

Pilon, Janet

Subject: FW: Hamilton Face Covering By-law

From: Steve Marta <sgmarta@sympatico.ca>

Sent: Wednesday, July 15, 2020 1:41 PM

To: clerk@hamilton.ca

Cc: Office of the Mayor; Pauls, Esther; Johnson, Brenda

Subject: Hamilton Face Covering By-law

Hi City of Hamilton Clerk,

I just had a very good phone discussion with Paul (Mayor Fred Eisenberg's assistant) with respect to the impending Hamilton Face Covering By-law ("the By-law") and my concerns as a small business owner in Hamilton, as well as Grimsby.

Our family (me, my wife and our 3 sons) designed, owns and operates Binbrook Gym in Binbrook and Grimsby Gym in Grimsby. We are also in the process of starting a third gym in the nearby Niagara region.

The gyms are boutique fitness facilities that are accessible 24/7 to members only and operate in a unit that is only 3,600 square feet.

The words of support and encouragement from our gym members have been overwhelming during this extremely difficult time for all family-run small businesses.

Many of our members have been struggling (as many others in the world) with the mental and physical health issues created by the lack of physical exercise, and they absolutely cannot wait for the time that we are allowed by the Ontario government to reopen the clubs.

First of all I totally understand the requirement and health care benefits of the By-law.

However, these are my concerns as a small business owner with the current draft of the By-law;

- Sections 2.3 to 2.4- Enforcement- It is not fair at all to "deputize" all small business owners to enforce a Hamilton by-law. We are not trained in situation or conflict de-escalation and should not be asked to take on the potential business, physical and verbal risks that may accompany this task. People have lost their lives recently as a direct result of carrying out the enforcement of the face mask requirement at their place of business. We also do not have the anonymity of a Hamilton By-law officer and in many cases

personally know our members or customers. We should not be exposed to the risk of retaliation or vandalism, or the potential business ending thrashing that can result from the many forms of social media.

- Section 2.5- requirement to be present at all times the business is open to the public- Our business model is dependent on the club being accessible 24/7 to all members and limited staffing by a family member from 9 a.m. to 10 p.m. during the week and from 10 a.m. to 2 p.m. on weekends (“staffed office hours”). We also have several controls in place that allow us to operate the club without having to physically be on-site. The 24/7 accessibility allows members to exercise when it is convenient for them (i.e. due to work or family commitments, etc.) or when physically required (i.e. due to stress, anxiety, insomnia, etc.). Also, our family personally operates each club and is staffed by one person for a limited number of hours per day. We have made substantial investments in membership and door access software, as well as security cameras to allow us to remotely monitor the operations of the gym 24/7. The physically present requirement will force our business to reduce the operating hours of the gym from being open 24/7 to only being open from 9 a.m. to 10 p.m. on weekdays and from 10 a.m. to 2 p.m. on weekends and thereby eliminate the 24/7 accessibility option that is so vital to all our members. Our gyms should not be required to have a family member present on-site 24/7 when it has controls to ensure its safe operation after staffed office hours. The club can only be accessed by members with an activated door access card. Also, since anyone inside the club is exempt from the By-law (please see Section 4.1(h) below) then Section 2.5 does not apply to the club.
- Section 4.1(h)- Exemption for a person who “is actively engaged in an athletic or fitness activity”. The interpretation of this exemption is vital. I am of the view that as soon as a member walks through the main entrance door to the club then that member is actively engaged in an athletic or fitness activity. A member will only come to the club to exercise and only a member can gain access to the club since all doors to enter the club are locked 24/7. The club does not have a lounge or any other social gathering area. The entire physical motion or movement of walking through the main entrance

doors, into the open coat rack/locker area, over to all the pieces of equipment and free weight area, using any piece of equipment in the club, as well as visiting any of the individual private washrooms, in my view, constitutes active engagement in an athletic or fitness activity. I am also of the view anyone that works inside the club or enters the club to obtain or cancel a membership at the club is actively engaged in an athletic or fitness activity. Consequently, I believe that anyone inside the four walls of our entire fitness club and business qualifies for the Section 4.1(h) exemption to the By-law.

Based on my discussion with Paul it is my understanding that our gyms, as well as all other fitness gyms in Hamilton, are effectively exempt from the By-law.

Consequently, I respectfully request the Hamilton City Council to consider my comments above during the Council meeting taking place this Friday, July 17, 2020 ("the Friday Meeting") for the purposes of finalizing the By-law.

Thank-you for taking the time to read my email and considering including its content on the Agenda for the Friday Meeting.

Steve Marta