

CITY OF HAMILTON

NOTICE OF MOTION

Council Date: April 8, 2020

MOVED BY COUNCILLOR S. MERULLA.....

**A By-Law to Promote and Regulate Physical Distancing during the COVID-19
Emergency**

WHEREAS the World Health Organization has declared a worldwide pandemic regarding the Novel Coronavirus (“COVID-19 Pandemic”);

WHEREAS on March 17, 2020, a Declaration of Emergency was made by the Province of Ontario pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9 (the “*Act*”) related to the COVID-19 Pandemic;

WHEREAS on March 27, 2020 the Province of Ontario granted power to municipal law enforcement officers to enforce Orders issued by the Province under the *Act* (the “Provincial Orders”);

WHEREAS section 10(2) of the *Municipal Act, 2001*, S.O. 2001, c.25 (the “*Municipal Act, 2001*”) provides that a municipality may pass by-laws respecting the health, safety and well-being of persons;

WHEREAS the City of Hamilton considers it desirable to enact a by-law to support the intent and purpose of the Provincial Orders made under the *Act* in order to protect the health, safety and well-being of persons in the City of Hamilton by prohibiting certain activities and regulating physical distancing during the COVID-19 Emergency; and

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

THEREFORE, BE IT RESOLVED:

That the By-law to Promote and Regulate Physical Distancing during the COVID-19 Emergency and a By-law to amend City of Hamilton By-law 17-225, being a By-law to Establish a System of Administrative Penalties in the form attached as Appendix ‘A’, be enacted by Council.

Authority: Item
CM:
Ward: City Wide

Bill No.

**CITY OF HAMILTON
BY-LAW NO.**

**A By-law to Promote and Regulate Physical Distancing during the COVID-19
Emergency and a By-law to amend City of Hamilton By-law 17-225, being a By-law to
Establish a System of Administrative Penalties**

WHEREAS the World Health Organization has declared a worldwide pandemic regarding the Novel Coronavirus (“**COVID-19 Pandemic**”);

AND WHEREAS on March 17, 2020, a Declaration of Emergency was made by the Province of Ontario pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9 (the “**Act**”) related to the COVID-19 Pandemic;

AND WHEREAS on March 27, 2020 the Province of Ontario granted power to municipal law enforcement officers to enforce Orders issued by the Province under the *Act* (the “**Provincial Orders**”);

AND WHEREAS section 10(2) of the *Municipal Act, 2001*, S.O. 2001, c.25 (the “**Municipal Act, 2001**”) provides that a municipality may pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS the City of Hamilton considers it desirable to enact a by-law to support the intent and purpose of the Provincial Orders made under the *Act* in order to protect the health, safety and well-being of persons in the City of Hamilton by prohibiting certain activities and regulating physical distancing during the COVID-19 Emergency;

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

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

PART 1- DEFINITIONS

1.1 For the purposes of this By-law,

“**Authorized Staff**” means a Municipal Law Enforcement Officer or any employee of the City whose duties include those provided for or assigned under this By-law, and shall include a Police Officer, the Director of Licensing and By-law Services (and their respective designates) and the Medical Officer of Health;

“**By-law**” means this By-law;

“**City**” means the City of Hamilton;

“**COVID-19 Emergency**” means the period of time commencing upon the date of passing this By-law until the declaration of emergency made by the Province of Ontario under the Act in relation to the COVID-19 Pandemic has been terminated;

“**Director**” means the Director of Licensing and By-law Services, or their respective designate, for the City of Hamilton;

“**Head of Council**” means the Mayor of the City;

“**Medical Officer of Health**” means the officer appointed to such position by the City of Hamilton under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, their deputies and designates for the purposes of this By-law;

“**Police Officer**” includes an officer of the Hamilton Police Service;

“**Proprietor**” means any person, governing body or agency which controls, governs or directs activity carried on in a Public Space and includes the person who is actually in charge thereof, but excludes the City;

“**Provincial Offences Act**” means the *Provincial Offence Act*, R.S.O. 1990, c. P33.

“**Public Space(s)**” means any outdoor or indoor space to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry.

PART 2 – OFFENCES

2.1 Every person shall maintain a distance of at least two (2) metres from every other person who is not a member of the same household when in a Public Space.

2.2 Proprietors shall take reasonable measures to ensure compliance with section 2.1 by:

- a) limiting the number of people allowed on their property;
- b) ensuring that the distancing measures specified in section 2.1 are being enforced on their property; and
- c) ensuring that people who refuse to comply with section 2.1 are promptly asked to leave their property and are reported to Authorized Staff upon failure to comply with this direction.

2.3 No person shall attend a social gathering of more than five (5) people, either in a Public Space or on private property.

2.4 Every owner or occupier of property shall ensure that no social gathering(s) of more than five (5) people occurs on their property.

2.5 For greater certainty, sections 2.3 and 2.4 do not apply to a gathering of members of a single household, or a gathering for the purpose of a funeral service that is attended by not more than 10 persons.

PART 3 – EXEMPTIONS

3.1 This By-law does not apply to Police Officers, City employees or persons hired or engaged by the City to do work or perform services in a Public Space, while performing policing, municipal, or enforcement services, including but not limited to, the enforcement of this By-law.

PART 4 - ADMINISTRATION AND ENFORCEMENT

4.1 The Director is responsible for the administration and enforcement of this By-law and may appoint delegates or assign duties to City staff under this By-law.

4.2 City staff who carry out any action under this By-law are deemed to be Authorized Staff for the purposes of this By-law, in the absence of evidence to the contrary.

4.3 Authorized Staff may, at any reasonable time, enter and inspect all lands, buildings, structures or parts thereof that are subject to this By-law for the purposes of determining compliance with this By-law.

4.4 Despite section 4.3, inspections of any dwelling unit may only be performed in accordance with the *Municipal Act, 2001*.

4.5 For the purposes of this By-law, Authorized Staff may:

- a) require the production for inspection of documents or things relevant to the inspection;
- b) inspect and remove documents or things relevant to an inspection for the purposes of making copies or extracts;
- c) require information from any person concerning a matter related to an 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 an inspection.

4.6 Where any person contravenes any provision of this By-law, Authorized Staff may direct such person, verbally or in writing, to comply with this By-law. Every person so directed shall comply with such direction without delay.

4.7 No person shall prevent, hinder or obstruct, or attempt to hinder or obstruct any Authorized Staff in the exercise of any power or the performance of any activity or duty under this By-law.

PART 5 – OFFENCES AND PENALTIES

- 5.1 Every person who contravenes any provision of this By-law is guilty of an offence and is liable to pay a fine, and such other penalties, as provided for in the *Provincial Offences Act* and the *Municipal Act, 2001*.
- 5.2 Every person, other than a corporation, who contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first conviction; and not more than \$25,000 for any subsequent conviction.
- 5.3 Every corporation which contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first conviction and not more than \$100,000 for any subsequent conviction.
- 5.4 If an offence under the By-law is continued on more than one day, the person who committed it is liable to be convicted for a separate offence for each day on which it is continued.
- 5.5 Without limiting the above, every person who contravenes this By-law may also be liable, upon issuance of a penalty notice, to pay an Administrative Penalty in an amount specified in the City's Administrative Penalties By-law No. 17-225 (the "**APS By-law**").

PART 6 – AMENDMENTS TO THE APS BY-LAW

6.1 Schedule A of By-law No. 17-225 is amended by adding the following table:

ITEM	COLUMN 1 DESIGNATED BY-LAW & SECTION		COLUMN 2 SHORT FORM WORDING	COLUMN 3 SET PENALTY
1	xx-xxx	2.1	Fail to maintain a distance of at least two (2) metres from another person	\$500.00
2	xx-xxx	2.2	Proprietor fail to ensure physical distancing in Public Space	\$500.00
3	xx-xxx	2.3	Attending a gathering of more than 5 people	\$500.00
4	xx-xxx	2.4	Owner or Occupier fail to ensure no social gathering of more than 5 people on property	\$500.00
5	xx-xxx	4.7	Obstructing an Officer or Authorized Staff	\$500.00

6.2 In all other respects the APS By-law is confirmed.

PART 7 – MISCELLANEOUS

7.1 **Conflict:** In the event a discrepancy between this By-law and any statute, regulation, rule, by-law, order or instrument of the Province of Ontario or the Government of Canada, the provision that is the most restrictive prevails.

7.2 **Severability:** Should any section of this By-law be declared by a Court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

7.3 **Short Title:** This By-law may be referred to as the Hamilton Physical Distancing By-law.

7.4 **Effective Date:** This By-law shall become effective on the date approved by City Council and shall remain in force during the COVID-19 Emergency.

PASSED this _____ , _____

F. Eisenberger
Mayor

A. Holland
City Clerk