



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

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	January 12, 2022
<b>SUBJECT/REPORT NO:</b>	Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008)(a) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Lora Fontana (905) 546-2424 Ext. 4091 Matthew Sutcliffe (905)546-2424 Ext. 2655
<b>SUBMITTED BY:</b>	Lora Fontana Executive Director Human Resources
<b>SIGNATURE:</b>	

**RECOMMENDATIONS**

- (a) That the recommended amendments to the Mandatory COVID-19 Vaccination Verification Policy (attached as Appendix "A" to Report HUR21008(a)), requiring proof of full vaccination in the workplace, and that, save and except members of Council and members of Council appointed committees, those unvaccinated staff, or those staff choosing not to disclose their vaccination status, without an approved medical exemption, be subject to discipline up to and including termination of employment, be approved;
- (b) That those unvaccinated staff or those who have not disclosed their vaccination status will have until May 31, 2022 to provide proof of full vaccination, or an approved medical exemption, at which time any failure to do so will result in their termination of employment with the City;
- (c) That unvaccinated employees or those who do not disclose their vaccination status, and those employees who are subject to an approved exemption, will be required to continue to participate in the rapid testing program until May 31, 2022;

---

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.

**SUBJECT: Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008(a)) (City Wide) - Page 2 of 9**

---

- (d) That, in the event the City is unable to secure an adequate and appropriate supply of rapid tests between the date of the amended policy and May 31, 2022, any employee who would otherwise be restricted from attendance at work will be placed on a paid leave of absence, pending the continuation of the program at the earliest available opportunity; and,
- (e) That the amended Mandatory COVID-19 Vaccination Verification Policy (attached as Appendix “A” to Report HUR21008(a)), continues to apply to all City employees, including permanent, temporary, full-time, part-time, casual, volunteers, students, members of Council and members of Council appointed committees, as appropriate and except where excluded otherwise, subject to the terms and conditions of applicable collective agreements.

## **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.

Approximately 93% of the City’s workforce is fully vaccinated. There are 474 employees participating in the Rapid Antigen Testing Program, as well as 68 employees on an unpaid leave of absence (due to refusal for disclosing their vaccination status or participate in rapid testing). Appendix “B” and “C” to Report HUR21008(a) provides a breakdown of their status in accordance with union affiliation and department accordingly.

Given the limited supply and current inability to secure a stable and reliable supply of rapid antigen tests, and the need for their reallocation to higher risk groups and settings, it is recommended that the City amend its Mandatory COVID-19 Vaccination Verification Policy for all City employees, including permanent, temporary, full-time, part-time, casual, volunteers and students. While there may be supplies available so that the rapid testing program may continue on an interim basis, guarantees are difficult to confirm. In addition, the science continues to evolve as it relates to the accuracy of the rapid tests, and the frequency required to detect rapidly spreading variants such as omicron. The ultimate goal of the City has always been to achieve full vaccination by all employees, and the rapid testing program was never intended to continue in perpetuity.

Those employees who continue to be unvaccinated or have not disclosed their vaccination status will be subject to a number of provisions, in accordance with the amended Mandatory COVID-19 Vaccination Verification Policy (See Appendix “A” to Report HUR21008(a)).

**SUBJECT: Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008(a)) (City Wide) - Page 3 of 9**

---

More specifically, these employees will continue to participate in the testing program and have until May 31<sup>st</sup>, 2022, to provide proof of their “fully vaccinated” status. Any employee failing to provide this proof of full vaccination by this date will have their employment with the City terminated, effective June 1<sup>st</sup>, 2021. This termination provision will not be applicable to elected members of City Council or their citizen appointees.

Initially the City did not have confirmation of the availability of rapid tests beyond January 17, 2022. This week, a private supplier has confirmed an additional supply of rapid tests that will enable the City to provide an appropriate notice period to staff in order to appropriately phase out the rapid testing program. As such, the City will continue to source additional rapid test kits to ensure sufficient supply until May 31, 2022.

Staff have received no further confirmation from the Province as to potential shipment of tests, including any confirmation on quantities to be received beyond those tests already received but will continue to work with them to secure future supplies, as best as possible.

As the availability of tests is not the responsibility of employees who the City provided the testing alternative to, it is further recommended that for any brief periods of time that an employee is unable to attend at work through participating in the testing program, that such employees be provided a paid leave until the earliest opportunity for them to rejoin the testing program. Those unvaccinated employees without an approved exemption, or those electing to not disclose their vaccination status, will continue in the rapid testing program, and that program will continue, until May 31, 2022.

Municipalities in Ontario have taken different approaches regarding mandatory vaccination. Durham, Niagara Region, Toronto, York Region and others have not given employees the option of rapid testing and instead opted for a mandatory vaccination policy in August 2021 with a termination provision after a period of notice. Mississauga, Burlington, Halton and Peel still have a testing option available to employees. Burlington revised their policy on January 7, 2022 which requires employees rapid testing to submit proof of vaccination by April 1, 2022 and firefighters to submit by March 1, 2022 as a condition of employment. Hamilton has a larger number of unvaccinated employees compared to other municipalities. This may be attributed to the fact that our policy does not currently have a termination provision.

**Alternatives for Consideration – See Page 8**

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

**Financial:** To date, the City has received the Rapid Antigen Tests from the Province free of charge, and accordingly, have not incurred any costs. As such, employees have received the tests from the City free of charge. In order to phase out the rapid test program, the City will potentially incur a cost of approximately \$80,000 to ensure an adequate of test kits until May 31, 2022.

**Staffing:** No additional staff has been hired to support the rapid antigen test program, however this program has resulted in a significant impact on staff workload, particularly within Human Resources. This will increase in the event that the science advice is such that the frequency of tests must increase in the future in order for testing to be effective.

**Legal:** Private and Confidential legal advice is being provided in a separate report (LS22008), which will also be on the January 12, 2022 General Issues Committee agenda.

## **HISTORICAL BACKGROUND**

On August 26, 2021, Council approved the COVID-19 Mandatory Vaccination Verification Policy requiring proof of full vaccination in the workplace, that included a component for a comprehensive testing program, education and communication plan for unvaccinated staff, including those staff choosing not to disclose their vaccination status.

This mandatory COVID-19 Mandatory 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.

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

- Vaccination requirements are subject to bona fide medical exemptions.
- No distinction was made between employees working from home and those employees physically attending the workplace. Employees currently working from home have been subject to all provisions of the mandatory policy. In order to ensure a consistent treatment of staff, as well as ensure adequate availability of staff for attendance at work, or for redeployment requirements, those affected staff working from home have been subject the rapid testing program, until recently;

**SUBJECT: Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008(a)) (City Wide) - Page 5 of 9**

---

- On December 19, 2021, the rapid testing program was discontinued for those employees working from home in order to preserve and reallocate the supply to higher risk groups and settings.
- Unvaccinated/non-disclosing staff have been subject to mandatory regular COVID testing (i.e. Monday and Thursday of each week).
- The policy was accompanied with a comprehensive and targeted communication and education strategy for all employees (e.g. Education Day, Town Hall meetings, etc.).
- Consultation took place with affected union leadership, as requested.
- While education and communication are fundamental components of policy and approach, suitable and appropriate disciplinary action have been incorporated into the policy.

Since the implementation of the rapid antigen program referenced in the policy on November 4, 2021, Human Resources has administered these tests for approximately 474 employees. Since this time, approximately 25 employees have tested positive through rapid testing, resulting in those employees not entering the workplace, thereby preventing any further risk related to the potential spread of COVID.

Since November 4, 2021, the group of employees subject to rapid testing completed and submitted the results of more than 7,000 rapid antigen tests, with each submission reviewed and acted upon by human resources staff.

Currently, there are approximately 68 employees on an unpaid leave as a result of non-compliance with our Mandatory COVID-19 Vaccine Verification Policy (due to refusal for disclosing their vaccination status or participate in rapid testing). As a result of its application, the policy has likely had a direct impact upon the City's almost 93% "fully vaccinated" rate.

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

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

**SUBJECT: Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008(a)) (City Wide) - Page 6 of 9**

---

Arbitrators and/or the Courts would look to ensure that an employee's rights are balanced against the interests of the Employer in ensuring the health and safety of employees and the public. In addition, in a non-union context, the Courts will consider the impact of these changes to the Policy and whether sufficient Notice of this change has been provided. Adjudicators will also critically evaluate the reasonableness of the policy in relation to these rights to ensure that they are respected, and that other reasonable, less intrusive options were not available. Our approach within the workplace must take into consideration this balance between an employer's rights and the employees' rights.

**RELEVANT CONSULTATION**

A communication was sent to all Union Leaders advising them of the City's intention to make changes to the Mandatory COVID-19 Vaccination Verification Policy as a result of changes in the environment. All bargaining agents were invited to meet to discuss options for moving forward given recent resource challenges and the impact upon the rapid antigen testing program. Meetings have been scheduled/were held with groups across several days. Each of these meetings provided an opportunity for questions to be asked, concerns to be raised, options to be considered, and consultation to occur. The City remains committed to continue to work with union leaders to support them and our employees in moving forward with any proposed changes.

**ANALYSIS AND RATIONALE FOR RECOMMENDATION**

In light of the unprecedented spike in COVID related cases, particularly as the result of the Omicron variant, the City has responded to a high number of COVID related absences. While the testing component of the COVID-19 Mandatory Vaccine Verification Policy has allowed the City to manage the spread of the virus within our workplaces (and provide an alternative to vaccination to employees who so choose), the recent challenges to securing a sufficient and sustainable supply of rapid antigen tests create concern about its ongoing viability.

Municipalities in Ontario have taken different approaches regarding mandatory vaccination. Durham, Niagara Region, Toronto, York Region and others have not given employees the option of rapid testing and instead opted for a mandatory vaccination policy in August 2021 with a termination provision after a period of notice. Mississauga, Burlington, Halton and Peel still have a testing option available to employees. Burlington revised their policy on January 7, 2022 which requires employees rapid testing to submit proof of vaccination by April 1, 2022 and firefighters to submit by March 1, 2022 as a condition of employment. Hamilton has a larger number of unvaccinated employees compared to other municipalities. This may be attributed to the fact that our policy does not currently have a termination provision.

**SUBJECT: Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008(a)) (City Wide) - Page 7 of 9**

---

Currently, there are 474 employees participating in the Rapid Antigen Testing Program, as well as 68 employees on an unpaid leave of absence (due to refusal for disclosing their vaccination status or participate in rapid testing). Appendix “B” to Report HUR21008(a) and Appendix “C” to Report HUR21008(a) provides a breakdown of their status in accordance with union affiliation and department accordingly.

On December 19, 2021 the City discontinued the testing program for those employees working exclusively from home, in part to preserve the limited number of available tests for those employees working outside of their homes/attending at City facilities. These employees will only be required to participate in the rapid antigen testing program in the event that they are redeployed within the organization (ie. redeployed to vaccination clinics).

Accordingly, it is recommended that the Policy be amended to eliminate the provisions for rapid antigen tests, effective May 31, 2022, for those unvaccinated employees without an approved medical exemption, including those employees that have not disclosed their vaccination status. Ongoing unpredictable supply issues, the potential costs of pursuing private solutions to allow for the program to continue, and the resourcing required to administer such a program on an ongoing basis all support the recommendation that the rapid testing program end, with an appropriate period of notice, effective May 31, 2022. At that time, as with new employees, the expectation will be that, unless subject to an approved exemption, employees will have disclosed that they are fully vaccinated in order to remain an employee of the City.

The timeframe between the requested amendments to this policy and the deadline for providing proof of vaccination (over approximately four and a half months’ notice), provide ample time for employees to achieve fully vaccinated status, and report that they have become fully vaccinated by May 31, 2022.

It is further recommended that for any period of time or which the City is unable to provide rapid antigen tests, that paid leave be provided to support unvaccinated employees or those who have elected to not disclose their status. It is anticipated, given current discussions, that any lack of testing supply would, at this time, be brief. Should supply issues become ongoing and unresolvable, the City will make future recommendations as to how to address such circumstances. Otherwise, those employees electing to not disclose will continue in the rapid testing program, and that program will continue, until May 31, 2022.

For clarity, the addition of language that provides for a termination option would not apply to elected members of Council and members of Council appointed committees. Accordingly, the following provisions would apply:

**SUBJECT: Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008(a)) (City Wide) - Page 8 of 9**

---

- All unvaccinated employees, without an approved exemption, or those who have elected to not confirm their vaccination status as of May 31, 2022 will be terminated from their employment effective June 1<sup>st</sup>, 2022.
- In the event that external factors affect the ability of the City to support the rapid antigen test program for any period of time, employees will be provided with paid time off until the earliest opportunity allowing them to re-enter the program and return to active duty.

**ALTERNATIVES FOR CONSIDERATION**

1. The City may consider allowing unvaccinated employees to attend at a work location (while following all other health and safety measures).

Accordingly, the City could consider not proceeding with the Mandatory COVID-19 Vaccination Verification Policy, or its proposed amendments. Unvaccinated employees would continue to attend the workplace in the absence of any proof of a negative rapid antigen test, and simply 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 not be able to ensure the health and safety of its employees as well as the communities in which they serve. While allowing unvaccinated employees to attend the workplace without proof of a negative rapid antigen test could be permitted, it will inevitably result in a higher number of COVID related cases amongst our employee population as well as within the broader community. Allowing unvaccinated employees to attend work without proof of a negative test would compromise the City's previously demonstrated commitment to providing a safe working environment for all employees and the broader community, and may not meet our legal obligations under the *Occupational Health and Safety Act* to take every precaution reasonable in the circumstances for the protection of a worker.

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

2. A number of additional options have been considered to further the rapid testing program (for example, by reducing testing periods to extend supply, allowing employees to provide their own tests, etc.), but each of these has been determined to increase the risk to the City. For example, while the overwhelming majority of those in the rapid testing program are entirely compliant, the City has had to address the submission of fraudulent (altered, fake, inaccurate, etc.) results, which



**SUBJECT: Amendment to the Mandatory COVID-19 Vaccination Verification Policy (HUR21008(a)) (City Wide) - Page 9 of 9**

---

compromise the integrity of the program. Allowing employees to provide test results using tests from an unknown source or manufacturer would not provide the confidence in the program that has been achieved.

Further, as a result of documented asymptomatic transmission, changes to the screening tool or changes to the testing schedule would increase risk of exposure and bring the City out of compliance with best practice and potentially public health guidelines. This increased risk tolerance does not align with the City's legal obligations to take every precaution reasonable in the circumstances.

For these reasons, the alternative of not proceeding with an amended 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(a) – Amended Mandatory COVID-19 Vaccination Verification Policy

Appendix "B" to Report HUR21008(a) – Employees in Rapid Testing Program by Unions

Appendix "C" to Report HUR21008(a) - Employees in Rapid Testing Program by Departments