

## Staff Report 2020-0244

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Meeting Date: July 7, 2020

Subject: Proposed Mandatory Face Covering By-law

Submitted By: Laura Hall, Acting General Manager, Corporate Services / Acting Town Clerk

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### RECOMMENDATION

That the proposed Mandatory Face Covering By-law, as provided at the July 7, 2020 Council Meeting, be enacted;

That Part 4 and Sections 11 and 12 of the proposed By-law shall come into force on July 15, 2020 and all other provisions of this By-law shall come into force on July 10, 2020;

That the By-law be in effect until October 1, 2020; and

That the requirement for a Public Open House pursuant to the Town's Public Notice Policy for the purpose of soliciting public input regarding the enactment of the proposed Mandatory Face Covering By-law, be waived.

### REPORT HIGHLIGHTS

- As of June 24, 2020, the Region of Peel entered into Stage 2 of the Province's COVID-19 reopening framework to allow businesses to reopen while maintaining physical distancing requirements.
- It has been suggested that non-medical masks worn by members of the public can aid in mitigating the transmission of COVID-19 by preventing the spread of respiratory droplets by individuals that are asymptomatic or pre-symptomatic.
- Use of non-medical masks by the public has been encouraged by international organizations, the Federal and Provincial governments.
- The Medical Officer of Health for the Region of Peel advised that a By-law mandating where non-medical masks are used improves protection of residents and support was affirmed for considering a mandatory requirement for indoor public spaces.
- While the Province has not implement a mandatory face covering requirement through the *Emergency Management and Civil Protection Act* (EMCPA) at this time, the *Municipal Act, 2001* permits a municipality to enact a By-law for this purpose being related to health and safety.
- Several municipalities are considering or have enacted By-laws to make the use of non-medical face coverings and masks mandatory including Toronto, Guelph, Dufferin County, Wellington County and the Region of York.
- The proposed Mandatory Face Covering By-law will require members of the public to wear a face covering before entering and while inside public establishments within the Town.

## **DISCUSSION**

### **Background**

As of July 3, 2020, Peel Region Public Health reported a total of 6,294 cases of COVID-19 within its jurisdiction. Community cases outside of long term care facilities, nursing homes and correctional facilities represent the large majority within the Region. Approximately 175 (as of July 6) of the cases, or 2.7% of the total, are located within Caledon with the majority being clustered in the southern portion of the Town.

Due to positive measures put in place to lower transmission of COVID-19, including hospital capacity, rapid case and contact management by public health and increases in testing, on June 24 the Region of Peel entered Stage 2 of the Province's reopening framework. Stage 2 loosens restrictions to permit the reopening of specific businesses and services as well as certain community and recreational spaces while increasing social gathering limits to 10 people. As the pandemic is ongoing, the resurgence and continued spread of the virus remains a real threat during Stage 2. Introducing additional measures, such as a requirement for non-medical masks, may help to emphasize current public health advice and personal responsibility to continue to limit the spread of COVID-19 and minimize the possibility of a second wave. Therefore, this report will review the purpose of and support for broad use of non-medical masks and propose a By-law for consideration to require the use of face coverings by the public in certain indoor spaces.

### **Purpose of Non-Medical Masks**

As restrictions are eased during Stage 2, the number of people circulating in public will increase and the reopening of businesses and other spaces will limit the ability to practice physical distancing particularly within indoor areas. Due to reduced air ventilation and increased crowding, the risk of spreading COVID-19 appears to be higher indoors.

The efficacy of masks is not definitive and continues to evolve throughout the pandemic. However, non-medical masks provide a low-cost and readily available method to prevent the spread of respiratory droplets from coughing, sneezing or talking which would otherwise be expelled into the air and could contaminate surfaces thereby increasing transmission of COVID-19. Therefore, wearing non-medical masks in enclosed spaces may mitigate the risk of increased spread. As COVID-19 can be transmitted by carriers who are asymptomatic or pre-symptomatic, any requirement for masking indoors should be applied universally rather than only to those exhibiting symptoms.

It is important to note that masking is only one part of an effective strategy for managing transmission of COVID-19 and other behaviours including frequent hand washing and physical distancing remain critical. However, during Stage 2 masking may further promote these practices in public by providing a visual reminder of the importance of preventative behaviours.

**International, Federal, Provincial and Regional Guidance**

As of June 5, the World Health Organization advised that governments should encourage the general public to wear masks in specific situations as part of a comprehensive approach to prevent COVID-19 transmission<sup>1</sup>. Further, the use of non-medical masks by the public has been promoted by upper levels of the Canadian government. The Federal government provided guidance stating that, when worn properly, a non-medical mask can reduce the spread of an individual's infectious respiratory droplets<sup>2</sup>. The Province of Ontario recommends that face coverings, such as non-medical cloth masks, be worn to reduce the risk of transmitting COVID-19 when physical distancing is not possible such as while using public transit or within small stores<sup>3</sup>. However, the upper levels of government are consistent in providing guidance that the following should not wear masks:

- children under the age of two;
- anyone who has trouble breathing; and
- those who cannot remove a mask without assistance.

Recently, on June 30, the Region's Medical Officer of Health, Dr. Lawrence Loh, noted that Peel Public Health strongly supports the use of non-medical masks where distancing is not possible. In addition, it was advised that a By-law mandating when and where non-medical masks must be used improves protection of Peel residents. On July 2, Dr. Loh provided a presentation to Brampton City Council which further affirmed support of considering a mandatory masking requirement for indoor public spaces. Rationale for this measure included the increased public interactions resulting from Stage 2 reopening and the need to provide clear public health messaging consistent with other surrounding municipalities implementing masking requirements.

**Legislative Framework for Masking Requirements**

Through the EMCPA the Province has previously established a precedent of imposing regulations on businesses and individuals to manage the spread of COVID-19. O. Reg. 52/20 limited the number of people permitted to attend a gathering and subsequent Orders closed businesses deemed non-essential. Further, businesses and organizations which are now open are required to operate in compliance with the advice, recommendations and instructions of public health officials pursuant to O. Reg. 263/20 to the Act. However, the Province has advised that mandatory mask regulations at the local level would ensure responsiveness to community needs without applying such a policy to regions with minimal cases. Therefore, at this time, the Province has not implemented such a requirement through the EMCPA.

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<sup>1</sup> Please see: [https://www.who.int/publications/i/item/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-\(2019-ncov\)-outbreak](https://www.who.int/publications/i/item/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-(2019-ncov)-outbreak)

<sup>2</sup> Please see: [https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks/about-non-medical-masks-face-coverings.html#\\_Appropriate\\_non-medical\\_mask](https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/prevention-risks/about-non-medical-masks-face-coverings.html#_Appropriate_non-medical_mask)

<sup>3</sup> Please see: <https://www.ontario.ca/page/face-coverings-and-face-masks>

Although Section 22 of the *Health Protection and Promotion Act* (HPPA) may permit a Medical Officer of Health to issue Orders to make the use of non-medical masks mandatory in enclosed public spaces, as described below, certain municipalities have instead chosen to invoke their *Municipal Act, 2001* powers for this purpose. Section 11(2) of the Act permits municipalities to pass By-laws with respect to the health, safety and well-being of persons. Further, Section 8(1) directs that powers shall be interpreted broadly to confer authority for municipalities to govern their affairs. The COVID-19 pandemic has necessitated unprecedented regulation by various levels of government. Within this context and based on available public health advice, the above general *Municipal Act, 2001* powers may provide the Town the ability to enact a By-law to regulate businesses and individuals by making non-medical masks mandatory within enclosed public spaces.

### **Emerging Approaches by Other Municipalities**

While public health officials have taken a lead in certain jurisdictions, such as Wellington-Dufferin-Guelph Public Health which issued an Order through the HPPA, several municipalities are considering or have enacted By-laws to make the use of non-medical masks mandatory. A recent report from the Medical Officer of Health for the City of Toronto concluded that requiring masks in enclosed public spaces will be an added health measure to protect the public and aid in controlling the spread of COVID-19. It was recommended that a By-law requiring masks in indoor public spaces be enacted using the City's authority to legislate for the protection of health, safety and well-being of persons.

On June 30, Toronto City Council passed a By-law requiring operators of establishments to adopt a policy to ensure that members of the public are not permitted entry to any enclosed space within their premises unless a mask or face covering is worn. Establishments are defined to include locations such as businesses, places of worship, event centres and community centers. Employees must be trained in the policy and wear masks when in enclosed spaces accessible to the public. Finally, the By-law requires operators to post signs to notify the public that masks must be worn prior to entering their establishment.

The Regional Municipality of York recently enacted a By-law, becoming effective on July 2, requiring every person using a transit vehicle or at a transit facility to wear a face covering with minimal exceptions. However, the Mayor of Markham has further advocated for a broader policy and on July 9 a special meeting of Regional Council will be held to consider reports on requiring the wearing of masks within indoor and outdoor spaces where physical distancing cannot be maintained.

Within the Region of Peel, the City of Brampton has taken steps towards enacting a By-law to ensure face coverings are worn in indoor public spaces. At a Special Council Meeting held on July 2, Brampton's Council adopted a Motion which cited advice from Peel Region's Medical Officer of Health and invoked the *Municipal Act, 2001* powers as authority to enact a By-law. Staff have been in consultation with both Brampton and Mississauga and it is anticipated that each will bring forward similar By-laws and that the Region of Peel will endorse this aligned approach by its local municipalities.

**Proposed Mandatory Face Covering By-law**

During the Stage 2 reopening the public will increasingly cross municipal borders, within the Region of Peel and from beyond, making consistent and clear regulation crucial to mitigate COVID-19 transmission. Therefore, similar to other nearby municipalities, the proposed By-law, will ensure that the use of face coverings are mandatory within public establishments in Caledon.

Face coverings are defined in the proposed By-law to include masks, bandanas, scarfs or similar items which are fitted to completely cover the mouth, nose and chin of a wearer without gaping. To align with public health advice, the definition of public establishment targets indoor areas where the public is permitted access including spaces such as retail stores, grocery and convenience stores, places of worship, personal care service shops, banquet halls, libraries, cinemas and municipal buildings.

The By-law will require individuals to wear a face covering before entering and while inside a public establishment, when using a transit vehicle such as a municipal bus or while riding in a taxi or limousine licenced by the Town. In addition, an operator may not permit a person to enter or remain in their public establishment without a face covering. To ensure operators apply this standard, the By-law requires that they adopt a policy to implement this regulation and post signs at all entrances to their public establishment or within their vehicle so the public is notified. Exemptions are set out for circumstances where use of a face covering may not be feasible such as for children under 2, persons who have trouble breathing or are unable to remove a mask without assistance and those engaged in fitness activity. It is important to note that the Town will be required to comply with the By-law within its own facilities. The proposed By-law is intended as a temporary measure which will stay in effect until the Town's declaration of emergency is terminated.

Progressive enforcement will be applied to ensure compliance with the By-law. While providing education and seeking voluntary compliance will be the primary approach, should a contravention continue, the By-law provides that a Municipal Law Enforcement Officer may issue an Order requiring an individual to put on a face covering or leave the location. Further, Staff will bring an application to the Regional Senior Justice to approve set fines to permit tickets to be issued, as needed.

Staff are recommending that Part 4 (Exemptions) and Sections 11 and 12 (Offences) of this By-law shall come into force on July 15, 2020 and all other provisions of this By-law shall come into force on July 10, 2020. The By-law is proposed to be in effect until October 1, 2020.

**Recommendations**

It is recommended that the proposed Mandatory Face Covering By-law, circulated at the meeting, be enacted by Council. This will set an important standard to further protect residents and join other municipalities in Ontario seeking to apply measures to mitigate the spread of COVID-19. In support of this urgent initiative it is further recommended that Council waive the Town's Public Notice Corporate Policy and Procedure which would otherwise require an Open House Meeting to solicit public input on the proposed regulatory By-law prior to Council consideration.

Staff have developed a Policy template for establishment owners to utilize along with a suggested Sign to ensure uniformity across the Town. This will assist with ease of implementation by the establishments within the Town and create a unified approach to protecting the public during this time.

**Public Education, Awareness and Enforcement**

Implementation of the By-law will include a coordinated public information campaign between the Town, the Region and the partnering municipalities within Peel. Such efforts will include social media channels, signage, direct outreach to the business community and all other measures necessary to inform the public of the new requirements. Complaints received regarding non-compliance with the requirements of the By-law can be directed to the Town. An Officer will conduct an inspection and determine next steps in achieving compliance, which includes education and awareness, followed by stricter measures such as issuing Orders and/or fines for non-compliance.

**FINANCIAL IMPLICATIONS**

There are no immediate financial implications associated with this report. Should the proposed By-law be adopted, operators of public establishments will not be required to provide face coverings for members of the public but may choose to assume this cost as part of their service. Alternatively, members of the public will continue to be responsible for the cost of obtaining their own face coverings. As the Town will be required to comply with the By-law, a cost may be incurred should the municipality choose to provide masks to the public at Town facilities.

**COUNCIL WORK PLAN**

The matter contained in this Staff Report is not relative to the Council Work Plan.

**ATTACHMENTS**

None.