

## **The Corporation of the City of Burlington**

### **City of Burlington By-law 17-2020**

#### **A by-law to Promote and Regulate Physical Distancing During the COVID-19 Pandemic State of Emergency BB-03-20**

**WHEREAS** on March 11, 2020 the World Health Organization declared a worldwide pandemic regarding the Novel Coronavirus 19 ("COVID-19 Pandemic");

**AND WHEREAS** on March 17, 2020, the Province of Ontario declared an emergency relating to the COVID-19 Pandemic under the provisions of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c.E.9 ("*Emergency Management Act*");

**AND WHEREAS** section 4 of the *Emergency Management Act* provides that the head of council of a municipality may declare that an emergency exists in the municipality or in any part thereof and may take such action and make such orders as they consider necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area;

**AND WHEREAS** on March 21, 2020 an emergency was declared by the Mayor of the City of Burlington, under the provisions of the *Emergency Management Act*, relating to the COVID-19 Pandemic;

**AND WHEREAS** the Provincial Government's modelling and forecast projects that the State of Emergency will last months and will result in a severe and long-term challenge to the health care system;

**AND WHEREAS** the Council of the City of Burlington considers the protection of health and safety of the public to be a paramount concern, and has suspended the operations of all City facilities, other than those deemed essential for the welfare of the citizens of the City of Burlington, during the COVID-19 emergency;

**AND WHEREAS** pursuant to O. Reg. 114/20 and under a Ministerial designation under the *Provincial Offences Act*, the Province of Ontario granted power to municipal law enforcement officers to enforce Orders issued by the Province under the *Emergency Management Act*;

**AND WHEREAS** the Medical Officer of Health recommended physical distancing measures to prevent the spread of COVID-19, including maintaining a distance of at least 2 metres from other individuals who are not members of the same household;

**AND WHEREAS** The Corporation of the City of Burlington considers it necessary to enact a regulation to support the intent and purpose of the Provincial Orders made under the

*Emergency Management Act* in order to protect property and the health, safety and welfare of the citizens of the City of Burlington, by prohibiting certain activities and regulating physical distancing during the COVID-19 Pandemic Emergency;

**AND WHEREAS** sections 8, 9 and 11 of the *Municipal Act, 2001* authorize the City of Burlington to pass by-laws necessary and desirable for municipal purposes, and in particular, paragraphs 5, 6, and 8 of subsection 11(2) authorize by-laws respecting public assets of the municipality, the economic, social and environmental well-being of City, the health, safety and well-being of persons, the protection of persons and property;

**AND WHEREAS** section 425 of the *Municipal Act, 2001* provides that any person who contravenes any by-law of the municipality is guilty of an offence;

**AND WHEREAS** section 444 of the *Municipal Act, 2001* provides that a municipality may make an order requiring a person who contravened a by-law or who 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 Council of the Corporation of the City of Burlington hereby enacts as follows:

## **PART 1: DEFINITIONS**

### 1. In this By-law:

"**By-law**" means this By-law;

"**City**" means The Corporation of the City of Burlington;

"**COVID-19 Emergency**" means the period of time commencing upon the date of passing of this By-law until the declaration of emergency made by the Head of Council under sections 4 of the *Emergency Management Act* in relation to the COVID-19 Pandemic has been terminated.

"**Emergency Management Act**" means the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E. 9

"**Head of Council**" means the Mayor of the City;

"**Municipal Act, 2001**" means the *Municipal Act, 2001*, S.O. 2001, c. 25

"**Officer**" means:

- (a) a police officer;
- (b) a person appointed by Council of the City as a municipal law enforcement officer;
- (c) a by-law enforcement officer of the City while in the discharge of their duties;  
or
- (d) an officer, employee or agent of the City whose responsibilities include the enforcement of this By-law.

**"Person"** or any expression referring to a person, means an individual of any age;

**"Provincial Offences Act"** means the *Provincial Offences Act*, R.S.O. 1990, c.P. 33

**"Public Property"** means any land, premises or buildings owned, managed, or maintained by the City and, for greater certainty, shall include highways, sidewalks, streets, any portion of a road allowance, parking lots, trails, swimming pools, recreation centers, parks and playgrounds.

## **PART 2: APPLICATION OF THIS BY-LAW**

- 2. This By-law applies to all Public Property.
- 3. Despite 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 a Public Property, and such Person may be within 2 metres of another Person who does not reside with them in a single household, 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.
- 4. 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 *Emergency Management Act* order and this By-law, the federal or provincial legislation or *Emergency Management Act* order prevails.

## **PART 3: GENERAL PROHIBITIONS**

- 5. While on Public Property, no Person shall stand less than 2 metre distance to any other Person that does not reside with them in a single household.

6. While on Public Property, no Person shall permit a child under the age of 16 to stand less than a 2 metre distance from any other Person that does not reside with them in a single household.

## **PART 4: ENFORCEMENT AND INSPECTION**

### **General**

7. This By-law may be enforced by an Officer.

### **Entry and Inspections**

8. An Officer may enter on land 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*,
9. An Officer, for the purposes of the inspection under section 8 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.
10. 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 8.

### **Orders**

- 11(1) If an Officer is satisfied that a contravention of this By-law has occurred, they may make an order requiring the Person who contravened the By-law or who has caused or permitted the contravention to discontinue the contravening

activity.

- (2) An Order under subsection 11(1) may require the Person who contravened the By-law to leave any Public Property where the contravention occurred.

12. An order under section 11 may be given verbally or in writing.

13(1) An order that is made in writing shall set out:

- a. the reasonable particulars of the contravention and the location on which the contravention occurred; and,
- b. the nature of the action that must be taken to achieve compliance and the date and time by which there must be compliance with the order.

- (2) An order in writing made under this section shall be served personally to the Person to whom it is directed, or served by Registered Mail to the last known address of the Person which shall be deemed to be received on the fifth day after mailing.

## **PART 5: PENALTIES**

14. Any Person who contravenes any provision of this By-law or an Order issued pursuant to this By-law is guilty of an offence.
15. All contraventions of any provision of this By-law or an Order issued pursuant to this By-law are designated as multiple offences and continuing offences pursuant to subsections 429(2) and (5) of the *Municipal Act, 2001*.
16. Upon conviction of an offence under this By-law, a Person shall be liable to a fine in accordance with section 429 of the *Municipal Act, 2001*, as follows:
- a. A minimum fine of \$500.00 and the 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 fine of \$500.00 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 \$500.00 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.

17. Where a person 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 convicted; and,
  - b. requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
18. Where any person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the City related to the contravention.

**PART 6: GENERAL PROVISIONS**

19. This By-law may be referred to as the “COVID-19 Physical Distancing By-law”.
20. 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 in force.
21. This By-law comes into force on the date of its passing.
22. This By-law will remain in force for the duration of the COVID-19 Emergency.

PASSED this 6th day of April, 2020.

Mayor Marianne Meed Ward \_\_\_\_\_

City Clerk Kevin Arjoon \_\_\_\_\_