

Authority: Item,
Report
CM:
Ward: City Wide

Bill No.

CITY OF HAMILTON

BY-LAW NO.

A by-law to Require the Wearing of Face Coverings Within Enclosed Public Spaces and to amend City of Hamilton By-law 17-225, being a By-law to Establish a System of Administrative Penalties

WHEREAS under section 10 of the *Municipal Act, 2001*, the City may pass by-laws respecting health, safety, and well-being of persons and the economic, social, and environmental well-being of the City;

AND 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* related to the COVID-19 Pandemic and has been extended pursuant to section 7.0.7 of the *Emergency Management and Civil Protection Act* due to the health risks to Ontario residents arising from COVID-19;

AND WHEREAS the Province of Ontario has enacted O. Reg. 263/20 (STAGE 2 CLOSURES) under Subsection 7.0.2 (4) of the *Emergency Management and Civil Protection 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 Novel Coronavirus is present within the city of Hamilton, and it causes the disease COVID-19 that is readily communicable from person to person and carries a risk of serious complications such as pneumonia or respiratory failure, and may result in death;

AND WHEREAS physical distancing is difficult to maintain in enclosed public spaces and there exists a pressing need for establishments to implement appropriate measures and regulations to better prevent the spread of COVID-19 and protect the health, safety and well-being of the residents of the city of Hamilton within enclosed public spaces;

AND WHEREAS it is believed that the existence of an enforceable by-law requirement will help to educate the public on the importance of a properly worn Face Covering and encourage voluntary compliance;

AND WHEREAS the City considers it desirable to enact a by-law to impose the following regulations requiring businesses and organizations that have enclosed spaces open to the public to ensure that persons wear a Face Covering as it is a necessary, recognized, 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 Hamilton;

NOW THEREFORE the Council of the City enacts as follows:

PART 1- DEFINITIONS

1.1 For the purposes of this by-law,

“**APS By-law**” shall mean the City’s Administrative Penalties By-law No. 17-225;

“**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 without limitation the Director, the Medical Officer of Health, any public health inspector, and any Police Officer;

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

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

“**Enclosed**” means any enclosed space, whether or not doors, windows, or other parts of the enclosed have been opened;

“**Emergency Management and Civil Protection Act**” means the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9 and any regulations or Orders thereunder;

“**Establishment**” means any municipal bus or transit shelter and any enclosed space where members of the public are ordinarily invited or permitted access, either expressly or by implication, and whether or not a fee is charged for entry and shall include without limitation enclosed:

- (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) community centres including indoor recreational facilities;
- (d) libraries, art galleries, museums, aquariums, zoos, and other similar facilities;

- (e) facilities operated by community service agencies which are attended by members of the public;
- (f) banquet halls, convention centres, arenas, stadiums, and other indoor event spaces;
- (g) premises utilized as an open house, presentation centre, or other facility for real estate purposes;
- (h) common areas of hotels, motels, and other multi-unit short term rentals, such as lobbies, elevators, meeting rooms, or other common use facilities;
- (i) concert venues, theatres, cinemas, casinos, and other entertainment facilities;
- (j) homeless shelters; and
- (k) municipal public transportation facilities including, for clarity, all vehicles owned or operated by Hamilton Street Railway and DARTS Transit;

For clarity “**Establishment**” shall not include:

- (a) airports or other facilities under the jurisdiction of the federal government;
- (b) provincial public transportation facilities;
- (c) schools or post-secondary institutions;
- (d) child care facilities;
- (e) portions of an Establishment that are not open to members of the public;
- (f) hospitals, independent health facilities, or offices of regulated health professionals; and
- (g) any portion of a property used primarily as a private dwelling;

“**Face Covering**” means a medical or non-medical mask or other face covering such as a balaclava, bandana, scarf, cloth, or other similar item that covers the nose, mouth, and chin without gapping;

“**Medical Officer of Health**” means the City’s Medical Officer of Health or their designate(s);

“**Human Rights Code**” means the *Human Rights Code*, R.S.O. 1990, c. H. 19.

“**Municipal Act, 2001**” means the *Municipal Act, 2001*, S.O. 2001, c. 25;

“**Operator**” means a person or organization which is responsible for or otherwise has custody, or control over the operation, of an Establishment and shall include without limitation a supervisor, manager, or owner of an Establishment;

“**Personal Health Information**” shall mean personal health information as defined by the *Personal Health Information Protection Act, 2004*, S.O. 2003, c. 3, Sched. A;

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

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

PART 2 – OPERATOR REQUIREMENTS

- 2.1 Every Operator shall ensure that a clearly visible sign is posted at all entrances to their Establishment that contains the following wording:

All persons entering or remaining in these premises shall wear a face covering which covers the nose, mouth, and chin as required under City of Hamilton By-law [REDACTED]-2020 (unless exempt).

- 2.2 To assist with visual recognition, the wording in the signage referred to in section 2.1 shall be in a colour that contrasts with the sign’s background such as black text on white background, shall be in a sans serif font such as Arial or Verdana, and shall have a font size of at least 24 points.
- 2.3 Every Operator shall take reasonable steps to ensure that no member of the public is permitted entry to, or otherwise remains within, the Establishment unless the member of the public is wearing a Face Covering in a manner which covers their mouth, nose, and chin. This requirement shall not apply to members of the public that state that they fall within an exemption of this by-law or appear to fall within one of the exemptions.
- 2.4 Every Operator shall ensure that any person who refuses to comply with the requirements of this by-law is promptly asked to leave their Establishment and is reported to Authorized Staff upon failure to comply with this direction.
- 2.5 Every Operator shall ensure that a person responsible for ensuring compliance with this by-law is present at the Establishment at all times when it is open to the public.
- 2.6 Every Operator shall ensure that all persons working at the Establishment are aware of the requirements of this by-law.
- 2.7 Every Operator shall ensure that its employees and every person working within the Establishment wears a Face Covering while working in any part of the Establishment that is open to members of the public.
- 2.8 For the purposes of this by-law, no Operator shall require any employee or member of the public to provide proof that any exemption set out in section 4.1 applies to that

employee or member of the public or request any Personal Health Information from any individual.

PART 3 – CUSTOMER REQUIREMENTS

- 3.1 Every person shall comply with signage posted that requires them to wear a Face Covering while in the Establishment.
- 3.2 Every parent, guardian, or person accompanying a child of at least two years of age to an Establishment shall ensure that the child complies with signage posted that requires the wearing of a Face Covering in the Establishment.

PART 4 - EXEMPTIONS

- 4.1 The requirements of sections 3.1 and 3.2 shall not apply to a person who:
 - (a) is a child under the age of two;
 - (b) is a child at least two years in age but under the age of 5 years who refuses to wear a Face Covering and cannot be persuaded to do so by their caregiver;
 - (c) has an underlying medical condition which inhibits their ability to wear a Face Covering;
 - (d) is unable to place or remove a Face Covering without assistance;
 - (e) is an employee or agent of the Operator and is within an area designated for them and not for public access, or is within or behind a physical barrier;
 - (f) is reasonably accommodated by not wearing a Face Covering in accordance with the *Human Rights Code* including a person with a disability that makes it difficult to wear or communicate while wearing a Face Covering;
 - (g) is in a swimming pool;
 - (h) is actively engaged in an athletic or fitness activity;
 - (i) who removes the mask for the period necessary to receive services or treatment;
 - (j) who is sleeping or in bed at a homeless shelter; or
 - (k) states that one of the exemptions of this by-law applies to them.
- 4.2 The requirements of sections 2.3 and 2.4 shall not apply to an Operator with respect to a person who is exempt from wearing a Face Covering in accordance with this by-law.

PART 5 - ADMINISTRATION AND ENFORCEMENT

- 5.1 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.
- 5.2 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.
- 5.3 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. Inspection of any dwelling unit shall be in accordance with the requirements of the *Municipal Act, 2001*.
- 5.4 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.
- 5.5 Despite section 5.4, no Authorized Staff shall request or require any Personal Health Information from any individual.
- 5.6 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.
- 5.7 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 6 – OFFENCES AND PENALTIES

- 6.1 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*.

- 6.2 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.
- 6.3 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 \$25,000 for a first conviction and not more than \$50,000 for any subsequent conviction.
- 6.4 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.
- 6.5 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 APS By-law.
- 6.6 An administrative penalty imposed by the City on a person under section 434.1 of the *Municipal Act, 2001*, constitutes a debt of the person to the municipality. If an administrative penalty is not paid within 15 days after the day that it becomes due and payable, the City may add the administrative penalty to the tax roll for any property in the city of Hamilton for which all of the owners are responsible for paying the administrative penalty and collect it in the same manner as municipal taxes.

PART 7 – AMENDMENTS TO THE APS BY-LAW

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

TABLE 25: BY-LAW NO. XX- XXX to Require the Wearing of Face Coverings Within Enclosed Public Spaces				
ITEM	COLUMN 1 DESIGNATED BY-LAW & SECTION		COLUMN 2 SHORT FORM WORDING	COLUMN 3 SET PENALTY
1	xx-xxx	2.1	As Operator failed to post mandatory Face Covering Sign at entrance of Establishment	\$500.00
2	xx-xxx	2.3	As Operator failed to prohibit entry to Establishment to person not wearing a Face Covering	\$500.00
3	xx-xxx	2.4	As Operator, failed to ask person not wearing a Face Covering to leave Establishment	\$500.00

TABLE 25: BY-LAW NO. XX- XXX to Require the Wearing of Face Coverings Within Enclosed Public Spaces				
ITEM	COLUMN 1 DESIGNATED BY-LAW & SECTION		COLUMN 2 SHORT FORM WORDING	COLUMN 3 SET PENALTY
4	xx-xxx	2.7	As Operator failed to ensure person working in Establishment wears Face Covering	\$500.00
5	xx-xxx	5.7	Obstructing an Officer or Authorized Staff	\$500.00
6	xx-xxx	3.1	Fail to wear a required Face Covering in an Establishment	\$200.00
7	xx-xxx	3.2	Fail to ensure child under your care wears a required Face Covering in an Establishment	\$200.00

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

PART 8 – MISCELLANEOUS

8.1 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. This by-law shall not be interpreted so as to conflict with a provincial or federal statute, regulation, or instrument of a legislative nature, including an order made under the *Emergency Management and Civil Protection Act*.

8.2 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.

8.3 Short Title: This by-law may be referred to as the Hamilton Face Covering By-law.

8.4 Effective Date: This by-law shall become effective at 12:01 a.m. on July 20, 2020.

PASSED this _____ , _____

F. Eisenberger
Mayor

A. Holland
City Clerk