

Subject: Review of Face Covering Bylaw No. 20/024

APPROVALS:

Jamie Doyle

Director

Chief Administrative Officer

Recommended Motion:

THAT the Face Covering Bylaw, No. 20/024, be left in its current form as approved on October 14, 2020.

Summary:

On October 14, 2020, Council passed the *Face Covering Bylaw* No. 20/024. Section 19 of the Bylaw requires that it be reviewed by Council no later than January 31, 2021. The Bylaw's provisions were delayed until such time as the number of active cases of COVID-19 infections in the Municipality was reported by Alberta Health Services to be fifty (50) or more, which did not occur until October 26, 2020. The Bylaw further required that the number of active cases be reviewed at thirty (30) day intervals, which occurred on November 26 and December 27, and was found to have remained above the fifty (50) active cases threshold on both occasions. In the interim, the Province of Alberta introduced CMOH Order 42-2020, effective December 13, 2020, which requires all persons in Alberta to wear a face mask at all times while attending an indoor public place.

Background:

The first case of the COVID-19 was detected in Alberta on March 5, 2020. As of January 11, 2021, there have been 112,743 confirmed cases in the province, with 13,320 active cases and 1,345 deaths in the province directly attributed to COVID-19. As of January 13, 2021, there are 250 active cases in the RMWB, and 3 deaths attributed to COVID-19. The table below illustrates the active cases at the end of each month in the RMWB and in Alberta since March 2020.

Active Cases	Alberta	RMWB
March 31, 2020	566	3

April 23, 2020	2295	9
May 31, 2020	584	4
June 30, 2020	547	28
July 31, 2020	1,408	13
August 31, 2020	1,370	28
September 30, 2020	1,596	49
October 31, 2020	5,172	51
November 30, 2020	16,628	233
December 31, 2020	14,555	219
January 13, 2021	~13, 320	250

One of the recommended means of mitigating the spread of COVID-19 has been the widespread use of face coverings while in public areas. The federal government first began recommending the use of face coverings in April 2020. Quebec adopted the first province-wide face covering requirement on July 18, 2020. Since then, every province and the Yukon have implemented a provincial or territory wide face covering requirement. Edmonton and Calgary introduced municipal face covering bylaws on August 1, 2020, and the RMWB implemented its own bylaw on October 14, 2020. Alberta was the last province to make face coverings mandatory provincial-wide on December 13, 2020.

RMWB Bylaw Status:

The RMWB passed the *Face Covering Bylaw No. 20/024* on October 14, 2020. This required all people in the RMWB to wear a face covering while in any indoor public place or public vehicle, with exceptions for:

- (a) children under 5 years of age;

- (b) persons who are unable to place, use, or remove a face covering safely without assistance;
- (c) persons unable to wear a face covering due to a mental or physical limitation, or on the basis of a protected ground under the Alberta *Human Rights Act*;
- (d) persons who are caregiving for or accompanying a person with a disability where wearing a face covering would hinder that caregiving or assistance; or
- (e) persons who have temporarily removed their face covering in a public place:
 - i. to provide or receive a service;
 - ii. while consuming food or drink in a designated seating area;
 - iii. while engaged in an athletic or fitness activity; or
 - iv. while attending or leading a religious or worship activity.

The Bylaw also requires employers, business operators and proprietors to prominently display a prescribed sign such that it is visible to all persons entering the indoor place detailing the face covering requirements.

The *Face Covering Bylaw* contains two reviewing provisions:

- the Bylaw requires a Council review no later than January 31, 2021.
- the Bylaw effectively requires that the number of active cases be reviewed every 30 days. If at the end of each 30-day period the number of active cases remains at 50 or more, then the face covering requirements of the Bylaw remain in effect.

The 30-day review provision does not apply to the Bylaw's application to persons using public vehicles (buses and taxis).

As of January 13, 2021, the RMWB has not issued a violation ticket under the *Face Covering Bylaw*. There have, however, been 53 investigations opened pursuant to the Bylaw, which have been principally addressed by public education.

Provincial COVID-19 Measures:

The Province of Alberta uses “Chief Medical Officer of Health Orders” or “CMOH Orders” to implement its various COVID-19 mitigation measures. Part 5 of CMOH Order 42-2020 sets out the current provincial face covering requirements. The Order’s core face covering requirement is that “a person must wear a face mask at all times while attending an indoor public place”. The Order also sets out a list of exceptions. The notable differences between the exceptions in the RMWB *Face Covering Bylaw* and CMOH Order 42-2020 are that:

- (a) The Order excepts children under the age of 2 while our Bylaw excepts

children under the age of 5. Here the Order is more restrictive.

- (b) The Order excepts persons consuming food or drink in an indoor public place whereas the Bylaw excepts from mask wearing only where the consumption is in a "designated seating area". In this example, the Bylaw is more restrictive as it makes it clear that walking about while sipping a coffee is prohibited.
- (c) The Order does not exempt persons attending or leading a religious or worship activity, while the Bylaw does. Here, the provincial requirement is more rigorous and is therefore more restrictive.
- (d) The Order exempts those persons providing an emergency or medical purpose, while the Bylaw does not. In this case, the Bylaw is more limiting.

The differences between CMOH Order 42-2020 and the *Face Covering* Bylaw, or the fact that the two address the same subject matter, does not create a legal conflict. A municipal bylaw is only invalid if it creates a situation where a person could not lawfully comply with both laws, or if the municipal bylaw thwarts the "scheme" of the provincial law. Currently, both the Bylaw and the CMOH Order either overlap or slightly extend the face covering exceptions, but at no point do they directly contradict each other or "thwart" one another in any substantial manner. Therefore, their co-existence is not a legal problem.

An advantage of having the Bylaw in addition to the CMOH Order is that all of the RMWB's bylaw enforcement officers may enforce the municipal bylaw. Only officers with the "Community Peace Officer" designation may enforce provincial laws such as a CMOH Order (depending on the authorization provided by the provincial government). The RMWB's Community Peace Officers are authorized to enforce the *Public Health Act*, which is the provincial statute which formally empowers the CMOH Orders. However, only 10 of the RMWB's 20 bylaw enforcement officers currently have this designation.

The provincial restrictions will be in place until rescinded by the Chief Medical Officer of Health. However, the Government of Alberta has indicated it expects these restrictions will be in place until at least January 21, 2021. Individuals or businesses who violate CMOH Order 42-2020 or other existing public health orders may be fined \$1,000 per offence, and if prosecuted successfully for contravening a public health order, up to \$100,000 for a first offence and \$500,000 for a subsequent offence.

Alternatives:

- 1. Leave the Bylaw in its current form, as approved. The Bylaw will continue to apply in the Region. Council has the option, at any time, to have the Bylaw brought back for reconsideration.
- 2. Direct Administration to bring forward an amendment to Bylaw No. 20/024 should Council desire amendments.

3. Direct Administration to repeal Bylaw No. 20/024 in its entirety.

Strategic Priorities:

Responsible Government

Attachments:

1. Face Covering Bylaw No. 20/024