

The Corporation of the City of Burlington

City of Burlington By-law 32-2022

A by-law to Regulate the Requirement of Wearing of Masks or Other Face Coverings on Public Transit Services, including Vehicles, Transit Terminals and Transit Shelters
File: 110-04-1 (CM-12-22)

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; 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 and Civil Protection Act*, R.S.O. 1990, c.E.9 (the "*Emergency Management Act*"), relating to the COVID-19 Pandemic; and

Whereas on July 24, 2020, the Province of Ontario ended the emergency declaration and implemented the *Re-opening Ontario (A Flexible Response to COVID-19) Act, 2020*, R.S.O. 2020, c.17; and

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 respond to the Roadmap Exit Step under the provincial *Reopening Ontario (A Flexible Response to COVID-19) Act 2020*, and use every tool available to protect residents from a resurgence of COVID-19; 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;

"Establishment" or "Establishments" means public transit services, including vehicles, transit terminals and transit shelters;

"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;

"*Re-opening Ontario (A Flexible Response to COVID-19) Act, 2020*" means the *Re-opening Ontario (A Flexible Response to COVID-19) Act, 2020* S.O. 2020, c.17.

PART 2: APPLICATION OF THIS BY-LAW

2. This By-law applies to all Establishments in the City of Burlington.
3.
 - (1) This By-law does not apply to persons under five years of age.
 - (2) That every person that is the parent or guardian accompanying a child that is five years old or older in an Establishment shall make best efforts to ensure that the child wears a Mask or Face Covering.
4. 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.

5. 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 *Re-opening Ontario (A Flexible Response to COVID-19) Act, 2020* and this By-law, the federal or provincial legislation or *Re-opening Ontario (A Flexible Response to COVID-19) Act, 2020* prevails.

PART 3: GENERAL OBLIGATIONS AND PROHIBITIONS

ESTABLISHMENTS

6.(1) The Operator of an Establishment that is open to the public, shall 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.

7.(1) If a person meets any of the following criteria, they shall be exempt from the requirement to wear a Mask or Face Covering:

- (i) the person is under five years of age chronologically;
- (ii) the person is under five years of age developmentally and they refuse to wear a Mask or Face Covering and cannot be persuaded to do so by their caregiver;
- (iii) 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;
- (iv) the person may experience a negative impact to their emotional well-being or mental health;
- (v) the person has a developmental disability which inhibits their ability to wear a mask or face covering;
- (vi) 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 a person or persons assisting the individual;
- (vii) the person is unable to place or remove a Mask or Face Covering without assistance;
- (viii) the person is being accommodated in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*;
- (ix) the person is being reasonably accommodated in accordance with the *Human Rights Code*;
- (x) the person is performing work for the business or organization, is in an area that is not accessible to members of the public and is able to maintain a physical distance of at least two metres from every other person while in the indoor area; or

- (xi) 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, to actively engaging in an athletic or fitness activity, to consume food or drink, or as may be necessary for the purposes of health and safety.
- (3) Every Operator of an Establishment, subject to the exemptions in section 7.(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 7.(1).
- 8. 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 XX-2022

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

- (i) the person is under five years of age chronologically;
- (ii) the person is under five years of age developmentally and they refuse to wear a Mask or Face Covering and cannot be persuaded to do so by their caregiver;
- (iii) 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;
- (iv) the person may experience a negative impact to their emotional well-being or mental health;
- (v) the person has a developmental disability which inhibits their ability to wear a mask or face covering;
- (vi) 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 a person or persons assisting the individual;
- (vii) the person is unable to place or remove a Mask or Face Covering without assistance;
- (viii) the person is being accommodated in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*;

- (ix) the person is being reasonably accommodated in accordance with the *Human Rights Code*;
- (x) the person is performing work for the business or organization, is in an area that is not accessible to members of the public and is able to maintain a physical distance of at least two metres from every other person while in the indoor area; or
- (xi) 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.

Please be respectful of the rights of individuals who are exempt from wearing a mask in conformity with the exemptions provided in City of Burlington By-Law XX-2022.

To report an incident of noncompliance, contact the Halton Regional Police Service COVID19 Hotline: 905-825-4722. For further information go to: www.burlington.ca/coronavirus

If you have any questions or concerns, please call 311.

- 9.(1) The Operator shall ensure that all persons working at the Establishment are trained in the requirements of this By-law and provisions of this By-law that apply to Establishments and shall maintain a record of all training.

PART 4: ENFORCEMENT AND INSPECTION

General

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

Entry and Inspections

11. 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*,
12. An Officer, for the purposes of the inspection under section 11 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.
13. 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 11.

PART 5: PENALTIES

14. Any person 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.
15. 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*.
16. Upon conviction of an offence under this By-law pursuant to Part III of the *Provincial Offences Act*, a person 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.
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 “Public Transit Mask 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 and shall remain in effect until 12:01 a.m. on April 28, 2022, or within 5 business days of when the Province of Ontario repeals their public transit mask mandate, whichever comes first, OR unless extended or revoked by City Council.

Enacted and passed this 22nd day of March, 2022.

Mayor Marianne Meed Ward _____

City Clerk Kevin Arjoon _____