

BY-LAW NUMBER 76 OF 2020
OF THE CITY OF SARNIA

**"A By-Law to Impose Temporary Regulations requiring
the Use of Masks or Face Coverings within Enclosed
Publicly-Accessible Spaces in the City of Sarnia."**

(Re: Mandatory Masks)

WHEREAS under sections 8 and 9 of the Municipal Act, 2001, S.O. 2001 c. 25 ("Municipal Act, 2001") the City has broad authority to provide any service or thing the City considers necessary or desirable for the public and to pass by-laws in respect of the health, safety and well-being of persons and the economic, social and environmental well-being of the City;

AND WHEREAS subsection 10(2) of the Municipal Act, 2001 authorizes a municipality to pass by-laws with respect to: economic, social and environmental well-being of the municipality, including respecting climate change; the health, safety and well-being of persons; and the protection of persons and property, including consumer protection;

AND WHEREAS subsections 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 subsection 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 subsection 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;

AND WHEREAS on March 11, 2020, the spread of the *novel coronavirus* that causes COVID-19 has been declared a pandemic by the World Health Organization;

AND WHEREAS on March 17, 2020, an emergency was declared by the Government of Ontario ("Province") pursuant to Order in Council 518/2020 under section 7.0.1 of the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9 ("EMCPA") in response to the outbreak of the COVID-19;

AND WHEREAS on March 18, 2020 an emergency was declared by The Corporation of the City of Sarnia ("City") pursuant to section 4 of the EMCPA in support of the Province's efforts to contain the spread of COVID-19;

AND WHEREAS health authorities at the Federal, Provincial and local levels have strongly recommended that persons wear face coverings in public where physical distancing cannot be maintained;

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 City of Sarnia within enclosed public spaces;

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

AND WHEREAS Council of the City of Sarnia is desirous to enact a by-law to require the mandatory use of face coverings in enclosed spaces

that are accessible to the public to help contain the spread of COVID-19;

NOW THEREFORE the Council of The Corporation of the City of Sarnia enacts as follows:

Definitions

1. In this by-law:

"By-law" means this By-law which may be cited as the "Mandatory Mask By-law";

"City" means The Corporation of the City of Sarnia or the municipality of the City of Sarnia, as the context requires;

"Council" means the Municipal Council of the City of Sarnia;

"EMCPA" means the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9, as amended from time to time;

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

"Establishment" means any of the following:

- (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) community service agencies providing services to the public;
- (f) banquet halls, convention centres, arenas, stadiums, and other 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 short-term rentals, such as lobbies, elevators, meeting rooms or other common use facilities; and
- (i) concert venues, theatres, cinemas, casinos, and other entertainment facilities.

"HPPA" means the Health Protection and Promotion Act, R.S.O. 1990, c. H.7, as amended from time to time;

"Mask" or "Face Covering" means a mask or face covering, 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;

"Officer" means a police officer; a person appointed by Council as a municipal law enforcement officer; an officer, employee or agent of the City whose responsibility includes 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;

"Person" or any expression referring to a person or people, means an individual over the age of twelve (12) and also includes a partnership, limited partnership, and a corporation and its directors and officers, and all heirs, executors, assignees and administrators;

Application

2. This By-law applies to all Establishments and Persons located within the City.
3. For greater clarity, Establishments shall include the following:
 - (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, including restaurants or the sale of any food or beverage, and including a mall or similar structure containing multiple places of business;
 - (b) churches, mosques, synagogues, temples, or other places of worship;
 - (c) City indoor recreational facilities open to the public, community centres including indoor recreational facilities, whether publicly accessible or requiring membership;
 - (d) libraries, art galleries, performing arts centres, museums, aquariums, zoos, and other similar facilities;
 - (e) community service agencies providing services to the public;
 - (f) banquet halls, convention centres, arenas, stadiums, and any other event space;
 - (g) premises utilized as an open house, presentation centre, or other facility for real estate purposes;

- (h) common areas of hotels, motels or other short-term rentals, such as lobbies, elevators, meeting rooms, or other common use facilities;
- (i) concert venues, theatres, cinemas, casinos, and other entertainment facilities; and,
- (j) other business, organizations and places that are permitted to operate in accordance with the Emergency Orders.

Mandatory Policy

4. The Operator of an Establishment located within the City that is open to the public, shall adopt a policy as required under this By-law to ensure that no member of the public is permitted entry to, or otherwise remain 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.
5. The Operator of the Establishment shall, upon request, provide a copy of the policy for inspection by any person authorized to enforce this By-law.
6. The policy shall include the following exemptions from the requirement to wear a Mask or Face Covering:
 - (a) children under five years of age;
 - (b) persons with an underlying medical condition which inhibits their ability to wear a Mask or Face Covering;
 - (c) persons who are unable to place or remove a Mask or Face Covering without assistance;
 - (d) 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; and

- (e) persons who are reasonably accommodated by not wearing a Mask or Face Covering in accordance with the Ontario Human Rights Code.
- 7. The policy shall permit the temporary removal of a Mask or Face Covering where necessary for the purpose of receiving services, or while actively engaging in an athletic or fitness activity.
- 8. Subject to the exemptions in sections 5, 6 and 7 of this By-law, the policy shall require that employees wear a Mask or Face Covering when working in the enclosed public space.
- 9. The policy shall not require employees or members of the public to provide proof of any of the exemptions set out in this By-law.
- 10. 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 SARNIA BY-LAW No 76 of 2020

- 11. The Operator shall ensure that all persons working at the Establishment are trained in the requirements of the policy and this By-law.
- 12. Nothing in this By-law shall 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 EMCPA order, or HPPA order, the federal or provincial legislation and orders authorized thereunder shall prevail.

General Obligations and Prohibitions - Operator

13. Subject to the exemptions in sections 5, 6 and 7 of this By-law, every Operator shall require that Masks or Face Coverings are worn by anyone engaged in the operation of the business or delivery of a service or product at an Establishment, including employees, volunteers, agents, or contractors.

General Obligations and Prohibitions – All Persons

14. Every Person shall wear a Face Covering before entering and while inside an Establishment.
15. Every Person shall ensure that any Person under their care, including children, comply with section 14 of this By-law.
16. Notwithstanding sections 13, 14 and 15, 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.

Administration, Inspection, and Enforcement

17. The City's Municipal Law Enforcement Office is responsible for the administration and enforcement of this By-law and may appoint delegates or assign duties to City employees for those purposes.
18. The provisions of this By-law may be enforced by an Officer.
19. An Officer may enter on land or buildings 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.
20. An Officer, for the purposes of the inspection under section 19 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 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.
21. 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 19.

Offences

22. Any Person or Operator 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.

23. Every person who contravenes any provision of this By-law is guilty of an offence.
 - (a) Upon conviction, every person who contravenes any provision in this By-law is liable to a fine not exceeding one thousand dollars (\$1,000), exclusive of costs, for each offence, recoverable under the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, or any successor legislation thereto.
24. 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:
 - (a) prohibiting the continuation or repetition of the offence by the person or operator convicted; and,
 - (b) requiring the person or operator convicted to correct the contravention in the manner and within the period that the court considers appropriate.
25. An offence under this By-law may constitute a continuing offence or a multiple offence as set out in the Municipal Act, 2001.

Interpretation

26. 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 EMCPA or the HPPA.
27. 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 of full force and effect.

28. Notwithstanding the terms of the City's Notice Policy, this By-law shall come into force and effect at 12:01 am on Friday, July 31, 2020 and shall remain in full force and effect until December 31, 2020 unless revoked or extended by Council.

By-Law Read a First, Second and Third time and passed on this 27 day of July, 2020.



Mike Bradley
Mayor



Amy Burkhart
Deputy City Clerk