

The Corporation of the City of Burlington

City of Burlington By-law 62-2020

A by-law to Impose Regulations Requiring the Wearing of Masks or Other Face Coverings Within Enclosed Spaces Open to the Public

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 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;

WHEREAS COVID-19 continues to be present within the City of Burlington and surrounding municipalities, and is a disease that is readily communicable from person to person, even with minimal or no signs of symptoms or illness, and carrying a risk of serious complications such as pneumonia or respiratory failure, multiple organ failure, kidney failure, liver failure, neurological complications, and may result in death; and

WHEREAS there is a growing body of evidence on the effectiveness of masks and face coverings to act as a barrier to prevent the spread of COVID-19; and

WHEREAS the wearing of masks and face coverings may act as an ongoing visual clue and reminder that public health measures, including hand-washing and maintaining a safe physical distance from others, are still required, that the COVID-19 pandemic is ongoing and that a resurgence of local disease activity remains an ongoing threat; and

WHEREAS the Province of Ontario has enacted O. Reg.263/20 (Stage 2 Closures) under Subsection 7.0.2 (4) of *Emergency Management Act* to permit certain businesses to reopen for attendance by members of the public subject to conditions, including the advice, recommendations and instructions of public health officials; and

WHEREAS physical distancing can be difficult to maintain in enclosed, indoor spaces open to the public and the Medical Officer of Health is supportive of temporary regulations requiring businesses and organizations that have enclosed spaces open to the public adopt a policy to ensure that persons wear a mask or face covering as it is a 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 of Burlington; and

WHEREAS the City of Burlington wants to be prepared for the eventual Stage 3 reopenings under the provincial *Emergency Management Act*, and use every tool available to protect residents from a resurgence of COVID-19; and

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, the following terms shall have the following meanings:

"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

"Establishment" or **"Establishments"** means any of 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, and includes a mall or similar structure which contains multiple places of business;
- (b) churches, mosques, synagogues, temples, or other places of worship;
- (c) City indoor facilities open to the public, community centres including indoor recreational facilities and City Hall;
- (d) libraries, art galleries, performing arts centre, museums, aquariums, zoos and other similar facilities;
- (e) community service agencies providing services to the public;

- (f) banquet halls, convention centres, arenas, stadiums, and other event spaces;
- (g) premises utilized as an open house, presentation centre, or other facility for real estate purposes;
- (h) private transportation for hire, including taxis, limousines and rideshare services;
- (i) public transportation;
- (j) common areas of hotels, motels and other short-term rentals, such as lobbies, elevators, meeting rooms or other common use facilities; and
- (k) concert venues, theatres, cinemas, casinos, and other entertainment facilities,

The following are not considered Establishments for the purpose of this By-law:

- (a) schools, post-secondary institutions, and child care facilities and indoor/outdoor day camps;
- (b) premises or any portion thereof (including City indoor facilities and community centres) used for City run recreational programs that require registration;
- (c) court facilities;
- (d) professional offices where clients receive purchased services (such as lawyer or accountant office) that are not open to members of the public except by appointment;
- (e) indoor areas of a building accessible to only employees;
- (c) hospitals, independent health facilities and offices of regulated health professionals.

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

"Mask or Face Covering" means a mask, balaclava, bandana, scarf, cloth or other similar item that covers the nose, mouth and chin without gapping.

"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.

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

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

PART 2: APPLICATION OF THIS BY-LAW

2. This By-law applies to all Establishments in the City of Burlington.
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 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.
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 OBLIGATIONS AND PROHIBITIONS

- 5.(1) The Operator of an Establishment that is open to the public, shall adopt a policy as required under this By-law to ensure that no member of the public is permitted entry to, or otherwise remains within, any enclosed space within the Establishment unless the member of the public is wearing a Mask or Face Covering, in a manner which covers their mouth, nose and chin.
- (2) The Operator of the Establishment shall, upon request, provide a copy of the policy for inspection by any person authorized to enforce this By-law.
- 6.(1) The Operator of an Establishment shall ensure that the policy contains the following exemptions from the requirement to wear a Mask or Face Covering:
 - (i) the person is under three years of age either chronologically or developmentally, and they refuse to wear a mask or face covering and cannot be persuaded to do so by their caregiver;
 - (ii) the person has an underlying medical condition where wearing a Mask or Face Covering would inhibit the person's ability to breathe in any way;

- (iii) the person has a mental health condition or developmental disability which inhibits their ability to wear a mask or face covering;
 - (iv) the person has a disability whereby the wearing of a mask or face covering would limit their ability to reasonably communicate with others or otherwise present a hardship for the person or persons assisting the individual;
 - (v) the person is unable to place or remove a Mask or Face Covering without assistance; and
 - (vi) employees and agents of the person responsible for the Establishment within an area designated for them and not for public access, or within or behind a physical barrier.
- (2) Every Operator of an Establishment shall permit the temporary removal of a Mask or Face Covering where necessary for the purpose of receiving services, or while actively engaging in an athletic or fitness activity.
 - (3) Every Operator of an Establishment, subject to the exemptions in section 6.(1), shall require that employees wear a Mask or Face Covering when working in the enclosed public space.
 - (4) Every Operator of an Establishment shall not require employees or members of the public to provide proof of any of the exemptions set out in section 6.(1).
7. 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
BURLINGTON BY-LAW 62-2020**

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

- (i) the person is under three years of age either chronologically or developmentally, and they refuse to wear a mask or face covering and cannot be persuaded to do so by their caregiver;
- (ii) the person has an underlying medical condition where wearing a Mask or Face Covering would inhibit the person's ability to breathe in any way;
- (iii) the person has a mental health condition or developmental disability which inhibits their ability to wear a mask or face covering;
- (iv) the person has a disability whereby the wearing of a mask or face covering would limit their ability to reasonably communicate with others or otherwise present a hardship for the person or persons assisting the individual;

- (v) the person is unable to place or remove a Mask or Face Covering without assistance; and
 - (vi) employees and agents of the person responsible for the Establishment within an area designated for them and not for public access, or within or behind a physical barrier.
- 8.(1) The Operator shall ensure that all persons working at the Establishment are trained in the requirements of the policy and this By-law and shall maintain a record of all training.
- (2) The Operator of the Establishment shall, upon request, provide a copy of all training records for inspection by any person authorized to enforce this By-law.

PART 4: ENFORCEMENT AND INSPECTION

General

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

Entry and Inspections

10. 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*,
11. An Officer, for the purposes of the inspection under section 10 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.
12. 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 10.

PART 5: PENALTIES

13. 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.
14. All contraventions of any provision of this By-law are designated as multiple offences and continuing offences pursuant to subsections 429(2) and (5) of the *Municipal Act, 2001*.
15. Upon conviction of an offence under this By-law pursuant to Part III of the *Provincial Offences Act*, 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.
16. 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.
17. Where any person or operator 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

18. This By-law may be referred to as the “COVID-19 Mask By-law”.
19. 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.

20. This By-law comes into force on July 20, 2020 and shall remain in effect until 12:01 a.m. on September 30, 2020, unless extended or revoked by City Council.

PASSED this 13th day of July, 2020.

Mayor Marianne Meed Ward _____

City Clerk Kevin Arjoon _____