

**Report to
Rapport au:**

**Council
Conseil
15 July 2020 / 15 juillet 2020**

**Submitted on July 10, 2020
Soumis le 10 juillet 2020**

**Submitted by
Soumis par:**

**Dr. / D^{re} Vera Etches, Medical Officer of Health / Médecin chef en santé publique
613-580-2424, x23681, Vera.Etches@ottawa.ca,
and / et**

**Anthony Di Monte, General Manager, Emergency and Protective Services /
Directeur général, Services de protection et d'urgence
613-580-2424, x22458, Anthony.DiMonte@ottawa.ca**

Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2020-OPH-MOH-0005

SUBJECT: TEMPORARY MANDATORY MASK BY-LAW FOR ENCLOSED PUBLIC SPACES IN THE CITY OF OTTAWA

OBJET: RÈGLEMENT TEMPORAIRE SUR LE PORT OBLIGATOIRE DES MASQUES DANS LES LIEUX PUBLICS DANS LA VILLE D'OTTAWA

REPORT RECOMMENDATION

That Ottawa City Council approve the Temporary Mandatory Mask By-law, as attached at Document 1 and as described in this report.

RECOMMANDATION DU RAPPORT

Que le Conseil municipal adopte un règlement municipal temporaire sur le port obligatoire des masques faciaux dans les lieux publics dans la Ville d'Ottawa, tel que décrit dans le document 1, ci-joint et dans le présent rapport.

BACKGROUND

This report outlines Ottawa Public Health's (OPH) recommendations for the temporary, mandatory requirement to wear masks in enclosed public spaces as a reasonable, practicable and effective method of limiting the spread of COVID-19 for the health, safety and well-being of residents of the City of Ottawa, as set out further in this report. Emergency and Protective Services also recommends the proposed Temporary Mandatory Mask By-law set out in Document 1 in support of OPH's recommendation, as described in this report.

OPH, as well as other public health authorities and jurisdictions across Canada and around the world, have been monitoring and responding to the threat of COVID-19 since late 2019. The first confirmed case of COVID-19 in Ottawa was reported on March 11, 2020 and on that same date, the novel coronavirus was declared a global pandemic.

As a result of this global pandemic, the Province of Ontario declared a State of Emergency on March 17, 2020 and the City of Ottawa declared a State of Emergency on March 25, 2020.

Evidence and Information Regarding Mask Use

From the onset, OPH has been monitoring the pandemic closely, both locally and in other jurisdictions, working collaboratively with various partners and neighbouring health units, and regularly updating guidelines and protocols based on the most up-to-date scientific evidence, the latest data and expert opinion.

OPH's objective has been, and continues to be, to protect the health of Ottawa residents by limiting the potential spread of infection.

Current evidence supports that physical distancing (maintaining a distance of 2 metres or more), proper hand hygiene, and coughing and sneezing etiquette are the most effective strategies for decreasing the transmission of COVID-19 in the community. However, increasing evidence indicates that wearing a mask is an important added measure in reducing COVID-19 transmission, recognizing that people without symptoms may be infectious and that there is a higher risk for transmission in indoor settings. This has led to provincial, national and international public health organizations recommending mask use, particularly in public and crowded settings where physical distancing may be more difficult or not possible.

Because this is a new virus, public health agencies have had to act on emerging evidence that has been developing as the pandemic spread and as different jurisdictions have tried different interventions. Waiting for evidence, such as randomized clinical trials, to promote mask use is not ethical as there is an increasing body of evidence gained during the pandemic supporting mask use. This evolved from early engineering studies of looking at materials to block respiratory droplets, to modelling studies of the potential benefits at a population level of even modest effectiveness, to increasing studies assessing the impacts in regions and countries that have already implemented mass masking policies during their COVID-19 response. This, coupled with the evidence and impact of asymptomatic and pre-symptomatic transmission, the higher rates of transmission in indoor versus outdoor settings, risks of resurgence with continuing community transmission as demonstrated in other jurisdictions, and the desire/need to re-open economies that will increase transmission risks, has resulted in provincial, national and international public health organizations recommending mask use, particularly in indoor public settings.

As a result, it is important to take steps now, such as mandating mask use in indoor public spaces, and to provide guidance, based on the best available information, as opposed to waiting for the best possible evidence. This will enable the population to be in the best position possible during the next phase of re-opening businesses and services and of resuming activities

It is also important to note that almost all evidence *against* the effectiveness of masks is pre-COVID-19, based on studies about influenza, and not necessarily conclusive.

As previously stated, the public health goal is to keep the whole population as safe as possible and to reduce risks to groups who may be more affected. Even a small amount of reduced transmission of COVID-19 for individual encounters from the source person wearing a mask adds up to significantly decreasing the burden of infection at the population level.

Though OPH has been recommending the use of face masks for some time and data shows that many people are already following these recommendations, as more businesses and community settings open and people increase their contacts, the risk of a rapid rise in infections and outbreaks is ever-present. Therefore, in order to continue to slow or stop the spread of infection while continuing with the progress that has been made in reopening our economy and resuming activities, OPH believes the time has come to mandate the use of face masks in indoor public settings.

For public health measures to work, they require public trust and engagement – in other words “buy-in” from the community. As such, in making recommendations, public health agencies usually starts with education and non-mandatory approaches and then adjust if needed.

As previously stated, OPH has been recommending mask use for some time. The health unit has also been engaging the community to assess how the pandemic, and various interventions to control the spread of infection, have been impacting residents.

According to **phase 1 of our engagement survey**, the majority of residents (90 per cent) agreed or strongly agreed that they would be willing to wear non-medical or cloth masks in order to be allowed to access services. Three quarters (74 per cent) agreed or strongly agreed that they would be willing to wear a non-medical or cloth mask in the workplace. Weekly population level polling data as of the end of June show that 73% of residents reported wearing a mask in indoor public places most of the time or always, which is an increase from previous weeks where it was 62% at the end of May. Moreover, the proportion of residents who think that wearing a mask when near others in public spaces is helping to prevent the spread of COVID-19 has increased from 40% at the end of May to 54% at the end of June.

OPH is encouraged by these numbers, which indicate that Ottawa residents want to do the right thing and care about protecting themselves and those around them. However, the data also indicates that there is room for improvement in efforts to protect the population as we move into the next phase of re-opening our economy and resuming activities.

In advance of moving forward with a mandatory masking policy, OPH consulted with members of the business community, including the Ottawa Board of Trade, the Ottawa Council of Business Improvement Areas, le Regroupement des gens d'affaires de la Capitale Nationale and Ottawa Tourism. Representatives from the business sector expressed strong support for this measure and noted that a mandatory mask policy would ensure all businesses are on a level playing field. They also saw this as a key method of ensuring employees feel protected in the workplace and that the public is confident in visiting retail settings.

Following the [joint statement](#) by Mayor Jim Watson and Ottawa Board of Health Chair, Keith Egli on the intentions for implementing a mandatory mask policy, the Ottawa Board of Trade responded with a [public statement](#) supporting this approach. In it they stated: “We commend the City of Ottawa and Ottawa Public Health for their decision to require the use of non-medical masks in public with certain exceptions. It is the right and

smart thing to do for our community health and our economy. [...] The use of masks is a key tactic that other jurisdictions have effectively implemented, and we can learn from their experience."

DISCUSSION

This report recommends that Council approve the Temporary Mask By-law, attached as Document 1, to require that masks be worn in enclosed public spaces, subject to specific exemptions, in order to limit the spread of COVID-19. This recommendation is based on the public health data, information, and rationale set out in the Background section above. The details of the proposed by-law and its regulations are more fully set out below.

Mask Requirement

COVID-19 carries the risk of serious complications, such as pneumonia and respiratory failure, and may cause death. The vast majority of Ottawa residents remain susceptible to COVID-19 and it continues to be transmitted locally. Further, with the resurgence of COVID-19 being observed in many countries, new outbreaks of COVID-19 could occur in Ottawa at any time. As such, the temporary mandatory requirement to wear masks in enclosed public spaces is deemed to be a reasonable, practicable and effective method of limiting the spread of COVID-19 for the health, safety and well-being of residents of the City of Ottawa, particularly as more businesses and community settings open and people increase their contacts.

Wearing a mask is an additional action to take in being [COVIDWise](#). It is not a substitute for the need for isolating yourself when sick, staying two metres apart from others, and exercising proper hand hygiene. It is also important to understand that wearing a face mask or face covering does not protect the person wearing the mask; it protects those who come in contact with the person wearing the mask in the event he or she is asymptomatic or pre-symptomatic. As such, it is an important and complementary public health measure to OPH's COVIDWise campaign, which seeks to inform residents about measures they can take to protect themselves and those around them. However, OPH also recognizes that not everyone can or should wear a mask. Accordingly, the proposed by-law provides exemptions and will work in conjunction with a continued information campaign that will foster education, kindness and respect, including accommodation for those who are deaf or hard of hearing and who may rely on lip reading.

On July 6, 2020, the Medical Officer of Health issued a Letter of Instructions to Business Operators. This letter instructed businesses and organizations to adopt a policy to ensure the use of masks in enclosed public spaces, provided a list of exemptions, offered guidance on implementation and defined the types of enclosed spaces where face masks should be mandated. It is noted that since June 15, 2020, all OC Transpo customers have also been required to wear a mask or face covering while using their services, with some exceptions.

The Medical Officer of Health is now recommending City Council enact a by-law that would require residents to wear a face mask in enclosed public spaces, with some exceptions, as set out in Document 1.

Overview of the Proposed By-law

The proposed by-law, attached as Document 1 to this report, defines the enclosed public spaces to which the regulation would apply, provides certain exemptions, provides for the requirement that people wear a mask while in an enclosed public space, and prescribes the duties of operators of enclosed public spaces.

With respect to the enclosed public spaces to which the proposed by-law will apply, the focus is on indoor locations where the public has access as they re-open, such as: restaurants and other eating and drinking establishments; retail locations; places of worship; sports facilities; community venues such as museums, theatres and other entertainment venues; public areas in hotels and other short-term rental premises; and public areas in hospitals and other health facilities, among others. The requirements of the by-law will also apply to the public areas of City buildings and facilities, including libraries.

The proposed by-law outlines the requirements for both clients and workers in these spaces to wear a mask, but also defines enclosed public spaces in which masks are not required, such as schools and child care centres, which are regulated by provincial legislation, as well as offices of professional service providers in the areas where clients receive services and the area is not open to the general public. Further, the proposed by-law incorporates the mandatory mask requirement on transit property, which had been instituted earlier this year by the Transit Commission, on an operational basis.

The proposed by-law provides exemptions to the mask requirement for young children, persons with medical conditions and disabilities that prevent them from safely wearing a mask, persons who are unable to put on or remove their mask without assistance, and persons who need to temporarily remove their mask for specific activities.

Operators of businesses and other enclosed public spaces will be required to verbally notify patrons of the mask requirement. Should a patron refuse to wear a mask without benefiting from an exemption, the business operator may report the issue to the City for follow-up. Since the by-law applies to every person entering and remaining in the public space, wearing a mask also applies to staff within those spaces, with some exceptions.

Further, the by-law includes a requirement for the operators of enclosed public spaces to provide alcohol-based hand rub at public entrances to the premises and to post signage that clearly notifies clients of the requirement to wear a mask, as additional measures to support the overall objective of the by-law.

The by-law will take effect immediately upon being passed by Council and will remain in effect until the next regularly scheduled meeting of Council, which is currently scheduled for August 26th. At that time, Council may extend the term of the by-law for an additional period of time as necessary to meet public health objectives related to COVID-19, based on public health data and other information that may be available at that time.

It is also worth noting that, like Ottawa's Medical Officer of Health, the Medical Officers of Health from neighbouring jurisdictions, namely the Eastern Ontario Health Unit, the Lanark, Leeds and Grenville Health Unit, and the Renfrew County and District Health Unit, have also invoked directives under the province's *Emergency Management and Civil Protection Act* to require individuals to wear a mask in certain enclosed public spaces in their respective jurisdictions. Like Ottawa, their focus is on an educational approach, primarily signage on premises, staff training, and notifying customers of the directives. An increasing number of jurisdictions across Ontario have, or are in the process of, also implementing mandatory masking policies or regulations.

Administration and Enforcement

As with any by-law, or with any new public health measure, the primary objective is to educate and inform, and gain voluntary compliance. However, a by-law does provide a means to impose penalties through tickets should such action be deemed necessary, such as in the case where a warning is insufficient or with repeat offenders.

In accordance with the usual process associated with the enactment of regulatory by-laws, Emergency and Protective Services will submit to the Ontario Court of Justice an application for set fines related to the chargeable sections of the By-law. The requested fines will be a reasonable amount, in keeping with the set fines of most other City by-laws, in the range of \$200-\$400, based on individuals or Corporations, subject to the approval of the Ontario Court of Justice. Currently, application review and approvals are

undertaken electronically, and timeframes are relatively short, thereby allowing the issuance of fines, as necessary, shortly after by-law enactment and negating the need for summonses (which are sometimes issued when set fines are not yet approved).

By-law and Regulatory Services will administer and enforce the Temporary Mandatory Mask By-law while it is in effect and work collaboratively with the Transportation Services Department for public transit property. It should be noted however that, with current staffing levels, response times with respect to enforcement of this and other regulations within By-law and Regulatory Services' purview may vary based on demand for service.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

The recommendation for a by-law mandating the use of masks in enclosed public spaces is based on the results of OPH's community engagement survey, consultations with Ottawa's business community and discussions with neighbouring health units, as described in this report.

LEGAL IMPLICATIONS

There are no legal impediments to the implementation of the recommendations in this report.

Pursuant to the *Emergency Management and Civil Protection Act* (EMCPA), the Province of Ontario has imposed restrictions on businesses and individuals in order to limit the spread of COVID-19. For example, various Provincial regulations and Orders have limited the number of people permitted to attend gatherings, closed places of business deemed non-essential, and imposed restrictions on the use of public facilities, including those found in parks. Furthermore, in keeping with Stage 2 of the Province of Ontario reopening plan, which took effect in the City of Ottawa at 12:01 a.m. on June 12, 2020, businesses and organizations are required to operate in compliance with the advice, recommendations and instructions of public health officials pursuant to Ontario Regulation 263/20 of the EMCPA.

Pursuant to Regulation 263/20, the Medical Officer of Health on July 6, 2020, issued instructions to businesses and organizations requiring that they adopt a policy to ensure that members of the public wear a mask when entering or remaining inside the public

areas of enclosed public spaces in light of the emerging evidence that the use of non-medical masks may limit the transmission of COVID-19. Such a requirement may also serve to avoid the need for the reintroduction of more restrictive measures, such as those seen during the earlier phases of the pandemic response, that could have the effect of slowing the recovery of the local economy. The adoption of a by-law, as jointly recommended by the Medical Officer of Health and the General Manager of Emergency and Protective Services, furthers those public health and economic objectives. As such, it is Legal Services' view that there is sufficient regulatory authority for the enactment of such a by-law based on subsection 10(2) of the *Municipal Act, 2001*. That subsection gives to municipalities like the City of Ottawa the authority to enact by-laws for the "health, safety and well-being of persons", and also for the "economic, social and environmental well-being of the municipality."

Based on some public commentary - locally and in other jurisdictions where mask requirements have been imposed - the possibility exists that the City may face a legal challenge to the proposed by-law, either directly or in the course of a potential prosecution. However, it may be noted that municipal regulations enacted in the furtherance of public health have previously withstood judicial scrutiny. Council's enactment of Smoke-Free By-laws and, more recently, Water Pipe (Hookah) By-laws, have prompted challenges founded on alleged violations of the *Canadian Charter of Rights and Freedoms*, including under Section 2(a) (freedom of conscience and religion), Section 8 (life, liberty and security of the person), and Section 15(1) (equal protection and benefit of the law without discrimination). Nevertheless, the Superior Court of Justice in a 2017 decision rejected a request for a temporary stay of the operation of the City's Waterpipes in Public Places and Workplaces By-law. In that case, the Superior Court allowed the operation of the City's By-law, recognizing that the public interest in limiting the negative health effects of smoking outweighed the claimed violation of the applicants' *Charter* rights.

Similarly, legislation at the provincial level requiring the wearing of seat belts has been the subject matter of various court challenges. These laws have been upheld by the Courts on the basis that the legislation serves the common good. As the Alberta Court of Appeal noted in a 1989 decision dismissing a challenge to that Province's laws mandating the use of seatbelts, "the risk of injury or death is decreased when a seat belt is worn; moreover failure to wear a seat belt puts other persons, both in the vehicle and outside it, at increased risk." As outlined in the Report, the advice of the Medical Officer of Health and her peers is that the wearing of a mask in enclosed public spaces is an effective tool in limiting the spread of COVID-19 in our community and, as such, it is

likely that a reviewing court will give deference to Council's exercise of its legislative authority in this regard.

The By-law is proposed to be temporary in nature and therefore contains a "sunset clause". This means that, if passed in its current form, Council would be required to renew the By-law if the need exists to extend its application beyond the sunset date. As the public health guidance develops based on the local epidemiological experience during the continuing reopening/recovery phases, Council would be in a position to benefit from any current and updated public health advice at the time of its consideration of an extension of the By-law.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no direct financial implications associated with respect to the administration and enforcement of the by-law.

ACCESSIBILITY IMPACTS

Accessibility impacts were considered in preparing this report and drafting the corresponding by-law. As such, the proposed by-law provides exemptions for a person with a disability or a medical condition, including breathing and cognitive difficulties which prevent them from wearing a mask safely, and a person who is unable to put on or remove a mask without assistance.

SUPPORTING DOCUMENTATION

Document 1 – Temporary Mandatory Mask By-law

DISPOSITION

Ottawa Public Health, in conjunction with other relevant City departments, will implement any necessary public education programs, and any other direction from Council emanating from this report.

Emergency and Protective Services will make application to the Ontario Court of Justice for set fines upon enactment of the by-law.