

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NUMBER 2020-069

By-law to amend By-law 2020-046

A By-law to Impose Temporary Regulations requiring the Use of Face Coverings
or Masks within Enclosed Public Places in the Town of Amherstburg

WHEREAS the Council of the Corporation of the Town of Amherstburg hereby deems it expedient to amend By-law 2020-046, being a By-law to impose temporary regulations requiring the use of face coverings or masks within enclosed public places in the Town of Amherstburg.

NOW THEREFORE the Council of the Corporation of the Town of Amherstburg hereby enacts as follows:

1. By-law 2020-046 is hereby amended as attached.

Read a first, second and third time and finally passed this 23rd day of November, 2020.



MAYOR – Aldo DiCarlo



Deputy CLERK – ~~Paula Parker~~
Tammy Fowkes

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2020-046

By-law to Impose Temporary Regulations requiring the Use of Face Coverings or Masks within Enclosed Public Places in the Town of Amherstburg

WHEREAS section 11(2) of the Municipal Act, 2001, R.S.O. 2001, c. 25 (the "Act"), authorizes a lower-tier municipality to pass by-laws with respect to the health, safety and well-being of persons;

AND WHEREAS on March 17, 2020, the Province of Ontario has declared COVID-19 to be an emergency under the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9 (the "EMCPA");

AND WHEREAS on March 22, 2020 the Corporation of the Town of Amherstburg (Town) declared COVID-19 to be an emergency under the EMCPA;

AND WHEREAS the wearing of face coverings may act as one component of an overall COVID-19 mitigation strategy, of which frequent hand-washing and maintaining a safe physical distancing are also important components;

AND WHEREAS the following is deemed necessary, as 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 Town within enclosed public spaces;

AND WHEREAS section 425(1) and 429(1) of the Municipal Act, 2001 authorize a municipality to pass by-laws providing that a person who contravenes a municipal by-law is guilty of an offence and to establish a system of fines for offences under a by-law;

AND WHEREAS section 436(1) of the Municipal Act, 2001 provides that a municipality has the power to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not a by-law passed under the Municipal Act, 2001 is being complied with;

AND WHEREAS section 444(1) of the Municipal Act, 2001 authorizes a municipality to make an order requiring the person who contravened a by-law, 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 Town of Amherstburg hereby enacts as follows:

1. DEFINITIONS

In this by-law:

"CAO" means the Chief Administrative Officer of the Corporation of the Town of Amherstburg or his or her designate; **(added B/L 2020-069, Nov. 23/2020)**

"Council" means the Council of the Corporation of the Town of Amherstburg;

"Designated Unenclosed Public Space" means any outdoor space to which the public is invited or permitted access, either expressly or by implication regardless of whether a fee is charged for entry, and includes Town-owned or leased lands, including but not limited to a municipal highway or a sidewalk, and that is established by Order issued by the CAO in accordance with Section 3A of this By-law; **(added B/L 2020-069, Nov. 23/2020)**

"Emergency Orders" means the emergency orders passed by the Province of Ontario pursuant to the EMCPA related to COVID-19 including any regulations enacted pursuant to the EMCPA;

"Face Covering" or "Mask" means a face covering or mask, including a bandana or scarf, construction of cloth, linen or other similar fabric that fits securely to the head and is large enough to completely and comfortably cover the mouth, nose and chin without gapping. A Face Covering may include, but is not required to be, a medical mask such as surgical masks, N95 or other similar masks worn by healthcare workers;

"Medical Officer of Health" means the Medical Officer of Health for the Windsor-Essex County Health Unit.

"Municipal Law Enforcement Officer" (Officer) means an individual appointed by the Town for the purpose of enforcing Town by-laws and shall include a police officer, a provincial offenses officer or any other person as may be appointed by Council to enforce this by-law;

"Operator" means a person or organization which is responsible for or otherwise has control over the operation of a Public Place, in the case of a multi-use dwelling the Operator includes the superintendent, property manager or condominium corporation;

"Outdoor Patio" means an outdoor space used for dining where the sale of goods or service is offered;

"Person" shall include an Operator, if the Operator is an individual; an employee; worker; volunteer; customer; patron; or other visitor;

"Enclosed Public Place" means the interior area of any premises or any portion thereof to which the public is invited or permitted access, either expressly or by implication regardless of whether a fee is charged for entry, in order to receive or to provide goods or services, including but not limited to the public areas of the following: **(amended B/L 2020-069, Nov. 23/2020)**

- a) Retail establishments, shopping malls, restaurants, cafes, cafeterias, banquet halls **(amended B/L 2020-069, Nov. 23/2020)**
- b) Churches, mosques, synagogues, temples, or other places of worship;
- c) Community centres including indoor recreational facilities;
- d) Buildings owned and operated by the Town;
- e) Libraries, art galleries, museums, aquariums, zoos and other similar facilities;
- f) Community service agencies providing services to the public;
- g) Banquet halls, convention centres, arenas, stadiums, and other event spaces;
- h) Premises utilized as an open house, presentation centre, or other facility for real estate purposes;
- i) Common areas of multi-use dwellings including apartments and condominiums, hotels, motels and other short-term rentals, such as lobbies, elevators, washrooms, meeting rooms or other common use facilities;
- j) Concert venues, theatres, cinemas, casinos, and other entertainment facilities; and,
- k) Public transportation and private transportation services, such as taxis, private limousine services, and ride-sharing services.

Public Place does not include the following:

- a) Schools, post-secondary institutions, child care facilities, day camps and school transportation vehicles;
- b) Independent health facilities and offices of regulated health professionals;
- c) Professional offices where clients receive purchased services by appointment, including lawyer or accountant offices;
- d) Portions of community centres, arenas or other buildings that are used for the purpose of providing day camps for children or for the training of amateur or professional athletes; and,
- e) Portions of community centres, arenas or other buildings owned or operated by the Town used for the purpose of providing community services, meetings or programs for which registration is required and where at least two metres can be maintained between Persons.

2. FACE COVERING POLICY

- 2.1 Every Operator shall adopt a policy regarding the wearing of Face Coverings that prohibits Persons to enter, or otherwise remains within, a Public Place unless the Person is wearing a Face Covering, subject to the exemptions provided for in Section 4.1 of this By-law and otherwise in accordance with this By-law.
- 2.2 The policy shall include the exemptions as set out in section 4.1 of this By-law.
- 2.3 The Operator shall, upon request, provide a copy of the policy for inspection by an Officer.
- 2.4 No Operator of a Public Place shall permit a Person to enter or to remain in a Public Place without a Face Covering in accordance with this By-law or their policy.
- 2.5 Every Operator shall conspicuously post at all entrances to the Public Place clearly visible signage that Persons are required to wear a Face Covering in accordance with this By-law and their policy.

3. FACE COVERINGS

- 3.1 Every Person within an Enclosed Public Place shall wear a Face Covering.
- 3.2 Every Person shall ensure that any Person under his or care including children comply with section 3.1 of this By-law.
- 3.3 Every Employee or agent of the Operator shall wear a Face Covering while offering for sale, goods and services on an Outdoor Patio.
- 3.4 Every Person within a Designated Unenclosed Public Space shall wear a Face Covering. **(added B/L 2020-069, Nov. 23/2020)**

3A. DELEGATION OF AUTHORITY – DESIGNATED UNENCLOSED PUBLIC SPACE (added B/L 2020-069, Nov. 23/2020)

- 3A.1 The CAO is authorized to issue an Order establishing a Designated Unenclosed Public Space, including setting out prescribed days or times of the day for the purposes of Section 3, provided that the CAO is first satisfied that an Order is necessary for public health and safety, and that:

- a) the Order is in line with the advice and recommendations of the Medical Officer of Health;
- b) an Order shall expire within sixty (60) days of the date of issuance, unless otherwise stated to expire on an earlier date, as specified in the Order;
- c) an Order may be extended beyond the sixty (60) days if the Medical Officer of Health agrees that an extension of the Order is necessary for the furtherance of public health and safety;
- d) an Order shall apply to a limited geographic area no greater than is necessary for the furtherance of public health and safety;
- e) for greater clarity, any and all Orders are rescinded immediately upon the date and time that this By-law is no longer in effect.

3A.2 The CAO is authorized to issue a Rescission to remove a Designated Unenclosed Public Space, as established under Section 3A.1, provided that the CAO is first satisfied that the Rescission is appropriate for public health and safety, and that:

- a) the Rescission is in line with the advice and recommendations of the Medical Officer of Health and is appropriate for public health and safety.

3A.3 In issuing an Order or a Rescission in accordance with subsections 3A.1 and 3A.2 the CAO will consider:

- a) the number of complaints received, or circumstances noted through investigations and inspections by the Municipal Law Enforcement Officers about the wearing of mask by general public while congregating in the Designated Unenclosed Public Space; and,
- b) the size and dimensions of the Designated Unenclosed Public Space and whether 2-meter physical distancing is practicable by the general public when congregating there.

3A.4 An Order or Rescission issued by the CAO:

- a) may be served personally by a Municipal Law Enforcement Officer, or by regular mail, on the Owner or Operator of the Designated Unenclosed Public Space;
- b) may be posted in a conspicuous place on the property of the Designated Unenclosed Public Space, or,
- c) where the Designated Unenclosed Public Space applies to Town-owned or leased land, the Order or Rescission shall be posted on the Town's website or other electronic forum, thereby giving public notice of same.

3A.5 The exercise of delegated authority pursuant to subsections 3A.1 and 3A.2 shall be reported to Council by email from the CAO within seven (7) business days of the exercise of authority.

4. EXEMPTIONS

4.1 The following Persons shall be exempt from wearing a Face Covering:

- 4.1.1 Children 2 years of age or younger; or a child under the age of 5 years either chronologically or developmentally and he or she refuses to wear a face covering and cannot be persuaded to do so by their caregiver.

- 4.1.2 Persons who have trouble breathing or are otherwise unable to wear a Face Covering for medical reasons or for reason of disability, including Persons who are unable to remove the Face Covering without assistance.
 - 4.1.3 Persons who are reasonably accommodated by not wearing a Face Covering under the Ontario Human Rights Code.
 - 4.1.4 Employees and agents of the Operator or Town within an area not for public access, or within or behind a physical barrier.
 - 4.1.5 Person while consuming food or drink provided by a business that is permitted to operate under the Provincial Emergency Orders and provided that all other conditions of the Emergency Order are met.
 - 4.1.6 Persons who are engaged in an athletic, fitness or aquatic activity in accordance with the Emergency Orders.
 - 4.1.7 Persons while receiving services involving the face and requiring the removal of a Face Covering, provided such services are permitted to operate under the Emergency Order.
 - 4.1.8 Persons conducting or participating in a religious rite or ceremony in churches, mosques, synagogues, temples, or other places of worship.
- 4.2 A Person who is not or refuses to wear a Face Covering shall identify if they are a Person who is exempt from wearing a Face Covering when asked by an Operator or Officer but Persons shall not be required to identify which exemption prevents them from wearing a Face Covering or provide proof in order to meet any of the exemptions set out in section 4.1 of this By-law.

5. ENFORCEMENT AND INSPECTION

- 5.1 An Officer may enter any lands, buildings, and structures at any reasonable time for the purpose of carrying out an inspection to determine whether any provision of this By-law is being complied with.
- 5.2 For the purposes of conducting an inspection pursuant to this By-law, an Officer may:
- 5.2.1 Require the production for inspection of documents or things relevant to the inspection;
 - 5.2.2 Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - 5.2.3 Require information from any person concerning a matter related to the inspection; and
 - 5.2.4 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.
- 5.3 An Officer may order any Person or Operator found in contravention of this By-law to:
- 5.3.1 Immediately correct the contravention by putting on and continuing to wear a Face Covering;
 - 5.3.2 Leave the Public Place and/or Designated Unenclosed Public Place;
(amended B/L 2020-069, Nov. 23/2020)

5.3.3 Require the Person or Operator to correct the contravention in the manner and within the period the Officer considers appropriate.

5.4 An order pursuant to this By-law may be given by an Officer verbally or in writing.

5.5 No Person shall obstruct, hinder, mislead, knowingly provide false information or make false claim or statement, or to prevent the execution of a duty any Officer or any other person having authority for the enforcement or administration of this Bylaw.

6. OFFENCE AND PENALTY

6.1 Every Person or Operator who contravenes any section of the by-law is guilty of an offence and, upon conviction, is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, c.P. 33.

6.2 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:

6.2.1 Prohibiting the continuation or repetition of the offence by the Person or Operator convicted; and,

6.2.2 Requiring the Person or Operator convicted to correct the contravention in the manner and within the period that the court considers appropriate.

7. GENERAL

7.1 Should any paragraph, clause or provision of the By-law be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-law as a whole or any part of thereof, other than the part which was declared to be invalid.

7.2 When any requirement of this By-law is at variance with any other By-law in effect in the Town or with any applicable provincial or federal statute, order or regulation, the more restrictive requirement shall apply unless otherwise stated in such legislation.

7.3 This By-law shall come into force and effect at 12:01 a.m. on Friday, August 28th, 2020.

7.4 The By-law shall remain in force and effect until such time it is repealed by Council on the advice of the Medical Officer of Health.

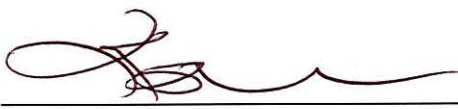
8. SHORT TITLE

8.1 This by-law may be referred to as the Mask By-law.

Read a first, second and third time and finally passed this 24th day of August, 2020.



MAYOR – Aldo DiCarlo



Deputy CLERK – ~~Paula Parker~~
Tammy Fowkes

Amended November 23, 2020