

TO:	CHAIR AND MEMBERS STRATEGIC PRIORITIES AND PLANNING COMMITTEE MEETING ON JULY 20, 2020
FROM:	LYNNE LIVINGSTONE CITY MANAGER
SUBJECT:	ADDITIONAL LEGISLATED MEASURES TO REDUCE THE RISK OF FURTHER COVID-19 INFECTIONS IN THE CITY OF LONDON

RECOMMENDATIONS

That, on the recommendation of the City Manager, with the concurrence of the Medical Officer of Health, Middlesex-London, the attached by-law BE INTRODUCED at the Municipal Council meeting to be held on July 21, 2020, to temporarily require the use of face coverings within enclosed publicly-accessible spaces in the City of London.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

There are no previous reports on this matter.

BACKGROUND

On March 11th, 2020 the World Health Organization declared a worldwide pandemic related to the COVID-19 Virus. In response to this, the Province of Ontario declared a state of emergency on March 17, 2020. In conjunction with the declaration, the Province issued numerous orders resulting in closures of business, reduced social activities and personal interactions to curtail the spread of the virus across the province. The Provincial approach includes three phases with less restrictions at each stage. In addition, health officials locally and across the province have strongly recommended several key actions to prevent the spread of the virus. These include maintaining a distance of two metres from other people, proper hand hygiene, appropriate coughing and sneezing etiquette and wearing a mask if you are unable to maintain a two metre distance. On July 13, 2020 the Province announced they will move to phase three, allowing most businesses to operate and gatherings of 50 people indoors and 100 people outdoors.

At a local level the City of London (the “City”) declared a state of emergency on March 20, 2020. At the writing of this report, there have been 591 cases in London and 49 cases in the County of Middlesex. There have been 57 deaths, and 570 cases have recovered. Over the last few weeks there has been a decrease in the number of daily cases including no cases in Long Term Care and no new deaths. Some of the recent cases have centred on situations where people are congregating indoors. As a result of these issues the Medical Officer of Health for Middlesex London (“Medical Officer of Health”) issued an order on July 7th, 2020 under section 22 of the Health Protection and Promotion Act requiring anyone entering a personal care business, taxis, ride shares and Transit to wear a mask or face covering. There has been ongoing discussions across the province regarding mask requirements and several municipal governments have recently passed bylaws requiring masking for members of the public in all publicly accessible spaces.

On July 14, 2020 a motion was introduced and passed at the Strategic Priorities and Planning Committee requesting:

- a) the Civic Administration, including the City Solicitor, BE DIRECTED to consult with the County of Middlesex and the Medical Officer of Health, Dr. Chris Mackie, and to bring forward, for consideration at the earliest opportunity by Municipal Council, any

legislative measures that the Medical Officer of Health recommends the City of London should enact to reduce the risk of further COVID-19 infections within the City of London, including the possibility of a temporary municipal bylaw requiring the wearing of masks or face coverings in enclosed public spaces; and,

- b) the Medical Officer of Health, Dr. Chris Mackie, BE REQUESTED to attend the standing committee meeting(s), to provide advice and answer questions about any advice or actions that may result from part a) above.

DISCUSSION

Consultations took place with both the County of Middlesex and the Medical Officer of Health. The Chief Administrative Officer for Middlesex County has indicated interest in reviewing any actions including bylaws that the City may be considering to prevent the spread of COVID-19. He further advised that each municipality within Middlesex County would be responsible to make their own decision and he will facilitate further consultations with each Municipality and the City of London.

Dr. Chris Mackie was consulted regarding the City of London implementing an additional legislative measure to reduce the risk of further COVID-19 infections within the City of London. He is recommending that the City of London pass a temporary by law that would require members of the public to wear a face covering in all indoor public spaces to reduce the spread of the COVID-19 Virus. The attached by law outlines the specific requirements including definitions, exemptions and enforcement.

Definitions and Application

The bylaw defines essential terms for interpretation and application, including face coverings, establishments, person and operator. The definition for Face Covering goes beyond a conventional mask to include any scarf or bandana as long as it covers the mouth, nose and chin. The definition of establishment specifically identifies many businesses or types of uses and buildings for ease of reference, but also includes a "catch all" provision that describes any business allowed to operate in accordance with the emergency orders.

Exemptions

The bylaw outlines several exemptions including those related to age, ability, accommodation or medical condition. The bylaw does not apply to federal or provincial facilities or employees. An important component of the exemption framework is a provision that removes any onus from the claimant of an exemption.

Enforcement

With the adoption of any new municipal by law, the standard protocol has been a three-pronged approach: education, voluntary compliance and enforcement if necessary. The approach to this by law will have a very strong front-ended focus on education, warnings and voluntary compliance.

In accordance with the standard process associated with the adoption of new by-laws, Civic Administration will submit an application to a Senior Regional Judge for a set fine related to the prohibition noted in the by law. The requested set fine amount will be in keeping with other City by laws and in consultation with Ontario municipalities. The proposed minimum fine is \$500. The approval of set fines are being undertaken electronically and time frames have been reduced. Without a set fine, officers have the enforcement option of issuing summonses which is not the preferred option should enforcement of this by law be required.

This by law will be enforced by the City's Municipal Law Enforcement Officers. This by law will be enforced proactively and in response to complaints. For the proactive protocol, officers will visit premises and focus on education. Officers will also respond to

complaints, however, based on the nature of the complaints, the response will be triaged and officers, if available, will attend “hot spots” to educate and employee enforcement actions if required. The enforcement of this bylaw will impact the response to standard property related complaints.

Medical Officer of Health Jurisdiction

The Medical Officer of Health has independent legislative tools to address public health and safety matters within the jurisdiction of the Middlesex London Health Unit. One available option is the issuance of an Instruction under section 364-20 of the Emergency Management and Civil Protection Act. A second available option is the issuance of an Order pursuant to section 22 of the Health Protection and Promotion Act. These tools and decisions are entirely within the discretion of the Medical Officer of Health and Middlesex London Health Unit and beyond the scope of the City’s legislative options.

This bylaw is proposed to be temporary in nature and therefore contains a sunset clause. The time frame identified was recommended by the Medical Officer of Health given the potential continued spread of the COVID-19 virus in our community.

Communication Strategy

Dr. Mackie also recommended an accompanying communication strategy to assist with the service of the by-law, clarify understanding of the by-law and reinforcing other critical public health precautions including maintaining a distance of two metres from other people, proper hand hygiene, appropriate coughing and sneezing etiquette.

A communications strategy has been developed and will be implemented pending Council’s approval of the by-law.

Dr. Mackie will attend the committee to provide further information regarding his recommendation.

Financial Impact

There are no financial implications arising from this report.

Acknowledgements

This report was written with the assistance of David O’Brien, Orest Katolyk, Aynsley Anderson, Barb Westlake Power, George Kotsifas, Dr. Chris Mackie (MLHU), Dr. Alex Summers (MLHU), and Alison Locker (MLHU)

SUBMITTED BY:
LYNNE LIVINGSTONE CITY MANAGER CITY OF LONDON

Bill No. [no. inserted by Clerk's Office]
2020

By-law No. [inserted by Clerk's]

A By-law to temporarily require the use of face coverings within enclosed publicly-accessible spaces in the City of London.

WHEREAS on March 17, 2020, an emergency was declared by the Government of Ontario ("Province") pursuant to Order in Council 518/2020 under section 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 ("EMCPA") in response to the outbreak of COVID-19;

AND WHEREAS on March 20, 2020 an emergency was declared by the Corporation of the City of London ("City") pursuant to section 4 of the EMCPA in support of the Province's efforts to contain the spread of COVID-19;

AND WHEREAS health authorities at the Federal and Provincial level have recommended that persons wear face coverings in public where physical distancing cannot be maintained;

AND WHEREAS the wearing of face coverings may act as one component of an overall COVID-19 mitigation strategy, of which frequent hand-washing and maintaining a safe physical distancing are also important components;

AND WHEREAS on July 6, 2020, the Medical Officer of Health of the Middlesex London Health Unit ("Medical Officer of Health") made an Order, pursuant to section 22 (5.0.1) of the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, requiring the use of face coverings for owners, operators and passengers of public transit or commercial vehicles for hire, as well as owners and operators of personal care service establishments;

AND WHEREAS because physical distancing is impossible to guarantee in enclosed public spaces, the Medical Officer of Health has advised that the following temporary regulations are a necessary, recognized, practicable, and effective method to limit the spread of COVID-19 and thereby help protect the health, safety, and well-being of the residents of the City;

AND WHEREAS the Medical Officer of Health advises that in addition to reducing the spread of COVID-19, the following temporary measures are likely to reduce anxiety and contribute positively to economic wellbeing;

AND WHEREAS Council of the City is desirous to enact a by-law to require mandatory face coverings in enclosed spaces that are accessible to the public to help contain the spread of COVID-19;

AND WHEREAS subsection 8(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*") provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority to enable it to govern its affairs as it considers appropriate and to enhance its ability to respond to municipal issues;

AND WHEREAS subsection 11(2) of the *Municipal Act, 2001* authorizes a municipality to pass by-laws with respect to: economic, social and environmental well-being of the municipality, including respecting climate change; the health, safety and well-being of persons; and the protection of persons and property, including consumer protection;

AND WHEREAS subsections 425(1) and 429(1) of the *Municipal Act, 2001* authorize a municipality to pass by-laws providing that a person who contravenes a municipal by-law is guilty of an offence and to establish a system of fines for offences under a by-law;

AND WHEREAS subsection 436(1) of the *Municipal Act, 2001* provides that a municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not a by-law passed under the *Municipal Act, 2001* is being complied with;

AND WHEREAS subsection 444(1) of the *Municipal Act, 2001* authorizes a municipality to make an order requiring the person who contravened a by-law, caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

MANDATORY FACE COVERINGS BY-LAW

Definitions

1. In this by-law:

"By-law" means this By-law;

"City" means The Corporation of the City of London or the municipality of the City of London, as the context requires;

"Council" means the Municipal Council of the City of London;

"EMCPA" means the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, as amended from time to time;

"Emergency Order" means the emergency orders passed by the Province of Ontario pursuant to the EMCPA related to COVID-19 including any regulations enacted pursuant to EMCPA;

"Face Covering" means a mask or face covering, including a bandana or scarf, construction of cloth, linen or other similar fabric that fits securely to the head and is large enough to completely and comfortably cover the mouth, nose and chin without gapping. A Face Covering may include, but is not required to be, a medical mask such as surgical masks, N95 or other similar masks worn by healthcare workers;

"HPPA" means the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, as amended from time to time;

"Officer" means a police officer; a person appointed by Council as a municipal law enforcement officer; an officer, employee or agent of the City whose responsibility includes enforcement of this By-law;

"Operator" means a person or organization which is responsible for or otherwise has control over the operation of an Establishment;

"Person" or any expression referring to a person or people, means an individual over the age of twelve (12) and also includes a partnership, limited partnership, and a corporation and its directors and officers, and all heirs, executors, assignees and administrators;

Application of this By-law

2. This By-law applies to all Establishments and Persons in the City.
3. For the purposes of this By-law, an Establishment means any portion of a building that is located:
 - (a) indoors; and,
 - (b) where the public is ordinarily invited or permitted access to whether or not a fee or membership is charged for entry.
4. For greater clarity, Establishments shall include the following:
 - (a) premises or any portion thereof which are used as a place of business for the sale or offering for sale of goods or services, including restaurants or the sale of any food or beverage, and including a mall or similar structure containing multiple places of business;
 - (b) churches, mosques, synagogues, temples, or other places of worship;
 - (c) City indoor recreational facilities open to the public, community centres including indoor recreational facilities, whether publically accessible or requiring membership;
 - (d) libraries, art galleries, performing arts centres, museums, aquariums, zoos, and other similar facilities;
 - (e) community service agencies providing services to the public;
 - (f) banquet halls, convention centres, arenas, stadiums, and any other event space;
 - (g) premises utilized as an open house, presentation centre, or other facility for real estate purposes;
 - (h) common areas of hotels, motels or other short-term rentals, such as lobbies, elevators, meeting rooms, or other common use facilities;
 - (i) concert venues, theatres, cinemas, casinos, and other entertainment facilities;
 - (j) other business, organizations and places that are permitted to operate in accordance with the Emergency Orders.
5. Notwithstanding the generality of section 3 and the specificity of section 4, Establishments shall not include the following:
 - (a) day cares, schools, post-secondary institutions, and other facilities used solely for educational purposes;
 - (b) hospitals and portions of buildings used by regulated health professionals;
 - (c) buildings owned or operated by the Province of Ontario or the Government of Canada;
 - (d) portions of community centres, arenas or other buildings that are being used for the purpose of day camps for children or for the training of amateur or professional athletes;
 - (e) school transportation vehicles;
 - (f) court facilities, or a portion of a building where any similar legislated judicial or quasi-judicial proceeding is taking place;
 - (g) professional offices that are not open to the public and are open by appointment only (such as a lawyer or accountant office);
 - (h) indoor areas of buildings that are accessible to employees only.
6. Notwithstanding section 2, this By-law does not apply to any Officer, City employee, or a person hired or engaged by the City to do work or perform services within an Establishment for the specific purposes of performing policing, municipal or enforcement services, including but not limited to, the enforcement of this By-law, or the provisions of an act of Parliament or the Legislature, or an order made under an act of Parliament or the Legislature.

7. Nothing in this By-law is to be construed as permitting anything which is prohibited under federal or provincial legislation, and where there is a conflict in this respect between federal or provincial legislation, or *EMCPA* order, or *HPPA* order, the federal or provincial legislation and orders authorized thereunder shall prevail.

General Obligations and Prohibitions - Operator

8. Subject to the exemptions in section 12, every Operator shall require that Face Coverings are worn by anyone engaged in the operation of the business or delivery of a service or product at an Establishment, including employees, volunteers, agents, or contractors.

9. The Operator shall conspicuously post at all entrances to the Establishment clearly visible signage containing the following text:

ALL PERSONS ENTERING OR REMAINING IN THESE PREMISES SHALL WEAR A MASK OR FACE COVERING WHICH COVERS THE NOSE, MOUTH AND CHIN AS REQUIRED UNDER CITY OF LONDON BY-LAW PH-20.

The following persons are exempt from the requirement to wear a Mask or Face Covering:

- (a) children under twelve years of age;**
- (b) Persons with an underlying medical condition or disability which inhibits their ability to wear a Face Covering;**
- (c) Persons who are unable to place or remove a Face Covering without assistance;**
- (d) employees or agents of the Establishment within an area designated for them and not publically accessible, or in an area separated by a physical barrier;**
- (e) Persons who are reasonably accommodated by not wearing a Face Covering in accordance with the Ontario Human Rights Code;**
- (f) Persons in an Establishment, while receiving services involving the face and requiring the removal of the Face Covering, including but not limited to eating or drinking, or while actively engaging in an athletic or fitness activity.**

Please be respectful of the rights of individuals who are exempt from wearing a mask in conformity with the exemptions provided in the By-law.

To report an incidence of non-compliance with the By-law, contact covidorderconcerns@london.ca or (519) 661-4660

General Obligations and Prohibitions – All Persons

10. Every Person shall wear a Face Covering before entering and while inside an Establishment.

11. Every Person shall ensure that any Person under their care, including children, comply with section 10 of this By-law.

12. Notwithstanding sections 10 and 11 of this By-law, the following Persons shall be exempt from wearing a Face Covering:

- (a) Persons with an underlying medical condition or disability which inhibits their ability to wear a Face Covering;
- (b) Persons who are unable to place or remove a Face Covering without assistance;
- (c) employees or agents of the Establishment within an area designated for them and not publically accessible, or in an area separated by a physical barrier;
- (d) Persons who are reasonably accommodated by not wearing a Face Covering in accordance with the Ontario Human Rights Code;
- (e) Persons in an Establishment, while receiving services involving the face and requiring the removal of the Face Covering, including but not limited to eating or drinking, or while actively engaging in an athletic or fitness activity; and,
- (f) police, fire, or paramedics where it may interfere with the performance of their duties.

13. No Person shall be required to provide proof of any of the exemptions set out in section 12.

Administration, Inspection, and Enforcement

14. The City's Municipal Law Enforcement Office is responsible for the administration and enforcement of this By-law and may appoint delegates or assign duties to City employees for those purposes.

15. The provisions of this By-law may be enforced by an Officer.

16. An Officer may enter on land or buildings at any reasonable time and in accordance with the conditions set out in sections 435 and 437 of the *Municipal Act, 2001* for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) an order or other requirement made under this By-law; or
- (b) an order made under section 431 of the *Municipal Act, 2001*.

17. An Officer, for the purposes of the inspection under section 20 and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*, may:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information in writing or otherwise as required by an Officer from any person concerning a matter related to the inspection; and,
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

18. An Officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001*, in accordance with the conditions set out in that section, where they have been prevented or is likely to be prevented from carrying out an inspection under section 16.

19. Any Person or Operator who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine and such other penalties as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.

20. Upon conviction of an offence under this By-law, a person or operator shall be liable to a fine in accordance with section 429 of the *Municipal Act, 2001*, as follows:

- (a) a minimum of \$500 and a maximum fine of \$100,000.00;
- (b) in the case of a continuing offence, for each day or part of a day that the offence

continues, a minimum of \$500 and a maximum fine of \$10,000.00, and the total of all daily fines for the offence is not limited to \$100,000.00; and
(c) in the case of a multiple offence, for each offence included in the multiple offence, a minimum fine of \$500, and a maximum fine of \$10,000.00, and the total of all fines for each included offence is not limited to \$100,000.00.

21. Where a person or operator has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:

- (a) prohibiting the continuation or repetition of the offence by the person or operator convicted; and,
- (b) requiring the person or operator convicted to correct the contravention in the manner and within the period that the court considers appropriate.

22. An offence under this By-law may constitute a continuing offence or a multiple offence as set out in the *Municipal Act, 2001*.

General

23. This By-law shall not be interpreted so as to conflict with a provincial or federal statute, regulation or instrument of a legislative nature, including an order made under the EMCPA or the HPPA.

24. If a court of competent jurisdiction declares any provision or part of a provision of this By-law invalid, the provision or part of a provision is deemed severable from this By-law and it is the intention of Council that the remainder of this By-law shall continue to be of full force and effect.

25. This By-law comes into force and effect on the day it is passed and shall remain in effect until December 31, 2020.

PASSED in Open Council on July 21, 2020.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading –