

City of North Bay Report to Council

Report No: CORP-2021-105

Date: September 23, 2021

Originator: Wanda Trottier

Business Unit:

Department:

Corporate Services

Human Resources Department

Subject: Workplace COVID-19 Vaccination and Testing Policy Options

Closed Session: yes ☐ no ☒

Recommendation

Effective November 29, 2021, mandate employees to provide proof of a full vaccination status, exempting those with bona fide medical or religious reasons. Those employees who provide proof of an exempted ground will be subject to provide proof of a negative COVID test/Rapid Antigen Testing at regular intervals of not greater than every 72 hours.

Council further directs administration to prepare and implement a detailed workplace policy with respect to mandatory vaccinations for employees.

Background

On September 7, 2021, the Council of the City of North Bay passed a motion that Administration:

- (i) be directed and explore options for and implement a workplace policy with respect to COVID-19 vaccinations and testing for staff;
- (ii) explore additional measures and policies to ensure safe in-person interactions between staff and citizens; and
- (iii) report back to Council with options by September 30, 2021.

Administration believes that a temporary COVID-19 vaccinations and testing policy is required to reduce the risks of the hazards of COVID-19. Any policy developed and implemented will require flexibility to be amended as new public health directives and/or provincial or federal government legislation, regulations and/or orders are created. Any such directives, legislation, regulations or orders shall take precedence.

Dr. Jim Chirico, Medical Officer of Health for the North Bay Parry Sound District Health Unit, supports the implementation of the City of North Bay's COVID-19 Vaccine Policy stating that a "workplace vaccination policy is an important measure to promote the safety of employees and the public and demonstrates the commitment of the City of North Bay to keep residents safe".

After reviewing of Public Health information and resources, directives and guidelines; consulting with other municipalities and advice from legal counsel, any new policy should reiterate the Corporation of the City of North Bay's commitment to the health and safety of its staff and citizens by encouraging and supporting employees' vaccination by the provision of education sessions regarding the benefits of vaccine, and by coordinating vaccine clinics(s) and/or facilitating access to vaccine clinics.

At the time of writing this report, the percentage of the population fully vaccinated in the North Bay Parry Sound District Health Unit is 77.2%. Projecting this vaccination rate on our staff, we can assume that approximately 404 employees are fully vaccinated and 119 are not.

Financial/Legal Implications

Financial

Administration has confirmed its eligibility of a Provincial program which provide free Rapid Antigen screening kits.

The Occupational Health and Safety Act

The City has an obligation under the Occupational Health and Safety Act to take every precaution reasonable in the circumstances in order to protect employees.

The Ontario Human Rights Code

The OHRC released a policy statement that recognizes that while, "receiving a COVID-19 vaccine remains voluntary, the OHRC takes the position that mandating and requiring proof of vaccination to protect people at work or when receiving services is generally permissible under the *Human Rights Code* (Code) as long as protections are put in place to make sure people who are unable to be vaccinated for Code-related reasons are reasonably accommodated. This applies to all organizations.

Upholding individual human rights while trying to collectively protect the general public has been a challenge throughout the pandemic. Organizations must attempt to balance the rights of people who have not been vaccinated due to a Code-protected ground, such as disability, while ensuring individual and collective rights to health and safety.

Some people are not able to receive the COVID-19 vaccine for medical or disability-related reasons. Under the *Code*, organizations have a duty to accommodate them, unless it would significantly interfere with people's health and safety."

Privacy

Inquiries about an employee's immunization status is subject to provincial privacy legislation such as the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). MFIPPA defines "personal information" to include information relating to the medical history of an individual, which would likely be interpreted to include immunization status. Such request of information is permitted by law, provided it is requested for bona fide work-related reasons and the information is secured and stored appropriately.

Collective Agreements

Human Resources has been in contact with Union Leaders to advise them that the City is considering implementing a COVID-19 vaccination policy for all employees. Further consultation with our union partners may be required given the implementation of a policy may be considered a change to a term and condition of employment.

Corporate Strategic Plan

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|---|---|
| <input type="checkbox"/> Natural North and Near | <input type="checkbox"/> Economic Prosperity |
| <input type="checkbox"/> Affordable Balanced Growth | <input checked="" type="checkbox"/> Spirited Safe Community |
| <input checked="" type="checkbox"/> Responsible and Responsive Government | |

Specific Objectives

Options Analysis

Option 1: Do not mandate employees be fully vaccinated against COVID-19, nor tested for COVID-19. While the City continues to observe and enforce Public Health Measures such as physical distancing, hand hygiene, masking and remote work options (for those employees in roles that allow for this), this option will not result in what Council is seeking as "an increased sense of security for our staff and citizens in their daily interactions" due to: 1) the rising numbers of cases related to the Delta variant; 2) the school year having started which creates greater frequency and duration of personal interactions and exposure, as well as; 3) the current inability for children under the age of twelve (12) to be vaccinated.

This option is not recommended.

Option 2: Mandate employees provide proof of a negative COVID-19 test at

regular interval of not greater than every 72 hours, unless proof of full vaccination status is provided.

While the opportunity for staff to present proof of full immunization status to be exempted from Rapid Antigen testing is voluntary, it would require the City to collect and store personal health information. This option creates challenge in terms of the sourcing and administration of tests and discerning on a frequent basis employees' eligibility to enter the workplace.

This option is not recommended.

Option 3: Effective November 29, 2021, mandate employees to provide proof of a full vaccination status, exempting those with bona fide medical or religious reasons. Those employees who provide proof of an exempted ground will be subject to provide proof of a negative COVID test/Rapid Antigen Testing at regular intervals of not greater than every 72 hours.

Council further directs administration to prepare and implement a detailed workplace policy with respect to mandatory vaccinations for employees.

This option requires the City to collect and store personal health information and could be met with a challenge to the Collective Agreement, specifically as to whether it's a reasonable exercise of management rights given the other public health measures currently being observed and enforced or under Common Law as Constructive Dismissal due to what might be perceived as a fundamental change to a term and condition of employment.

There is no case law at this time to address this particular situation.

Several municipalities have implemented a mandatory vaccination policy, (including Sudbury, Timmins, Ottawa, Windsor, Hamilton, East Gwillimbury, and Toronto), with allowances (Rapid Antigen testing/proof of negative COVID-19 test) for exemptions based on bona fide medical or religious reasons.

This is the recommended option.

Recommended Option

Effective November 29, 2021, mandate employees to provide proof of a full vaccination status, exempting those with bona fide medical or religious reasons. Those employees who provide proof of an exempted ground will be subject to provide proof of a negative COVID test/Rapid Antigen Testing at regular intervals of not greater than every 72 hours.

Council further directs administration to prepare a detailed workplace policy with respect to implementation of mandatory vaccination policy.

Respectfully submitted,

Name: Wanda Trottier, CHRL

Title: Director, Human Resources

I concur with this report and recommendation

Name Peter E.G. Leckie, B.A. (Hons.), LL.B.

Title: City Solicitor

Name David Euler, P.Eng., PMP

Title: Chief Administrative Officer

Personnel designated for continuance:

Wanda Trottier, CHRL

Director, Human Resources