



REPORT FOR ACTION

Supplementary Report on Additional Measures Necessary for COVID-19 Response

Date: July 28, 2020

To: City Council

From: Medical Officer of Health and City Solicitor

Wards: All

SUMMARY

As the City of Toronto approaches Stage 3 of reopening and continues to respond to the COVID-19 pandemic, it is imperative that appropriate measures be in place to mitigate the potential resurgence of COVID-19 cases.

This report recommends additional actions be taken that are necessary to mitigate the ongoing risk of COVID-19 transmission. In particular, this report recommends additional measures be applied to food and drink establishments as they continue to reopen, including requirements to reinforce physical distancing and limit capacity and table size, maintain customer logs to be used by Toronto Public Health for contact tracing purposes, and implement screening of staff. The measures will apply subject to any conflict with the provincial emergency orders applicable to Toronto.

This report also recommends that a temporary By-law be enacted requiring apartment buildings and condominiums to implement mask or face covering policies and signage. Finally, this report recommends the extension of the physical distancing By-laws currently in place in parks and public squares to ensure that they remain in effect until the next Council meeting.

RECOMMENDATIONS

The Medical Officer of Health and the City Solicitor recommends that:

1. City Council amend Toronto Municipal Code, Chapter 545, Licensing, to add temporary provisions requiring the operators of establishments that serve food or drink in either indoor or outdoor areas, to implement additional measures necessary to decrease the risk of COVID-19 transmission, as set out in Appendix A to this report, such licensed establishments to include: Eating or Drinking Establishments (includes restaurants, cafes, bars and pubs with eat-in or take-out food), Entertainment

Establishments/Nightclubs, Adult Entertainment Clubs, Places of Amusement (includes bowling alleys), and Billiard Halls.

2. City Council enact a temporary By-law requiring the owners or operators of apartment buildings and condominium corporations to have a policy to ensure masks or face coverings be worn by individuals in the enclosed common spaces, such as lobbies, elevators and laundry rooms, of their apartment building or condominium building respectively, subject to appropriate exemptions for individuals who are unable to wear a mask or face covering for medical reasons, children under two years old, and other reasonable accommodations; the policy shall include corresponding signage and training for staff on the requirements of the By-law.

3. City Council direct that the amendments and By-law in Recommendations 1 and 2 come into force one week after being enacted, and expire at 12:01 a.m. on the first day after the completion of the first Council meeting after the summer recess (currently scheduled for September 30 and October 1, 2020), unless extended by Council.

4. City Council amend Physical Distancing By-laws 322-2020 and 323-2020, making minor modifications to align with updated provincial orders and guidance, and authorizing a further extension of the By-laws to provide that they remain in effect until the end of the first Council meeting after the summer recess (currently scheduled for September 30 and October 1, 2020), unless extended by Council.

5. City Council authorize the City Solicitor to introduce the necessary Bills and apply for set fines to give effect to City Council's decision and City Council authorize the City Solicitor to make any necessary clarifications, refinements, minor modifications, or technical amendments as may be identified by the City Solicitor, in consultation with the Medical Officer of Health, in order to give best effect to the Medical Officer of Health's recommendations for the protection of the public as described in this report.

FINANCIAL IMPACT

There are no financial impacts arising from the receipt of this report.

DECISION HISTORY

On April 2, the Mayor exercised authority delegated to him under s. 59-61(A) of City of Toronto Municipal Code Chapter 59, Emergency Management to enact City of Toronto Physical Distancing By-laws 322-2020 and 323-2020.

<https://www.toronto.ca/legdocs/bylaws/2020/law0342.pdf>

On April 30, 2020, City Council amended Physical Distancing By-laws 322-2020 and 323-2020, authorizing an extension of the By-laws to provide that they remain in effect until the municipal emergency has been declared as terminated, or until Council rescinds those By-laws, whichever is first.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC20.3>

At its May 28, 2020 Special meeting, City Council requested the City Manager, in consultation with the City Solicitor, the Medical Officer of Health and other City Officials as required, to report to the June 29 and 30, 2020 meeting of City Council on the ability of the City to require the wearing of masks or face coverings by the public within permitted businesses, offices and public gathering places so as to ensure that the re-opening of permitted businesses and activities is done in a manner which protects the health and safety of the public.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC21.1>

At its June 29 and 30, 2020 meeting, City Council considered a report from the City Manager on COVID-19 Actions and Council Directions, a supplementary report from the City Solicitor on Non-Medical Mask Regulation and Guidelines (CC22.3a) and a supplementary report from the Medical Officer of Health on the Use of Masks or Face Coverings in Enclosed Public Spaces (CC22.3b). At that meeting, Council also enacted By-law [541-2020](#) to impose temporary regulations requiring the wearing of masks or other face coverings within enclosed public spaces and requested that the Medical Officer of Health review the recommendations regarding masks and face coverings on a monthly basis, and report if any changes are required before September 30th, 2020.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.CC22.3>

COMMENTS

COVID-19 Risks as Reopening Continues

At present the COVID-19 Dashboard shows that the case count for Toronto, after declining slowly, has reached a plateau at a lower level. Still, as of July 27, 2020, the seven-day moving average for new COVID-19 cases reported each day is 29, demonstrating that community spread of COVID-19 continues. An increase in cases has been identified, however, in other parts of Ontario, and there may be further increases as the results of entering Stage 3 of the provincial recovery framework in those areas are seen. British Columbia and Alberta have also seen significant increases recently. There have been reports of large numbers of people gathering without distancing on patios and on beaches during the last several weekends. Toronto has also seen an increase in the cases from those aged 20 to 39 years compared to earlier in the outbreak.

At this time, there are concerns that the opportunity for more close contact especially in indoor settings will result in more transmission of the virus. Although the risk of a minor increase in cases must be weighed against the economic and social benefits of reopening, there is also a real possibility of a resurgence involving a succession of large outbreaks. This might exceed the capacity of the case and contact management teams.

As Toronto continues to reopen, it is possible for the prevalence of COVID-19 to rise to challenging levels at the same time as the return of students to schools and post-secondary institutions, to be followed shortly thereafter by the respiratory virus season.

It is therefore essential to ensure that the conditions prevailing in the context of reopening will not entail an undue risk of outbreaks.

Food and Drink Establishments

The strongest risk is that arising in food and drink establishments, which provide several factors known to be associated with high risk of transmission - close, prolonged contact with many people in a closed environment. This is borne out by the reports of multiple cases arising from contact in bars in Quebec, Alberta, many US states and South Korea.

Following a review of the Province's Stage 3 order, O. Reg 364/20 issued on July 15, 2020 under the Emergency Management and Civil Protection Act (and continued under the Reopening Ontario Act, 2020), we have identified the need to consider additional measures to apply to the reopening of food and drink establishments in Toronto.

Based on input from Toronto Public Health, as well as Legal Services and Municipal Licensing and Standards, Mayor Tory sent a letter to Premier Ford on July 18, 2020, requesting that six measures be implemented as part of the Stage 3 order that would apply to the City of Toronto and other large jurisdictions. The requests were:

1. The provisions that apply to food and drink establishments (Schedule 2, section 1(1)2 in O. Reg 364/20) should be amended to require that patrons be seated at all times unless entering, exiting, travelling to and from the washroom, or paying, in addition to while eating and drinking.
2. The amended Stage 3 order should include the following requirement: operators of food and drink establishments where patrons will be seated shall,
 - a. Maintain a client log with a name and contact information for one person, minimum, in each party along with the date, check in and check out times, and table number
 - b. Store these logs for a period of 30 days, after which the information can be destroyed
 - c. Permit local public health units to access this information when tracing contacts of someone with COVID-19 who was a patron at the restaurant/bar or otherwise for public health purposes pursuant to the Health Protection and Promotion Act.
3. In addition to the current capacity limits set out in Schedule 1, section 3 of O Reg 364/20, food and drink establishments should be subject to additional capacity restrictions that limit occupancy to ensure that physical distancing can be easily maintained by all patrons. There is a precedent for this in O. Reg. 52/20 pertaining to wedding and funeral services.
4. The amended Stage 3 order should implement early closure times (e.g. midnight) for food and drink establishments similar to what was done in the City of Montreal.
5. The amended Stage 3 order should require operators of food and drink establishments to implement COVID-19 screening protocols for staff, such as completion of a screening questionnaire, prior to the commencement of their shifts.

6. Mandatory face covering requirements for staff and patrons should be clearly outlined in the amended Stage 3 order.

Municipal Response to Food and Drink Establishments

At this time, the Province has not incorporated these measures into its emergency orders. Accordingly, Legal Services has undertaken a review to determine the City's ability to implement these measures at a municipal level.

Should provincial orders come into effect that address the recommendations made in this report, the provincial orders will take precedence to the extent of any conflict, including if the measures set out are more restrictive than the City's by-laws. In the event of such conflict, enforcement would take place under the applicable provincial order, and not the City by-law.

With respect to Item 4, the City's authority to require business establishments to be closed to the public under the City of Toronto Act, 2006 does not extend to those that provide goods or services in the form of or in connection with prepared meals or that operate under the authority of a liquor licence. The Province of Ontario would have to implement an early closure time on establishments that serve food or drink, as the City does not have this authority.

With respect to Item 6, additional action is not necessary on a municipal level, given that the City's current mask By-law applies to these establishments.

Items 1, 2, 3, and 5 can be added as temporary provisions of Toronto Municipal Code, Chapter 545, Licensing, to regulate the operators of establishments that serve food or drink in either indoor or outdoor areas. These establishments would comprise the following categories of businesses licensed under Chapter 545: Eating or Drinking Establishments (includes restaurants, cafes, bars and pubs with eat-in or take-out food), Entertainment Establishments/Nightclubs, Adult Entertainment Clubs, Places of Amusement (includes bowling alleys), and Billiard Halls.

This report recommends amendments that would accordingly require operators to:

- Ensure that customers are seated at all times in establishments when being served or consuming food or drink at the establishment, except when the customers are entering or exiting the establishment, travelling to and from its washrooms, or paying;
- Maintain a customer log that: records the name and contact information of at least one person from each party that is served or consumes food or drink at the establishment, including the date they attended, the party's check in and check out times, and the table number or, if there is no table number, the location in the establishment where the party was seated; is stored securely for 30 days after which it is destroyed; and is made available to Public Health for the purpose of COVID-19 contact tracing if required or other public health purposes in accordance with the Health Protection and Promotion Act;

- Subject to the requirement that capacity is limited such that each person can maintain a 2 metre physical distance from others, restrict indoor capacity in food or drink establishments in any event to not more than 100 persons;
- Ensure that no more than 10 persons are seated at each table in an indoor and outdoor area; and

Establish a COVID-19 screening protocol to be completed by staff before they start a shift consisting of at least a screening questionnaire.

The same tools would be available to enforce these provisions as for other provisions of the City's licensing by-laws. This includes laying and prosecuting charges, which may result in a fine on conviction, or seeking to suspend, revoke, or place conditions on an operator's business licence.

There is strong public health rationale to implement these measures, which are contained within or consistent with COVID-19 guidance currently provided by Toronto Public Health. Bars, restaurants, and other food or drink establishments are naturally sociable places, but physical distancing must be maintained and mingling discouraged. Consumption of alcohol can contribute to the risk of abandoning physical distancing. These behaviours are less likely to occur if patrons remain seated. The wording of the current provincial Stage 3 order, O. Reg 364/20 requires being seated while eating and drinking, but does not preclude wandering around at other times.

Further, recording the name and a contact number/e-mail address for at least one member of each party and keeping this in a log, together with the date and time of the visit and the table number, all for 30 days, and providing this information to Toronto Public Health upon request would greatly enhance the efficacy of contact tracing at a time when this function is likely to be under pressure. Timely notification of contacts is essential.

With respect to capacity, the current provincial orders do not presently impose indoor capacity limits for food or drink establishments in the course of their regular business, or limits on table size. However, there is a strong public health rationale for limiting numbers in this manner.

COVID-19 is primarily spread from close contact with the respiratory droplets of a person who is contagious when they talk, cough or sneeze. Indoor settings with crowds of people pose challenges with respect to mitigating the spread of COVID-19, and performing public health follow-up.

Contact tracing in large gatherings can be difficult. To notify patrons who may have been exposed to COVID-19 in a restaurant in a timely way requires ensuring that there are capacity limits in the restaurant. There have been instances of outbreaks occurring in bars in which hundreds of contacts were identified. Such numbers could severely strain the capacity of Toronto Public Health's contact tracing teams and may lead to secondary cases.

Additionally, there have been reports of super spreaders who are very contagious and, if in a crowded setting, can spread the virus to many people. Speaking loudly or shouting, as may be necessary in crowded spaces and large tables, may aerosolize droplets in the air for a longer period before they fall to the ground, further resulting in the spread of COVID-19. Larger numbers of indoor patrons can also result in increased crowds and gathering outdoors upon leaving the establishment, which may be difficult to manage.

Further, while masks will be required in restaurants, they can be removed while eating or drinking, and so the protection offered by masks will be reduced, thus necessitating these additional public health mitigation measures.

Finally, the implementation of a screening questionnaire is consistent with Toronto Public Health's current guidance for restaurants and bars, which requests establishments to implement active screening of staff through the completion of a symptom questionnaire prior to the start of each shift. Implementation of this measure would mitigate the risk of COVID-19 being spread through ill staff.

Mask or Face Covering Requirements in Apartment Buildings and Condominiums

City of Toronto By-law 541-2020 requiring operators to have mask or face covering policies in indoor public spaces came into effect on July 7, 2020.

Toronto Public Health has also strongly recommended mask use in the common areas of condominiums and apartments, however there are concerns that this recommendation is not being consistently observed or adhered to.

On July 22, 2020, Mayor Tory wrote a letter to the Greater Toronto Apartment Association to urge apartment buildings and condominiums to adopt a policy requiring the use of mask or face covering in common areas.

Given the potential to see increased compliance through the use of a bylaw to support this public health measure, following from observations in other jurisdictions and more recently with respect to the City's mask by-law, it is recommended that a by-law be passed requiring apartments and condominiums to adopt a policy on mask or face covering usage, with requirements and exemptions in line with those set out in By-law 541-2020. Unlike business operators, landlords and condominium corporations may not refuse entry to residents who are not wearing masks or face coverings, although they may have other remedies available. In any case, the policy and accompanying signage requirements will ensure the importance of wearing masks or face coverings is conveyed to all those using indoor common areas.

Physical Distancing By-laws

While Toronto has made significant gains to reduce the spread of COVID-19 in the City and flatten the curve, there continue to be new cases every day. As Toronto continues to progress through the Stages in the Provincial Recovery Framework, ensuring people keep a physical distance from others who are not in their household or social circle will be valuable to reduce the spread of COVID-19 while additional parts of society continue

to open up. We will need to maintain a physical distance in indoor and outdoor spaces, even if we are wearing masks, to further mitigate the risk.

The City's Physical Distancing By-laws are currently set to expire on the termination of the municipal emergency. To ensure that the Physical Distancing By-laws remain in effect regardless of any provincial or municipal action regarding the declaration of emergency, it is recommended that the Physical Distancing By-laws applicable to City parks and public squares be extended until the next Council meeting, with minor modifications to be consistent with Provincial orders related to households and social circles.

Municipal Licensing and Standards has been consulted in the preparation of this report.

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ATTACHMENTS

Appendix A - Amendments to Chapter 545, Licensing