

# The Corporation of the Municipality of Leamington

## By-law 61-20

By-law to require the wearing of a mask  
during the COVID-19 pandemic

**Whereas** on March 11, 2020, the World Health Organization declared COVID-19 coronavirus disease (“COVID-19”) a pandemic;

**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 Municipality of Leamington (the “Municipality”) declared COVID-19 to be an emergency under the EMCPA;

**And Whereas** one of the most effective ways to reduce the spread of COVID-19 is frequent hand-washing and keeping a distance of at least two (2) metres apart from others, as much as possible;

**And Whereas** health authorities at the Federal, Provincial and local levels have strongly recommended that persons wear masks in public where keeping a distance of at least two (2) metres apart cannot be maintained or is difficult to maintain;

**And Whereas** there exists a pressing need 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 Municipality within public spaces;

**And Whereas** section 11(2) of the Municipal Act, 2001, R.S.O. 2001, c. 25 (the “Act”) provides that a lower-tier municipality may pass by-laws respecting the health, safety and well-being of persons.

**Now Therefore** Council of The Corporation of the Municipality of Leamington enacts as follows:

### Definitions

1. For the purposes of this by-law:
  - a) **“Commercial Establishment”** means those portions of a fixed commercial premises that are openly accessible to members of the public and that are used for the purposes of offering goods or services for sale to members of the public and include a mall or other structure containing a number of commercial premises, and, without limiting the generality of the foregoing,

include retail stores; convenience stores; malls/plazas; restaurants; personal service settings; grocery stores and bakeries; gas stations; farmer's markets; areas of mechanics' shops/garages/repair shops which are open to the public; and car dealerships.

- b) **"Mask"** shall mean a mask, balaclava, bandana or scarf that is made of cloth, linen or other similar fabric that fits securely to the head and covers the nose, mouth and chin without gapping;
- c) **"Officer"** shall mean a police officer, a provincial offences officer, a municipal law enforcement officer, a public health inspector or any other person as may be appointed by Council to enforce this by-law;
- d) **"Operator"** shall mean an individual, corporation, partnership or an association that owns, controls, governs, directs or is responsible for the activity carried on within a Public Space;
- e) **"Person"** shall include an Operator, if the Operator is an individual; an employee; worker; volunteer; customer; patron; or other visitor;
- f) **"Policy"** shall mean the policy required by section 7 of this By-law;
- g) **"Public Space"** shall mean the following:
  - i) a Transit Vehicle; and
  - ii) a building or a portion of a building where the public is ordinarily invited or permitted access whether or not a fee is charged or a membership is required for entry and shall include the following:
    - 1) a Commercial Establishment;
    - 2) a community centre;
    - 3) a library, museum, art gallery, theatre or performing arts centre;
    - 4) a community service office;
    - 5) a banquet hall, convention centre, arena, stadium or other event space;
    - 6) a laundromat; and
    - 7) a common area; waiting area, lobby, service counter, washroom, hallway, stairwell and elevator; unless such area is within a residential apartment building or condominium,

but does not mean the following:

- i) a school or post-secondary institution;
  - ii) a day care centre;
  - iii) a day camp for children;
  - iv) a building or a portion of a building used for the training of amateur or professional athletes;
  - v) a church, mosque, synagogue, temple or other place of worship;
  - vi) a hospital or an independent health facility; and
  - vii) an office of a regulated health professional.
- h) “**Transit Vehicle**” shall mean a vehicle used as:
- i) part of the Municipality’s public transit system; and
  - ii) a taxicab as defined in by-law 63-16.

### **Requirement to Wear a Mask**

- 2. A Person shall wear a Mask when entering and while in a Public Space.
- 3. A Person who is the parent or guardian accompanying a child that is two (2) years of age or older shall ensure that the child wears a Mask when entering and while in a Public Space.

### **Exemptions from Requirement to Wear a Mask**

- 4. The following Persons are exempt from sections 2 and 3 of this By-law:
  - a) a Person under two (2) years of age;
  - b) a Person that is two (2) years of age or older, but under five (5) years of age chronologically or developmentally who refuses to wear a Mask and cannot be persuaded to do so by the accompanying parent or guardian;
  - c) a Person who is unable to wear a Mask for medical reasons or who has a disability that prevents him or her from safely wearing a Mask; and
  - d) a Person who is providing care to or is otherwise assisting a Person with a disability where wearing a Mask would hinder the accommodation of that Person’s disability.

5. No Person shall be required to provide proof that he or she is exempt from the provisions of this By-law.

### **By-law Not Applicable**

6. This By-law shall not apply to a Person:
  - a) while that Person is consuming food or drink provided by a business is permitted to be open pursuant to an order made pursuant to EMCPA provided that all other conditions or terms of any order made pursuant to EMCPA are met;
  - b) while that Person is receiving services provided by a business that is permitted to be open pursuant to an order made pursuant to EMCPA provided that all other conditions or terms of any order made pursuant to EMCPA are met;
  - c) who is engaged in a sport or other strenuous physical activity;
  - d) who is an owner, employee, worker or volunteer of an Operator, while he or she is in an area of the Public Space that is:
    - i) not designated for public access; or
    - ii) within or behind a physical barrier,if two (2) metres distance may be maintained from all other Persons at all times.

### **Obligations of Operators**

7. An Operator shall have a Policy in place to prohibit a Person from entering the Public Space or remaining within the Public Space if the Person is not wearing a Mask.
8. The Policy shall include the exemptions as set out in section 4 of this By-law.
9. No Policy shall require any Person to provide proof that he or she is exempt from the provisions of the Policy.
10. An Operator shall, upon request by an Officer, provide a copy of the Policy to the Officer.
11. No Operator shall permit a Person to enter into or remain in a Public Space without a Mask in accordance with the Policy and this By-law.

12. An Operator shall ensure that persons who are employed by the Operator or otherwise work or volunteer for the Operator are trained in the requirements of the Policy and this By-law.
13. An Operator shall post, at every entrance to the Public Space prominent and clearly visible signage that contains the following message:

Every person entering or remaining on these premises shall wear a mask, unless exempt pursuant to By-law 61-20.

### **Enforcement**

14. Pursuant to section 436 of the Act and in addition to any other powers of entry granted to the Municipality, an Officer may enter onto land and into buildings at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
  - a) this By-law or any other by-law passed by the municipality;
  - b) any direction or order of the Municipality made under the Act or this By-law;  
or
  - c) an order to discontinue or remedy a contravention of this By-law for which a conviction has been entered by a court of competent jurisdiction.
15. For the purposes of enforcing this By-law, an Officer may:
  - a) require the production for inspection of documents or things, or copies of any document or thing, relevant to the inspection;
  - b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - c) require information 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 purpose of the inspection.
16. 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 By-law.

### **Offence and Penalty**

17. 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.
18. When a Person or Operator has been convicted of an offence pursuant to this by-law, the Ontario Court of Justice or any court of competent jurisdiction may, in addition to any penalty imposed on the Person or Operator convicted, issue 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.

### **Generally**

19. If any provision of this By-law is declared invalid for any reason by a court of competent jurisdiction, only that invalid portion of the By-law shall be severed and the remainder of the By-law shall still continue in force.
20. This By-law shall come into force and take effect on the date of its enactment.

**Read a first, second and third time and finally passed this 11<sup>th</sup> day of August, 2020.**

Hilda MacDonald, Mayor

Brenda Percy, Clerk