



**CITY OF HAMILTON**  
**CITY MANAGER'S OFFICE**  
**Human Resources Division**

<b>TO:</b>	Mayor and Members City Council
<b>COMMITTEE DATE:</b>	August 26, 2021
<b>SUBJECT/REPORT NO:</b>	Mandatory COVID-19 Vaccination Verification Policy (HUR21008) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
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<b>SUBMITTED BY:</b>	Lora Fontana Executive Director, Human Resources
<b>SIGNATURE:</b>	
<b>SUBMITTED BY:</b>	Stephen Spracklin, City Solicitor
<b>SIGNATURE:</b>	

**Discussion of Confidential Appendix “B” to Report HUR21008 in Closed Session is subject to the following requirement(s) of the City of Hamilton’s Procedural By-law and the *Ontario Municipal Act, 2001*:**

- Labour relations or employee negotiations;
- Litigation or potential litigation, including matters before administrative tribunals, affecting the City or a local board;
- Advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and
- A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

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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.

## **RATIONALE FOR CONFIDENTIALITY**

Appendix “B” to Report HUR21008 is being considered in Closed Session as it provides legal advice pertaining to the City’s proposed Mandatory Vaccine Verification Policy and includes an assessment of potential challenges to that Policy. As such, the advice is considered particularly sensitive in that it is relevant to the safety and administration of the City’s workforce and workplaces as well as the conduct of employment and labour relations within the corporation.

## **RATIONALE FOR MAINTAINING CONFIDENTIALITY**

The disclosure of this opinion/assessment outlined in Appendix “B” could adversely affect the City’s ability to appropriately manage its workforce/workplaces, its relationships with its employees, bargaining units and/or their representatives as well as compromising the City’s ability to appropriately defend any challenges to this Policy.

## **RECOMMENDATIONS**

- (a) That Council approve the recommendation that the City implement the Mandatory COVID-19 Vaccination Verification Policy attached as Appendix “A” requiring proof of vaccination in the workplace, including a comprehensive testing, education and communication plan for unvaccinated staff.
- (b) That the Mandatory COVID-19 Vaccination Verification Policy applies to all City employees, including permanent, temporary, full-time, part-time, casual, volunteers, students, members of Council; and members of Council appointed committees.
- (c) That Appendix “B” to Report HUR21008, remain confidential and not be released publicly.

## **EXECUTIVE SUMMARY**

Throughout the Pandemic, the City of Hamilton has been committed to providing a safe working environment for all our employees as well as the community we serve. Ensuring high rates of vaccination remains one of the most important ways we can protect our employees and community. The recent COVID-19 cases have demonstrated that vaccines are effective in preventing the spread of the virus.

Given the City's obligation under Provincial law to take all necessary precautions to protect the health and safety of its workforce, and the need to model a behaviour and commitment to promoting vaccinations, it is recommended that the City implement a mandatory COVID-19 Vaccination Verification Policy for all City employees, including permanent, temporary, full-time, part-time, casual, volunteers and students.

Accordingly, effective September 30, 2021, all City employees will be required to provide proof of their vaccination status. Those employees who have not been vaccinated or who do not disclose their vaccination status by September 30, 2021, will be required to attend mandatory education on the benefits of vaccination.

Unvaccinated employees will then need to provide proof of their first dose no later than October 15, 2021. As of November 15, 2021, it will be mandatory for all staff to have received their first and second doses of a COVID-19 vaccine.

Those employees who continue to be unvaccinated or prefer not to disclose their vaccination status will be subject to a number of provisions, in accordance with the Mandatory COVID-19 Vaccination Verification Policy (See Appendix A).

Finally, the application of the City's Mandatory COVID-19 Vaccination Verification Policy will be in accordance with all prescribed legislation, including, but not limited to, the *Ontario Human Rights Code and the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*.

#### **Alternatives for Consideration – See Page 8**

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

Financial: Staff continue to determine the costs associated with the implementation of the Mandatory COVID-19 Vaccination Verification Policy.

Staffing: N/A

Legal: Relevant consultation and consideration has taken place in accordance with employment related legislation (i.e. *Ontario Human Rights Code, Employment Standards Act of Ontario, Workplace Safety and Insurance Act, Municipal Freedom of Information and Protection of Privacy Act*, etc).

## **HISTORICAL BACKGROUND**

Generally speaking, COVID-19 vaccinations are available to most Canadians. There continues to be a degree of uncertainty as to what information employers can collect about employee vaccination and whether widespread vaccination in the workplace means fewer health and safety protocols such as physical distancing, masking, disinfecting, etc. Consequently, the City must take all reasonable steps to protect the health and safety of their employees and the workplaces while balancing this with the human rights and privacy rights of employees.

Recently, the Provincial government announced mandatory COVID-19 vaccination policies for high risk settings including hospitals, paramedics, post-secondary institutions, school board employees and licenced child care facilities.

The City of Toronto has also introduced a mandatory vaccination policy for all employees. Effective September 13, 2021, all employees will be required to disclose and provide proof of their vaccination status. Employees who have not been vaccinated or who do not disclose their vaccination status by September 13, 2021, will be required to attend mandatory education on the benefits of vaccination. Unvaccinated staff will be required to provide proof of first dose no later than September 30, 2021. As of October 30, 2021, it will be mandatory for all City of Toronto employees to have received their first and second doses of the COVID-19 vaccine. They will comply with all human rights obligations and accommodations, as prescribed.

More locally, McMaster University recently introduced a mandatory vaccination policy for all students, faculty, staff and visitors attending a McMaster faculty or facility. The new policy requires that anyone accessing campus or a university facility in person upload proof that they are fully vaccinated, or that they have received an exemption from the university for a validated human rights ground. Such grounds include medical conditions which would prevent a person from receiving COVID vaccinations. The university has stated that they will work with those who receive an exemption to ensure they are connected with the appropriate resources to develop a reasonable and appropriate accommodation plan and that the university can put in place appropriate alternative health and safety measures.

In addition, employees working in our Lodges as well as our Paramedics have already implemented procedures in accordance with Provincial mandates and directives. Further, any City employee working at the David Braley Health Sciences Centre are required to meet McMaster's vaccination policy requirements.

All provincial and federal governments have broad powers during a public health emergency to mandate proactive measures to safeguard the population, including requiring vaccination against transmissible diseases. Having said that, they have deferred the decision to mandate vaccinations for those not already covered by Federal or Provincial directives, including vaccine mandates for most Municipal employees.

Consequently, there have been no arbitration or legal decisions around the implementation of a mandatory COVID vaccine policy. This is not to suggest that such legal arguments and decisions will not take place in the future, providing for some much-needed guidance and jurisprudence on the matter. As such, the question of whether a mandatory vaccine policy would be considered a “reasonable precaution” under health and safety legislation has yet to be determined through arbitral decisions and/or Ontario courts.

Given this lack of clarity and legal jurisprudence, the City must make an informed decision as to how to approach this issue and whether or not vaccinations are a workplace requirement.

The City of Hamilton continues to face an increase in positive cases of COVID-19 as well as a levelling off of vaccination rates. As of August 19, 2021, the Hamilton COVID statistics in the Community were as follows:

Daily Increase:	57
Active Cases:	381 (+19)
Average daily new cases for past week:	48
Number of active outbreaks:	11
Number of COVID cases currently hospitalized:	51 (+7)
Percent of 12+ population with one dose:	78.3%
Percent of 12+ population with two doses:	70.4%

It is further reported that approximately 95% of the 17,479 COVID-19 cases in Hamilton have been among people who are unvaccinated. As well, Hamilton is reported as having the lowest level of vaccination within its population in the Province of Ontario. Similarly, the number of positive cases amongst City of Hamilton staff has been increasing over the summer

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

Arbitrators and/or the Courts would look to ensure that an employee's privacy and human rights interests are balanced against the interests of the Employer in ensuring the health and safety of employees and the public. Our approach within the workplace must take into consideration this balance between an employer's rights and the employees' rights. These considerations would include (but not limited to) areas such as:

### **Health and Safety**

The City must ensure it is in compliance with the broad duties as prescribed under relevant health and safety legislation, and take every precaution reasonable in the circumstances in order to protect it's employees. This would include consideration for the prevention of workplace disruption and lost time claims due to employee illness, as well as the promotion of optimal health and morale of it's employees.

### **Human Rights**

The City's Mandatory COVID-19 Vaccination Verification Policy must ensure compliance with the *Ontario Human Rights Code* and must also take into account the duty to accommodate employees that are unable to be vaccination on the basis of a protected ground such as physical disability or religion. Any employee who is unable to be vaccinated due to a human rights protected ground (eg. underlying health condition), will trigger an obligation to accommodate an employee to a point of undue hardship.

### **Privacy**

It is generally not unlawful to ask employees if they have been vaccinated against COVID-19, provided it is for work related reasons. Inquiring about an employee's immunization status is subject to provincial privacy legislation such as the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. *MFIPPA* defines "personal information" to include information relating to the medical history of an individual, which would likely include their immunization status. Such information is permitted by law, provided it is requested for bona fide work-related reasons, and the information is secured and stored appropriately.

## **RELEVANT CONSULTATION**

A communication was sent to all Union Leaders advising them of the City's intention to implement a Mandatory COVID-19 Vaccination Verification Policy, including an invitation to reach out to staff respecting any questions or concerns they may have. To date, a consultative meeting took place between staff and the Union Executive, CUPE

Local 5167, addressing potential components of the policy including scope, education, testing, consequence for non-compliance, protective grounds, privacy provisions and timelines.

Other consultations include legal counsel and various COVID-19 related articles and legal publications. Consultation has also taken place with the City's Public Health.

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The City has an obligation under Provincial law to take all necessary precautions to protect the health and safety of its workforce and is committed to providing excellent service to our community and building trust and confidence in local government.

With the recent increase in COVID cases in Hamilton particularly, there is undeniable evidence that vaccines are effective in preventing the spread of the virus. Although there is no legislation supporting municipal employers in the development and administration of mandatory vaccination policies, there is arguably a social obligation to mandate such requirements for City employees. Similar to long term care and our post secondary institutions in Hamilton, the City should model the behaviour it would like to see across our community, and demonstrate a similar commitment to promoting vaccinations and ensure the health and safety of everyone.

To help reduce the risk of COVID-19 transmission, the Mandatory COVID-19 Vaccination Verification Policy is an important measure that complements other workplace health and safety measures in place, including daily health screening, mandatory masking, physical distancing, hand hygiene, and enhanced cleaning. The provisions for the Mandatory COVID-19 Vaccination Policy would incorporate a transitional phase, allowing for suitable and appropriate timing for unvaccinated staff or those preferring not to disclose their vaccination status, to attend a mandatory education session on the benefits of vaccination and/or get vaccinated.

Accordingly, it is recommended that, effective September 15, 2021, City employees will be required to provide proof of their vaccination status. Those employees who have not been vaccinated or who do not disclose their vaccination status by September 15, 2021, will be required to attend mandatory education on the benefits of vaccination.

Unvaccinated staff, or staff who have not yet disclosed their vaccination status, will then need to provide proof of first dose no later than September 30, 2021. As of November 1<sup>st</sup>, 2021, it will be mandatory for all staff to have received their first and second doses of a COVID-19 vaccine.

Provisions of the Mandatory COVID-19 Vaccination Verification Policy would include (but not limited to) the following:

- Vaccination requirements are subject to bona fide medical and human rights exceptions. As well, unique medical and/or religious exemptions will be reviewed on a case by case basis and would be subject to the City's accommodation process, as appropriate.
- No distinction shall be made between employees working from home and those employees physically attending the workplace. Employees currently working from home will be subject to all provisions of the mandatory policy.
- Unvaccinated staff be subject to mandatory regular COVID testing.
- The policy is accompanied with a comprehensive and targeted communication and education strategy for all employees (eg. Education Day, Town Hall meetings, etc.).
- Consultation has taken place with affected union leadership, as requested.
- While education and communication are fundamental components of policy and approach, suitable and appropriate disciplinary action are incorporated into the policy.

Unvaccinated employees or those who prefer not to disclose their vaccination status will be subject to a number of provisions, in accordance with the Mandatory COVID-19 Vaccination Verification Policy (See Appendix A to Report HUR21008).

Finally, the Medical Officer of Health (MOH) for the City of Hamilton has endorsed the benefits of vaccinations and the value of a Mandatory COVID-19 Vaccination Verification Policy in the workplace.

## **ALTERNATIVES FOR CONSIDERATION**

The City could consider not proceeding with a Mandatory COVID-19 Vaccination Verification Policy. Employees would continue to attend the workplace and comply with the current workplace health and safety measures in place, including the daily health screening, mandatory masking, physical distancing, hand hygiene and enhanced cleaning.



By doing so, the City would arguably not be demonstrating a commitment to providing a safe working environment for all employees and the broader community. Recognizing that vaccinations remains one of the most important ways to protect individuals, our working environment and the broader community, implementing a mandatory vaccination verification policy is considered a duty and obligation for the City as an employer, as we continue to manage through a fourth wave of COVID-19.

For these reasons, the alternative of not proceeding with a mandatory COVID-19 vaccination verification policy is not recommended.

## **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

### **Community Engagement and Participation**

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

### **Economic Prosperity and Growth**

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

### **Healthy and Safe Communities**

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

### **Our People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report HUR21008 – Mandatory COVID-19 Vaccination Verification Policy  
Appendix “B” to Report HUR21008 - Legal Opinion - Mandatory COVID-19 Vaccination Verification Policy