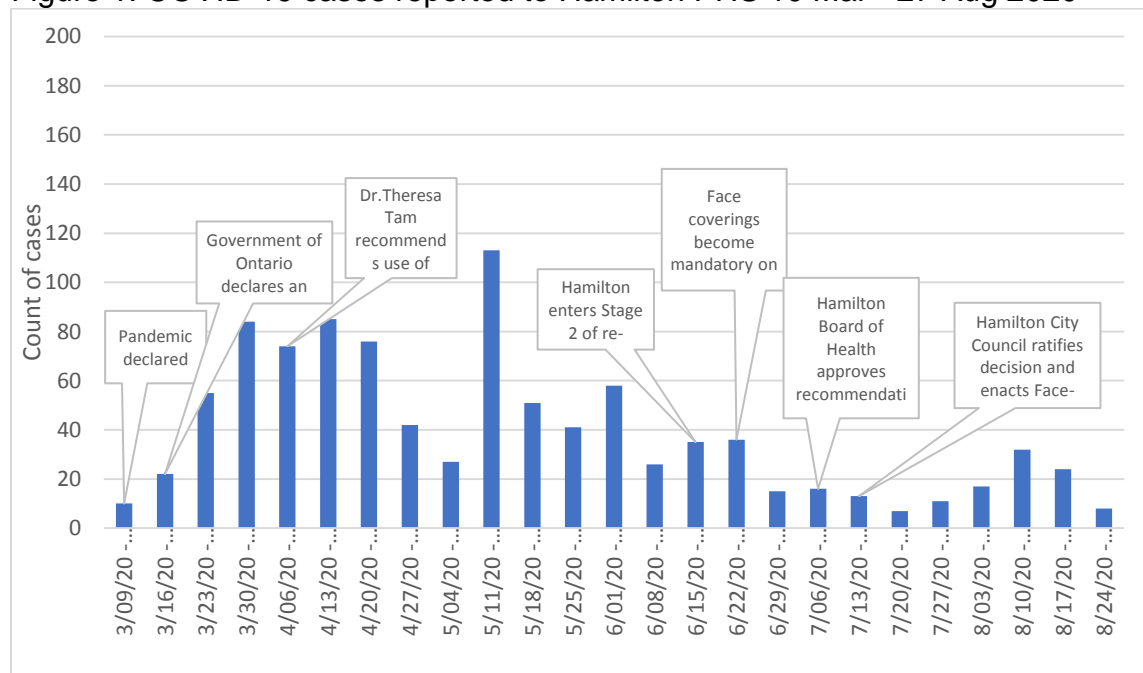
As long as the risk of COVID-19 spread persists, our economy remains open, and science supports face coverings as an effective public health measure, the need for a face covering policy exists. Given that a provincial mandate to support the continued and consistent need to mask in publicly accessed common indoor spaces is lacking, it is left to the municipality to ensure that best public health measures supporting emerging evidence are followed.

Epidemiologic Summary:

As of August 27, 2020, there have been 978 cases of COVID-19 in Hamilton, including 67 active cases and 45 deaths with COVID-19. While COVID-19 case counts are currently low, there were still four to five cases reported each day at the beginning and middle of August and 2-3 cases reported daily within the last week. This is an increase compared to mid-July when there were only one to two cases reported daily.

The graph below (Figure 1) shows weekly number of COVID-19 cases in Hamilton to the dates of significant events, such as enacting the masking By-law.

Figure 1: COVID-19 cases reported to Hamilton PHS 10 Mar - 27 Aug 2020¹



¹ Data Source: Ministry Case and Contact Management System (CCM). Prepared by: City of Hamilton Public Health Services. Date Extracted: August 27, 2020.

Recent cases of COVID-19 in Hamilton are reported as being connected to increased socializing (parties, cottages, bars, patios etc.), workplace exposures, and community (unknown exposures). Cases may be a result of individuals not physically distancing, and/or not masking, and/or not masking properly.

Although individuals were initially compliant with staying at home and physically distancing at the beginning of the pandemic, it is less likely that the population will tolerate a return to stricter controls as the pandemic continues, especially now that the majority of businesses are operating, and society has re-opened. While the need to remind individuals to physically distance continues, there may be a certain amount of physical distancing 'fatigue'. This, coupled with the fact of high asymptomatic and pre-symptomatic transmission rates of COVID-19, necessitates a continued mandatory masking mandate.

Evidence for masking/face covering: review of any new evidence

The overall evidence for face coverings in preventing COVID-19 transmission has not significantly changed since the last board of health report (BOH20014). However, there is additional evidence regarding the type of face covering used. Face shields, clear plastic masks and masks with valves have not been supported by the evidence currently available to be used as substitutes for other types of non-medical face coverings.

As a better than nothing approach, the WHO recommends that if face shields are to be used, the wearer should ensure proper design that covers the sides of the face and extend below the chin. For certain populations, those with mental health disorders, developmental disabilities, deaf and hard of hearing community and children, the WHO supports the use of face shields ^{2,3}.

Messaging to both operators and the public regarding the effectiveness of these types of masks is being communicated by Hamilton Public Health Services through social media and via our webpage.

Scope of the Face Coverings in Enclosed Public Spaces By-law

Apartments and Condominiums: The proposed amendment addresses a gap in the existing By-law. The current By-law does not protect individuals who reside in apartment buildings or condominiums in common spaces within their own buildings. Although

² World Health Organization (August 21, 2020). Q&A: Children and masks related to COVID-19. Accessed on August 27, 2020. Available from: <https://www.who.int/news-room/q-a-detail/q-a-children-and-masks-related-to-covid-19>

³ World Health Organization (August 21, 2020). Advice on the use of masks for children in the community in the context of COVID-19: Annex to the Advice on the use of masks in the context of COVID-19. Accessed on August 27, 2020. Available from: https://apps.who.int/iris/bitstream/handle/10665/333919/WHO-2019-nCoV-IPC_Masks-Children-2020.1-eng.pdf

multi-unit residences are private property, members of individual units, including guests of units, may congregate or come into close contact in common areas increasing risk of COVID-19 transmission. For people who reside in multi-unit residential buildings it may be difficult to avoid contact with their neighbours. Common areas, like foyers and elevators, need to be accessed to reach living spaces. Furthermore, individuals are required to use shared facilities like laundry rooms and parking structures. For the purposes of individuals living in multi-unit dwellings, other individuals residing within the same building may be comparable to other members of the public⁴. While apartment and condominium owners have the authority to create and adopt their own masking policies, to ensure that an equitable and uniform approach is taken to protect individuals who reside in multi-unit dwellings, apartment buildings and condominiums would need to be included under the revised face covering By-law.

Evidence continues to support that the main mode of COVID-19 transmission is through direct contact and respiratory droplets, both of which are increased if an individual is in close proximity to an infected person⁴. While there is a paucity of evidence describing clusters or outbreaks of COVID-19 in apartments, condominiums and hotels, preliminary investigations suggest potential transmission through various modes such as close contact with other infected individuals, contaminated fomites or potentially through Heating Ventilation and Air Conditioning (HVAC) or plumbing systems. Recommendations to reduce transmission in multi-residential buildings and hotels are multi-layered and include continuing to encourage physical distancing or the use of face coverings when physical distancing is difficult to maintain^{4,5}.

Evaluating Policy Implementation: Education on Face Covering Use

Efforts to ensure clear and consistent communication for face covering requirements including educational components to support these requirements started in advance of the By-law being passed. In addition to a media release, when the By-law came into effect, webpages (one focusing on By-law wording and the other on how to put on and take off masks properly) went live, including a FAQ section. Social media messages sent beginning the week of By-law implementation (July 20-Aug 24) include:

- Twitter: 28 posts, 80.3 K followers;
- Instagram: 4 posts, 28.3 K followers; and,
- LinkedIn: 4 posts, 27, 204 followers.

From July 20, 2020 until August 23, 2020 our webpage detailing By-law requirements received 39, 724 views. In contrast, our webpage outlining general face covering and

⁴ Eykelbosh, A (March 31, 2020). COVID-19 Precautions for multi-unit residential buildings. National Collaborating Centre for Environmental Health. Accessed on August 27, 2020. Available from <https://nccceh.ca/sites/default/files/COVID-19%20Precautions%20for%20Multiunit%20Residential%20Buildings%20-%20March%2031%202020.pdf>

⁵ Alberta Health Services (July 16, 2020). COVID-19 Scientific Advisory Group Rapid Evidence Brief. Accessed on August 27, 2020. Available from: <https://www.albertahealthservices.ca/assets/info/ppih/if-ppih-covid-19-sag-transmission-in-condo-or-apartment-buildings-rapid-review.pdf>

masking information received 4, 223 views likely reflecting that legislation provides greater motivation for behaviour change than education alone.

To support uptake of the By-law and to educate the public about mask use, By-law posters were developed and made available to download for owners and operators.

Evaluating Policy Impact:

- **By-Law Implementation:** Officers in Licensing and By-law Services continue to act as ambassadors for the City, educating the public that as establishments start to reopen a face covering By-law is in effect. Overall, Officers have observed that most individuals are complying with the requirements of the By-law. During the three weeks of education when the By-law was first passed, numerous establishment owners expressed appreciation for Officer provision of education. Officers also received many comments of thanks for the mask signage provided by the City.

Since the By-law came into effect no charges have been issued.

Officers have investigated numerous complaints, in addition to proactively enforcing the By-law. Since July 21, 2020 the majority of complaints received by Licensing and By-law Services related to establishments not complying with the By-law (n=96). Other main complaints received relate to employees not wearing face coverings (n=23), exemptions and being denied entry (n=16).

- **Masks and Face Covering Use on HSR:** HSR reports an increase in mask uptake since the By-law came into effect. This observation is based on information gathered through passenger spot-checks and operator reported compliance. Before the By-law, but after HSR made masks mandatory, compliance was estimated at approximately 70% (efforts to improve compliance involved giving away 30,000 free-masks at 18 pop-up events at key transit locations). Since the By-law passed, approximately 85% of customers are wearing masks while on board buses. The other approximately 15% of customers declare and/or meet the exemption criteria. Signs, announcements and continued distribution of free masks at pop up events likely contribute towards this high rate of compliance.
- **Masking Inquiries and Complaints:** Masking inquiries and complaints received can generally be categorized/themed as follows:
 - Clarification of By-law (e.g. exemptions, requirements, applicability to business, etc.);
 - Civil liberties (i.e. not wanting a masking By-law);
 - Enforcement and masking exemptions;

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- Education on face covering use (individuals not wearing masks properly);
- Masking options (e.g. face shields, clear masks, etc.); and,
- Masking in multi-unit dwelling common areas.

Calls and emails relating to face coverings are typically received by the PHS COVID-19 hotline and the PHS COVID-19 email inbox. During an 8-day period at the end of July/beginning of August, phone calls related to masking comprised of roughly 8% of all calls (82/1078).

Mitigating Negative Unintended Consequences:

- **Denial of Service/Discrimination:** Anecdotally, there have been several complaints from individuals who were unmasked and were barred access from entering a business/organization. In certain circumstances individuals were asked to provide proof of medical exemption. Our messaging clearly states that no member of the public be denied entry or stigmatized and that proof of exemption is not required.

Establishments can determine their own policies in addition to the By-law if they so choose. We have urged businesses that adopt their own policies to implement appropriate and reasonable exemptions for individuals who cannot use face coverings. The City of Hamilton does not enforce an individual business' mandatory mask policy or corporate policy, only specifics addressed in the By-law.

- **Littering:** There have been anecdotal reports of increased littering due to improper disposal of non-reusable masks. Where possible non-medical reusable masks have been encouraged. Educational efforts to inform the public on how to properly dispose of masks will continue. While an audit could be considered this is likely neither feasible nor an effective use of resources.

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 By-law as there would be fewer establishments under this By-law.

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

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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): 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