
For Subject: Options to Consider for Mandating Face Coverings

Report to: Regional Council

Report date: Wednesday, July 8, 2020

Recommendations

1. That Regional Council **CONSIDER** the options presented in Report CAO 15-2020; and
2. That staff **PROCEED** with the option approved by Regional Council.

Key Facts

- The Province of Ontario and The Regional Municipality of Niagara have declared emergencies as a result of the COVID-19 pandemic pursuant to the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c.E.9, as amended.
- Niagara Region Public Health continues to recommend public health measures to be practiced by all residents of Niagara in order to reduce the spread of COVID-19. These include keeping a 2 metre physical distance from others, cleaning hands often, wearing a mask or face covering when maintaining physical distancing is not possible, and staying home and getting tested if sick.
- On June 25, 2020, Council approved the Recommendations in Report CAO 14-2020 (Appendix 1) to encourage all residents and visitors to Niagara to practice the above behaviours that limit the spread of infection. As well all business owners were encouraged to enable other to practice these behaviours.
- Over the past few weeks, other jurisdictions have implemented requirements with respect to face coverings either through an order issued by their medical officer of health pursuant to Provincial Emergency Orders, enactment of a by-law or by their medical officer of health providing instructions under the state of emergency for the mandatory use of face coverings.
- While Niagara's Acting Medical Officer of Health is not currently contemplating making such an order, Regional Council may pass a by-law under section 11 of the Municipal Act, 2001 which could mandate the use of face coverings.
- Alternatively, given Niagara's diverse landscape, Regional Council may choose to defer to (but fully support) the individual decision of the local area municipal councils regarding face coverings.
- Face coverings will not protect the wearer from getting COVID-19. Wearing a face covering protects others from the wearer's respiratory droplets. Therefore, properly wearing an appropriate face covering may reduce the risk of transmission when physical distancing is not possible (Appendix 4 Province of Ontario Fact Sheet).

Financial Considerations

Should Council proceed with Option 1, there would be no costs involved.

Should Council proceed with Option 2 to enact a by-law with respect to face coverings, or Option 3 to launch a comprehensive education campaign, there is no specific budget for an education and advertising program. The estimated cost of an education/advertising program is \$30,000 excluding regional staff time. This campaign is likely to include radio, print and social media advertising elements similar to the scope of what was enacted during the Region's *Stay Home Niagara* efforts.

There is no capacity to absorb these costs within the 2020 Public Health Operating Budget.

In addition with respect to Option 2, financial considerations associated with by-law and enforcement would need to be addressed especially as it relates to after hours and weekend enforcement since many local area municipalities do not have enforcement outside of regular business hours.

There may be additional costs if Council elects to provide masks to the public at municipal facilities or as a part of community outreach efforts to ensure that the requirement of wearing a face covering does not become a financial barrier to individuals seeking to access goods and services, including municipal services.

Analysis

Currently businesses and workplaces are responsible for following public health guidance with some types of workplaces required to have face coverings for their clients and staff (e.g. personal service settings like nail salons, hair dressers, piercing and tattoo studios, dental offices, health care providers). Others are given discretion to decide whether to make mask-wearing mandatory based on upon each setting's particular risk profile, the occupational health and safety of employees and health risks to members of the public entering their premises. Individual businesses and workplaces may refuse entry to persons not wearing a non-medical mask, subject to reasonable exceptions, including those set out in existing public health guidelines.

The re-opening of businesses and other services will result in more people returning to the workplace, more gatherings, and more people taking public transit, which may make the ability to physically distance difficult, or in some cases, impossible. The science regarding the use of masks is still evolving and their efficacy is not definitive; however, the wearing of face masks or face coverings is one measure being considered by a number of jurisdictions that can be taken to help mitigate the risk of the spread of COVID-19, when the preferred measure of physical distancing is not possible.

Staff have outlined three options for Council to consider that support the increased use of face coverings in enclosed spaces where physical distancing is not possible, and provided an overview of considerations applicable to all options.

Option 1

Support those Local Area Municipalities who implement By-laws for Mandatory Face Coverings

Niagara Region has continued to support public health guidance to recommend and encourage the use of non-medical masks in specific situations and settings where physical distancing may be difficult.

For purposes of consistency, efficiency and enforcement, the Province of Ontario would be in the best position to mandate the wearing of medical or non-medical masks by the general public under the Emergency Management and Civil Protection Act. To date the Province has not mandated the wearing of masks citing enforcement challenges as well as concerns related to a “one size fits all” approach given the differing case counts and risk throughout Ontario municipalities.

The local area municipalities have authority pursuant to section 11 of the Municipal Act, 2001, to pass by-laws regarding the health, safety and well-being of persons. The local area municipalities are also largely responsible for business licensing pursuant to section 11 of the Municipal Act, 2001.

A “one size fits all” approach to mandating face coverings throughout the Region has drawbacks. This is an unprecedented situation. Each municipality has its own unique set of circumstances that should be considered when deciding if face coverings should be mandatory in their jurisdiction, including economic recovery strategies.

Currently COVID-19 data is available on a local municipal basis and it demonstrates the varying number of cases between municipalities in Niagara. The opportunity to maintain physical distance may also vary depending on whether a municipality is more urban or rural, and with the kinds of public places present and how crowded they are likely to be. Should an individual municipality consider it necessary to implement a by-law to mandate face coverings, it could be done with an enhanced understanding of the local impacts and challenges this might create. The Region has not had the opportunity to undertake specific outreach and consultation with the local area municipalities, stakeholders (including the business community) and the public regarding the mandating of masks, therefore there is some risk that proceeding to do so may attract criticism for interfering in the business of the local area municipalities, particularly if the Region’s by-law conflicts with by-laws or measures being considered by the local area municipalities.

In this regard, the City of St. Catharines held a Special Council meeting on July 6, 2020 and subsequently directed City staff to enact a temporary by-law. This by-law would require individuals or organizations that are responsible for the operation of a facility or businesses which have enclosed spaces open to the public to ensure no member of the public is permitted entry unless wearing a mask or face covering to help limit the spread of COVID-19. Consideration of this by-law will take place at their Council meeting being held on July 13.

It is unknown at this time should the City of St. Catharines proceed with their by-law, whether it may be in conflict with any Regional by-law enacted and create additional confusion for members of the public and businesses.

It is worth noting that this direction would be consistent with the approach taken by Peel Region, where they deferred to the judgement of their local municipalities to make decisions regarding mandatory face coverings.

Another benefit of the decision-making on this topic resting with the local area municipalities is that they can tailor the requirements of the by-law to align with their individual business licensing by-law regimes and the duration of their declarations of emergency.

If Regional Council wants to support the local area municipalities' efforts to pass their own by-laws a suggested motion would be:

That Regional Council **ENDORSE** and **SUPPORT** the efforts of those local area municipalities that enact temporary by-laws respecting mandatory face coverings to ensure continued diligence in the fight against COVID-19.

Option 2

Enact a Temporary Regional By-law Mandating Face Coverings

Niagara Region also has the authority pursuant to section 11 of the Municipal Act, 2001 to pass by-laws regarding the health, safety and well-being of persons that could be relied upon to pass a by-law mandating the use of face coverings in enclosed public spaces where physical distancing is not possible.

Mandatory face coverings by-laws should be time limited and reviewed based on the state of the pandemic, evolving scientific evidence, the easing of other public health restrictions as the Province re-opens and the impact on the operations of businesses and facilities. Such by-laws should also be limited in scope to ensure that they are no more intrusive than necessary based on available alternatives and the rights of individuals under the Charter of Rights and Freedoms and consideration of other applicable legislation such as AODA.

One factor Council should be aware of in considering this option is the potential that the respective declarations of emergency of the Province, Region and local area municipalities may be terminated at different times. Restrictions imposed on the public and business based on the emergency should be in alignment with the changing state of emergency. However a Regional by-law would not afford flexibility to vary requirements in different municipalities, whereas a local by-law could be repealed at any time if the emergency in that jurisdiction is terminated.

The draft by-law included as Appendix 3 places the onus on persons who are in certain enclosed public places within buildings to comply with the requirement to wear a face covering and on owners and operators of enclosed public places to post signage at all entrances regarding the use of face coverings. This approach strives to provide a balanced responsibility for ensuring that face coverings are worn while in enclosed places.

The draft by-law targets enclosed places based on evidence that the risk of spreading COVID-19 is higher indoors than in outdoor spaces. The draft by-law targets those places within buildings where the public is more likely to be in close proximity such as when shopping, entering/exiting a high traffic area, waiting for service, etc. These public places would not include “employee only” areas such as offices, storage areas, etc. that are not open to the general public because there is more control of the area by the owner/employer and an ability for the owner/operator to implement health and safety measures as necessary related to their employees in accordance with the Occupational Health and Safety Act.

Face coverings are defined in the draft by-law to include masks, bandanas, scarves or similar items which are fitted to completely cover the mouth, nose and chin of a wearer without gaping. The draft by-law outlines exemptions recognizing that wearing a face covering may not be possible/is not recommended for all people including, children under 5, anyone who has trouble breathing or is unable to wear a face covering for medical reasons. Individuals that are unable to wear a face covering will not be required to provide proof of any exemptions.

Public education and buy-in will be an important part of compliance with this by-law and if approved, Regional staff will work to educate residents about the by-law by undertaking a communications campaign.

Should Council wish to proceed with the passing of a temporary by-law, enforcement would be undertaken pursuant to the Provincial Offences Act. Considering that this is a Regional By-law, the draft by-law provides for enforcement by Niagara Regional Police and municipal law enforcement officers or by-law officers appointed by a lower tier municipality or by The Regional Municipality of Niagara.

Overall approach and enforcement strategies would need to be considered to ensure consistency across all the local area municipalities. Enforcement would be by way of summons until such time a set fine order can be obtained to allow for the issuance of tickets. Council should be aware that Ontario Court of Justice issued a notice July 2 that no in-person Provincial Offences Act proceedings will be conducted until September 14, 2020. The lack of practical enforcement options may undermine any relative advantages of making this measure legally mandatory and could result in conflict or questions concerning equity and infringement on certain rights.

Given the draft by-law is regulatory in nature with potential enforcement consequences (i.e. fines) and impacts to business operations, an opportunity for the local area municipalities, businesses and the public to provide input should be contemplated prior to passage of the by-law. Staff could upon direction by Council provide public notice and/or employ other means to seek public input and engage with stakeholders for purposes of receiving input for Council's consideration.

If Regional Council desires to enact a temporary Regional by-law mandating face coverings, a suggested motion would be:

That Regional Council **APPROVE** the temporary by-law to require mandatory face coverings in enclosed public places during the COVID-19 pandemic attached as Appendix 3 to Report CAO 15-2020.

Option 3

Launch a comprehensive education campaign that continues to recommend face coverings when physical distancing is not possible

This option is responsive to the potential concern that there may be uncertainty among members of the public regarding the issue of face coverings including:

- When and why to wear a face covering
- What type of face covering
- The correct use of face coverings to prevent risk of contamination
- Proper disposal of face coverings

The education campaign could comprise advertising, online resources, signage, social media and community outreach and would serve to reinforce the advice of public health officials, including regarding the importance of maintaining physical distancing of two metres wherever possible, hand washing and staying home and getting tested if symptomatic. This would build on the recommendations approved by Council on June 25, 2020, in CAO 14-2020.

This option would preserve the autonomy of local area municipalities to make their own determination regarding the benefits of passing by-laws and continues to allow businesses to develop their own policies reflective of their individual operations and customer interactions.

If Regional Council wishes to proceed with an education campaign that continues to recommend face coverings when physical distancing is not possible suggested motion would be:

That staff **BE DIRECTED** to proceed with a comprehensive education campaign that continues to recommend face coverings when physical distancing is not possible.

Face Covering Considerations Applicable to all Options

The approach to masks needs to be part of a broader strategy to reduce the spread of COVID-19. It is critical to emphasize that wearing a mask alone will not prevent the spread of COVID-19. Any guidance on mask wearing should be balanced against ensuring that members of the public do not overestimate their effectiveness or develop a false sense of security in their use, which may potentially lead to lower adherence to other more critical preventative measures such as physical distancing and hand hygiene.

Any requirement for face coverings should be accompanied by education on proper use given that improper use of face coverings can increase the risk of transmission of COVID-19. There is also a need to recognize that wearing a face covering may not be possible for some people.

Many businesses and other services that have continued to operate in some manner during the pandemic have made the wearing of masks mandatory. With regard to businesses that are already open or are preparing to reopen, the Province has already set conditions under Ontario Regulation 82/20 and Ontario Regulation 263/20 (under EMCPA) , including ensuring compliance with the Occupational Health and Safety Act and compliance with the guidance for public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting. In other cases, certain regulatory bodies have imposed this requirement as a condition of being able to re-start their services. These measures have been directed at both persons responsible for places of business, and at members of the public.

If masks are made mandatory, employees and/or the general public will either have to use their own masks, or have them supplied by their employer or the business owner in question. The costs associated with such measures must be considered to ensure that members of the public continue to have access to good and services they require. Consideration should also be given to those that may not have access to face coverings

and not be able to comply with the by-law requirements to ensure that the requirement to wear a mask does not become financial barrier.

The World Health Organization recently released an interim guide on mask usage ([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)), which includes some considerations on the benefits and drawbacks of the use of masks or face coverings:

Potential benefits/advantages

- Reduced potential exposure risk from infected persons before they develop symptoms;
- Reduced potential stigmatization of individuals wearing masks to prevent infecting others (source control) or of people caring for COVID-19 patients in non-clinical settings; however, there is the potential for the reverse to occur if masks are mandated (see below)
- Making people feel they can play a role in contributing to stopping spread of the virus;
- A visual cue to remind people to be compliant with other measures (e.g., hand hygiene, not touching nose and mouth). However, this can also have the reverse effect (see below); and,
- Potential social and economic benefits. Amidst the global shortage of surgical masks and PPE, encouraging the public to create their own fabric masks may promote individual enterprise and community integration. Moreover, the production of non-medical masks may offer a source of income for those able to manufacture masks within their communities. Fabric masks can also be a form of cultural expression, encouraging public acceptance of protection measures in general. The safe re-use of fabric masks will also reduce costs and waste and contribute to sustainability.

Potential harms/disadvantages

- Potential increased risk of self-contamination due to the manipulation of a face mask and subsequently touching eyes with contaminated hands;
- Potential self-contamination that can occur if non-medical masks are not changed when wet or soiled. This can create favourable conditions for microorganism to amplify;
- Potential headache and/or breathing difficulties, depending on type of mask used;
- Potential development of facial skin lesions, irritant dermatitis or worsening acne, when used frequently for long hours;
- Difficulty with communicating clearly;
- Potential discomfort;
- A false sense of security, leading to potentially lower adherence to other critical preventive measures such as physical distancing and hand hygiene;
- Poor compliance with mask wearing, in particular by young children;
- Waste management issues; improper mask disposal leading to increased litter in public places, risk of contamination to street cleaners and environment hazard;
- Difficulty communicating for deaf persons who rely on lip reading;

- Disadvantages for or difficulty wearing them, especially for children, developmentally challenged persons, those with mental illness, elderly persons with cognitive impairment, those with asthma or chronic respiratory or breathing problems, those who have had facial trauma or recent oral maxillofacial surgery, and those living in hot and humid environments.

As well, there is a risk of stigmatization of those persons with medical conditions who are unable to wear masks either being perceived as unsafe by others, or perceived as being irresponsible or inconsiderate to others.

Currently, public health officials at all government levels support 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. Many businesses and other services that have continued to operate in some manner during the pandemic have made the wearing of masks mandatory. In other cases, Provincial orders and certain regulatory bodies have imposed this requirement as a condition of being able to re-start their services.

It should be emphasized that wearing a face covering remains a second-line preventative measure, when the preferred measure of physical distancing is not possible. Practicing physical distancing and frequent hand washing are still the most effective methods to limit the spread of the virus, and both are supported by stronger scientific evidence than wearing face coverings. Paradoxically, a bylaw on mandatory face coverings would mandate the less scientifically-supported second line prevention measures, while leaving the more effective first line measures voluntary. Some regions that have mandated face coverings have addressed this by simultaneously requiring operators of public spaces to provide hand sanitation stations at the entrance to any public space.

Contributing factors to the effectiveness of the use of cloth masks included proper training on mask use, proper fit, hand hygiene and duration of wear. The mask wearer should be properly educated on how to use a mask and adhere to all other mask etiquette.

Alternatives Reviewed

Staff reviewed the approaches taken by other jurisdictions to date (Appendix 5).

Council could decide to not take any action with respect to mandating face coverings acknowledging that public health officials at all government levels have provided advice that the most important measures are to keep a two metre distance from others, wash hands often and to stay home when sick. The use of masks in enclosed public settings where physical distancing is not possible is in addition to the above measures.

Council could also defer to the Medical Officer of Health to continue to exercise judgement on when and if to issue emergency instructions or a public health order making non-medical masks or face coverings mandatory for all community members, with exceptions. These approaches would still suffer the enforcement issues associated with a by-law, with even more challenging enforcement if the route of a public health order was selected. As well, these avenues are legally untested methods to set a requirement on all of society. At present, the Acting Medical Officer of Health does not favour such emergency instructions or an order, but is continually reviewing the situation and would adapt if conditions and evolution of scientific knowledge warrants.

Relationship to Council Strategic Priorities

Ensuring diligence around measures to limit the spread of COVID-19 will prevent illness and potentially death in Niagara. As well it will maximize the opportunity to reopen business safely. This directly supports two of Council's Strategic Priorities: Supporting Businesses and Economic Growth and Healthy and Vibrant Community.

Other Pertinent Reports

See Appendices.

Submitted by:

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This report was prepared in consultation with Dr. M.Mustafa. Hirji, Acting Medical Officer of Health, Ann-Marie Norio, Regional Clerk, Donna Gibbs, Director, Legal and Court Services, and Daryl Barnhart, Executive Officer to the Regional Chair.

Appendices

- Appendix 1 Report CAO 14-2020 A Unified Message for All-of-Niagara Vigilance Against COVID-19
- Appendix 2 Memorandum PHD-C 4-2020 Further Details on Order to Wear Masks in Wellington-Dufferin-Guelph
- Appendix 3 Draft By-law
- Appendix 4 Fact Sheet from Government of Ontario website "Face Coverings and Face Masks"

Appendix 5 Actions by Other Jurisdictions respecting Face Coverings