



**SUBJECT: Mandatory mask bylaw**

**TO: Corporate Services, Strategy, Risk & Accountability Cmte**

**FROM: Office of the Mayor; Ward 4 City Councillor**

Report Number: MO-07-20

Wards Affected: City-wide

File Numbers: 110-04-1

Date to Committee: July 9, 2020

Date to Council: July 13, 2020

**Recommendation:**

1. Council approve the following motion:

WHEREAS the spread of COVID-19 has been declared a pandemic by the World Health Organization, the City of Burlington has declared a State of Emergency, and the province remains under emergency orders due to the health risks to Ontario residents arising from COVID-19; and

WHEREAS COVID-19 continues to be present within the City of Burlington and surrounding municipalities, and is a disease that is readily communicable from person to person, even with minimal or no signs of symptoms or illness, and carrying a risk of serious complications such as pneumonia or respiratory failure, multiple organ failure, kidney failure, liver failure, neurological complications, and may result in death; and

WHEREAS there is a growing body of evidence on the effectiveness of masks and face coverings to act as a barrier to prevent the spread of COVID-19; and

WHEREAS the wearing of masks and face coverings may act as an ongoing visual clue and reminder that public health measures, including hand-washing and maintaining a safe physical distance from others, are still required, that the COVID-19 pandemic is ongoing and that a resurgence of local disease activity remains an ongoing threat; and

WHEREAS the Province of Ontario has enacted O. Reg.263/20 (Stage 2 Closures) under Subsection 7.0.2 (4) of Emergency Management and Civil Protection Act to permit certain businesses to reopen for attendance by members of the public subject to

conditions, including the advice, recommendations and instructions of public health officials; and

WHEREAS physical distancing can be difficult to maintain in enclosed, indoor spaces open to the public; and

WHEREAS the City of Burlington wants to be prepared for the eventual Stage 3 reopenings under the provincial Emergency Management and Civil Protection Act, and use every tool available to protect residents from a resurgence of COVID-19.

THEREFORE, BE IT RESOLVED that Burlington City Council enact a temporary bylaw requiring individuals, organizations or corporations that are responsible for the operation of a facility or business, which have indoor, enclosed spaces open to the public, to ensure no member of the public is permitted unless wearing a mask or face covering in a manner which covers their mouth, nose and chin, subject to the exemptions below, to help limit the spread of COVID-19; and

BE IT FURTHER RESOLVED that the operator of such facilities or businesses that are open to the public, shall conspicuously post at all entrances to the facility or business clearly visible signage outlining the requirements and exemptions of this bylaw; and

BE IT FURTHER RESOLVED that members of the public attending facilities or businesses that are open to the public shall wear a mask or face covering in a manner which covers their mouth, nose and chin, subject to the exemptions below, and unless it is reasonably required to temporarily remove the covering to access services provided by the establishment, or while actively engaging in an athletic or fitness activity during physical activity, and exemptions may be accommodated if:

- a. The person is under three years of age.
- b. The person has an underlying medical condition or developmental disability which inhibits their ability to wear a mask or face covering, or other physical disability whereby the wearing of a mask or face covering would limit their ability to reasonably communicate with others.
- c. Wearing a face covering would inhibit the person's ability to breathe in any way.
- d. The person is unable to place or remove a mask or face covering without assistance.
- e. Employees and agents of the person responsible for the establishment are within an area designated for them and not for public access, or within or behind a physical barrier.
- f. Staff identify any other such exemptions that may be advisable.

BE IT FURTHER RESOLVED that employees working with members of the public in an enclosed, indoor space must also wear a mask or face covering, unless they are in an

area not for public access, or they meet one of the exemptions; and

BE IT FURTHER RESOLVED that employees or members of the public shall not be required to provide proof of any of the exemptions set out herein; and

BE IT FURTHER RESOLVED that the bylaw apply to all City of Burlington indoor facilities open to the public such as community centres, city hall, libraries, art gallery, performing arts centre, and public transit; and

BE IT FURTHER RESOLVED that the bylaw be in force for a temporary period of time, beginning July 20 and expiring September 30, 2020, unless extended or revoked by City Council; and

BE IT FURTHER RESOLVED that the Executive Director of Legal Services & Corporation Counsel be directed to prepare the necessary bylaw for consideration by City Council on July 13, 2020; and

BE IT FURTHER RESOLVED that the Director of Corporate Communications & Government Relations be directed to develop a communications campaign during the first month the bylaw comes into force and effect to assist residents and businesses to understand the bylaw and exemptions, assist with voluntary compliance, and where people can acquire masks; and

BE IT FURTHER RESOLVED that council request that the Region of Halton present a mandatory mask bylaw for consideration by Regional Council at its meeting of July 15, 2020 to ensure consistency across the region; and

BE IT FURTHER RESOLVED that council request the Province of Ontario to enact a mandatory mask order under the Emergency Management and Civil Protection Act for those regions that have entered Stage 2 reopening, and/or will enter Stage 3 reopening; and

BE IT FURTHER RESOLVED that council request the Government of Canada to enact a mandatory mask policy; and

BE IT FURTHER RESOLVED that this report be circulated to the Region of Halton, Towns of Halton Hills, Oakville and Milton, all Halton Members of Provincial Parliament, Members of Parliament, the Federation of Canadian Municipalities, and the Association of Municipalities of Ontario.

2. Direct the Chief Financial Officer to establish an initial grant of \$10,000 to provide non-medical masks free of charge for community members who lack the financial means to purchase them, via application and submission of receipts, funded from the city's COVID-19 account, and direct the City Manager's Office to report back to the August 13, 2020 Corporate Services, Strategy, Risk and Accountability Committee on a plan for providing masks to in-need community members including such additional options as:

- a. seeking a sponsor to fund or procure/provide masks that would be supplied free of charge to the public, with the sponsor and/or city logo displayed on the mask, and distributed by the city or through the sponsor;
  - b. issuing a request for proposals to local businesses to provide a quote on the cost to supply the city with masks that can be distributed to the public, either by the city or by the business, then billed to the city;
  - c. purchasing masks that can be distributed to members of the public, on a request basis, or made available at the entry to city facilities, once opened;
  - d. providing grant funding to residents to purchase their own mask, subject to quantity and cost limitations, and an application process;
  - e. other options as they may arise.
3. Direct the City Manager to report back to the August 13, 2020 Corporate Services, Strategy, Risk and Accountability Committee on potential grant funding for businesses and commercial establishments to assist with the cost of signage and masks as mandated by this bylaw, retroactive to the effective in-force date of the bylaw, subject to appropriate criteria.
4. That City Council seek matching funding from Halton Region at 50% or more of total costs to implement assistance to residents and businesses, given the Region's role in health care delivery, social service delivery and business supports.

## **PURPOSE:**

### **Vision to Focus Alignment:**

- Delivering customer centric services
- Building more citizen engagement, community health and culture

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## **Background and Discussion:**

Throughout the COVID19 pandemic, Burlington residents have done their part to protect themselves and their neighbours from the spread of the virus, leading to the lowest infect rates per capita in Halton Region, and among the Greater Toronto and Hamilton Area Municipalities.

As of the writing of this report, the number of cases per 100,000 in Halton was 122, Hamilton 142, Waterloo 222, Wellington/Dufferin/Guelph 157, Niagara 160, Peel 368, and Toronto, 428. The Ontario rate is 240. Source: [Public Health Ontario](#)

There are 11 active cases in Burlington, no institutional outbreaks and no hospitalizations. Source: [Halton Region Public Health](#) and [Joseph Brant Hospital](#)

This has remained true, even after we entered Stage 2 reopening.

We have achieved these low rates through voluntary compliance to public health directives including maintaining a 2 metre physical distancing from those outside of your household or social circle; wearing a face covering in indoor public spaces or any other settings where physical distancing cannot be maintained; and frequent hand washing.

This is something to be proud of.

However we cannot afford to let our guard down until a vaccine is found, and as the economy continues to reopen we need to guard against any false sense of security. Our community expects us to do everything we can to ensure public safety and to stop community spread. This virus is not more powerful than our collective will to fight it.

We believe that the benefits of wide-spread cloth mask use will set us up for a better transition into Stage 3 reopening.

Mandating, not just recommending, the use of non-medical masks will help convince more members of the community to wear them as the economy reopens. It will not be possible to achieve 100% compliance - nor is it with any bylaw. However, a bylaw will set expectations and assist with a greater degree of voluntary compliance. More people wearing masks is better. Many aspects of the pandemic are beyond our control...wearing a mask is not one of them. This is a low-hanging fruit.

We have also received support from businesses for a bylaw, to provide them a level playing field to request customers wear masks, without risk of losing business, and to help keep everyone and their staff healthy.

We know that masks alone aren't enough. We continue to ask you to follow all the other health measures to reduce the spread of COVID19, including physical distancing and hand washing.

### **Why now?**

A number of residents have asked "why now" especially when our numbers are so low. Why not institute this at the very beginning of this pandemic? As with so much during this pandemic, our understanding and the information available to us about the virus and the best tools we have to combat its spread is constantly evolving. And we must be prepared to adapt and respond.

We have only recently learned of our ability as municipalities to implement a mandatory bylaw, and have quickly had to learn more about whether and how best to potentially implement this tool. We wanted to consult with our Medical Officer of Health on using this tool, and now have the support for proceeding.

Our understanding of the need for masks has shifted as we have learned about the possibility of asymptomatic spread. And we need to look ahead and be ready to use every tool available to us as we prepare for the eventual Stage 3 reopening. We can't assume that our low infection rates will remain that way as more businesses open, and we can't become complacent.

This Twitter thread from Ottawa Public Health sums up the situation well, and frustrations we have all faced with rapidly changing evidence requiring a new response. The sentiment mirrors our thanks to the people of Burlington for being patient with us and doing your part to get through this pandemic together:

*"Public Health is about following evidence, so when we call for change, that change is the result of what our evidence is telling us. Lately evidence has been coming at great speed & volume. We've been doing our best to keep you informed.*

*But some of you may feel like in March & April we said masks weren't needed, then in May & June said masks were needed and now we're saying they'll soon be mandatory. We know this may have seemed confusing, and we're sorry about that. However, each shift was evidence-based.*

*Before we knew about asymptomatic transmission, there was no need for you to wear a mask unless you were sick. Then evidence emerged to support its existence. We needed to react quickly, so we asked you to wear masks when distancing was difficult to protect those around you.*

*We are once again in a period of change. The emerging evidence shows us that wearing cloth masks in indoor public spaces is a necessary measure to help keep our community safe; especially as we all begin gathering again. We know that this transition won't be easy for you.*

*There will be bumps in the road as we work with community partners to implement this measure. Some of you may have a hard time adjusting, and that's ok. We're all human, and none of us are perfect, but we will make this work. We know this isn't easy for you, and we understand.*

*Just know that we care. We really do. We've been at this for months now, working tirelessly to try to keep pace with COVID-19 and keep you safe. Can we guarantee that things won't shift again? No. Can we guarantee that this measure will put an end to COVID-19? Also no.*

*But we can say this: we will beat this. We will keep following evidence and working together. We've said it 100 times: #WeAreInThisTogether. Thanks for sticking with us."*

As Burlington moves forward with the tool of a mask bylaw, it will take some time for us all to adjust and some people won't be able to wear masks.

Let us all endeavour to be kind and compassionate to one another, to approach each other with understanding rather than judgement, with help and offers of assistance. We know that Burlington residents will continue to do what you can to beat COVID19, as you have throughout this pandemic.

Thank you Burlington!

### **Guidelines on wearing nonmedical masks**

Public health officials at all government levels are recommending the use of non-medical masks or face coverings for persons in public places where it is difficult to maintain two metres of physical separation from others.

Below are links to international, federal, provincial and regional guidance on wearing masks:

[Halton Region Masks and Face Coverings](#)

[Provincial Governments Face Coverings and Face Masks](#)

[Federal Government Non-Medical Masks and Face Coverings](#)

[World Health Organization Advice on the use of masks](#)

### **Legal considerations**

The City of Toronto has put together a detailed analysis of the various legal avenues available for mandating mask wearing. The link to the full report is in the resource section at the end but some relevant sections are below.

### **Provincial order under EMCPA**

If recommended by public health authorities, the Province of Ontario would be in the best position to mandate the wearing of non-medical masks by the general public under the Emergency Management and Civil Protection Act.

The EMCPA has already been used to impose infection control measures and phased reopening and could be used to require mandatory masks particularly as the Province permits gradual reopening of various sectors of the economy. The EMCPA has an existing enforcement process...which would avoid the necessity to have set fines approved by a Regional Senior Judge of the Ontario Court for any measure that becomes a provincial offence.

## **Municipal Bylaw**

If the City were to seek to enact regulations itself, the best option for doing so would appear to be Council's general authority to legislate for the health, safety and well-being of persons in the City based on clear recommendations of public health authorities and operational requirements.

Where the City seeks to implement requirements for the wearing of masks on City property, it may also rely on its additional authority as the owner and occupier of the premises with an inherent ability to institute policies for the safe delivery of services.

The City's bylaw would need to establish reasonable measures reflecting any potential health benefits of wearing masks in appropriate circumstances and settings and would also need to be designed to be compatible with any orders issued by the Province under the authority of the EMCPA.

A bylaw, whether a general bylaw or a business licensing bylaw, could be enforced through the City's existing enforcement powers. This could include the issuance of tickets under Part I or an information under Part III of the Provincial Offences Act. The enactment of new City bylaw provisions requiring enforcement through "Part I tickets" would require the City to make an application for new set fine amounts for approval by the Regional Senior Justice.

## **Section 22 order**

The Medical Officer of Health has order-making powers under the Health Protection and Promotion Act and specifically the ability to issue orders under Section 13 in respect of a health hazard, and the ability to issue orders under Section 22 in respect of a communicable disease. Section 22 is generally the appropriate power where an order may be warranted for the purposes of controlling the spread of COVID- 19, a communicable disease. The Medical Officer of Health must be of the opinion, on reasonable and probable grounds, that certain conditions set out in the HPPA have been met prior to serving an order.

In relation to a measure directed at the public, there are limits on the authority of a Medical Officer of Health to pass a broad declaration (akin to a municipal bylaw or provincial regulation) to prohibit an otherwise lawful activity. Accordingly, it is generally advised that the use of section 22 orders be focused on issues relating to quarantine and isolation of individuals, or to remediating or disinfecting specific settings in the context of particular outbreaks or other identifiable health risks. For example, the existing class order issued by the Medical Officer of Health requiring self-isolation is directed primarily at persons who have tested positive for or are presumed to have COVID-19. The Medical Officer of Health also has the discretion to issue an order against an owner or occupier of a business based upon reasonable evidence that the



measure is necessary to decrease the particular risk presented by COVID-19 at that specific setting. This is in contrast to mandating masks as a precautionary measure directed at healthy persons in the community with no known contact with COVID-19.

Finally, it should be noted Section 22 orders are not enforceable under Part 1 of the POA as a ticket offence, and may be appealed under the HPPA.

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### **Financial Matters:**

An initial grant fund of \$10,000 will be established under the COVID19 budget, to provide free masks to individuals without financial means to purchase themselves. Staff will report back to the July 13 council meeting on any costs associated with the bylaw, and to the August CSSRA Committee on costs related to a potential business grant, and additional options for providing masks to the public.

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### **Climate Implications**

Not directly applicable.

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### **Engagement Matters:**

In the last few weeks, since Medical Officers of Health have issued mandatory mask orders (Wellington/Dufferin/Guelph, Kingston) or municipalities have passed a mandatory mask bylaw (Toronto), council has received extensive feedback from residents and business via social media and email about the issue of a mask order. The significant majority of communication to the Mayor's Office and Ward 4 Councillor's office has been in favour of implementing a mandatory mask order as one more tool to combat COVID19. Further engagement may occur via delegations at committee or council when the is will be debated.

The Halton Region Medical Officer of Health was consulted on a mandatory mask bylaw and has indicated her support.

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### **Conclusion:**

Burlington has achieved the lowest per capita infection rates of any municipality in our broader region due to the voluntary efforts of residents to comply with public health directives. However, we cannot afford to let our guard down, especially as the economy continues to reopen. We need to guard against any false sense of security. Our

community expects us to do everything we can to ensure public safety and to stop community spread. We believe that the benefits of wide-spread cloth mask use will set us up for a better transition into Stage 3 reopening.

Mandating, not just recommending, the use of non-medical masks will help convince more members of the community to wear them as the economy reopens. It will not be possible to achieve 100% compliance - nor is it with any bylaw. However, a bylaw will set expectations and assist with a greater degree of voluntary compliance. More people wearing masks is better.

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Respectfully submitted,

Ward 4 Councillor Shawna Stolte

Mayor Marianne Meed Ward

Resources:

[City of Toronto: Non Medical Mask Regulation and Guidelines](#)

## **Appendices:**

None

## **Report Approval:**

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Council. Final approval is by the City Manager.