

CORPORATION OF THE COUNTY OF ELGIN

BY-LAW NO.: 20 – 38

Being a By-Law to temporarily require the use of face coverings and related health protection measures within enclosed public spaces during the COVID-19 Pandemic

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 COVID-19;

AND WHEREAS on March 21, 2020 an emergency was declared by the Corporation of the County of Elgin (“Elgin”) 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 and Provincial level have 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 health protection strategy, of which frequent hand-washing, hand sanitization, and maintaining a safe physical distancing are also important components;

AND WHEREAS on July 30, 2020, the Medical Officer of Health of Southwestern Public Health (“Medical Officer of Health”) issued a Letter of Instructions pursuant to O. Reg. 364/20 to the *Reopening Ontario (“A Flexible Response to COVID-19”) Act*, S.O. 2020, c. 17, as amended (and formerly a regulation to the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, as amended) requiring businesses and organization open to the public in, among other places, the County of Elgin to have in place and implement policies requiring health protection measures, including the wearing of face coverings by all persons therein, within the premises owned and operated by such businesses and organizations;

AND WHEREAS because physical distancing is impossible to guarantee in enclosed public spaces, the Medical Officer of Health has advised that such health protection measures are 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 County;

AND WHEREAS the Medical Officer of Health advises that in addition to reducing the spread of COVID-19, the said health protection measures are likely to reduce anxiety and contribute positively to economic wellbeing;

AND WHEREAS Elgin County Council is desirous to enact a by-law to require mandatory face coverings in enclosed spaces that are accessible to the public to help contain the spread of COVID-19;

AND WHEREAS subsection 8(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act, 2001*”) provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority to enable it to govern its affairs as it considers appropriate and to enhance its ability to respond to municipal issues;

AND WHEREAS subsection 11(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes an upper tier municipality to pass by-laws with respect to, among other things, economic, social and environmental well-being of the municipality, 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;

NOW THEREFORE the Municipal Council of the Corporation of the County of Elgin enacts as follows:

### **Definitions**

1. The following definitions apply to the text of this By-Law:
  - (a) “Elgin” shall mean the Corporation of the County of Elgin.
  - (b) “Face Covering” means a medical mask or non-medical mask or other face covering such as a bandana, scarf, or cloth (including hijab and niqab) that covers the wearer’s nose, mouth and chin, without gaping, to limit the transmission of respiratory droplets. Plastic face shields do not meet the definition of Face Covering for the purposes of this By-law, though they may be used in addition to a Face Covering.
  - (c) “Employee” means an employee, worker, volunteer, student, or contractor of the establishments set out in subsection 1.(c) of this section.
  - (d) “Enclosed Public Space” means the indoor areas of any building or vehicle as part of the following establishments within those parts of Elgin to which this By-Law applies and that are open or accessible to the public:
    - a. Stores and other establishments that sell or offer to sell food, beverages, consumer products, vehicles, equipment or other goods;
    - b. Restaurants, bars and other establishments that sell or offer to sell food or drink to the public for on-site consumption or take-out, with the exception of the patrons while consuming food and drinks in the seating areas therein;
    - c. Establishments that offer to provide services, including but not limited to professional, counselling, personal care, funeral home, transportation, repair and rental services, to the public, with the exception of services related to child care and day camps, care for the elderly and persons with disabilities;
    - d. Shopping malls and plazas;
    - e. Lobby areas of commercial buildings;
    - f. Hotels and motels, with the exception of the rented rooms therein;
    - g. Laundromats;
    - h. Concert venues, theatres and cinemas;
    - i. Fitness centres, gyms or other recreational and sports facilities;
    - j. Real-estate open houses;
    - k. Museums, galleries, historic sites and similar attractions;
    - l. Places of worship;
    - m. Mechanics’ shops, garages and repair shops;
    - n. Indoor farmers’ markets and flea markets;
    - o. Indoor premises of gas stations;

- p. Convenience stores;
- q. Municipal buildings owned or operated by Elgin or any lower tier municipality located therein;
- r. Municipally operated or contracted conventional or specialized transit vehicles for transporting passengers, including such vehicles owned or operated by Elgin or any lower tier municipality located therein;
- s. Commercial transportation vehicles for transporting passengers, including taxis, limousines, buses or rideshare agencies.

For greater certainty, waiting areas, lobbies, service counters, washrooms, hallways, stairwells and elevators are included in the definition of Enclosed Public Space if they are open to the general public.

For additional greater certainty, the following places shall not be included in the definition of Enclosed Public Space:

- a. Universities, College and Schools;
  - b. Child care centres and providers;
  - c. Day camps;
  - d. Indoor spaces that are owned or operated by or on behalf of the Provincial or Federal Government; and
  - e. Hospitals, independent health facilities and offices of regulated health professionals.
- (d) “Enclosed Employee Space” means spaces within the establishments set out in subsection 1.(c) of this section which are accessible by employees of such establishments and are not accessible to the public.

### **Application**

- 2. This By-Law shall apply to all lands and premises and regulated activities as described herein and undertaken within the territorial limits of the County of Elgin, save and except for those lands and premises and described activities undertaken within the territorial limits of the City of St. Thomas, the Town of Aylmer and/or the Municipality of Dutton Dunwich.

### **Mandatory Health Protection Measures**

- 3. (a) Every person within an Enclosed Public Space shall wear a Face Covering.
- (b) A “person” in subsection 2.(a) of this section shall include any occupant within an enclosed public space and shall include, but not be limited to, any owner, operator, employee, volunteer and worker in the enclosed public space and any customer, patron or other visitor in the enclosed public space but shall not include any of the following:
  - a. Children under 2 years of age;
  - b. Children either chronologically or developmentally under 5 years of age who refuse to wear a Face Covering and cannot be persuaded to do so by their parent or guardian;
  - c. Persons who are unable to wear a Face Covering as a result of a medical condition (for example, due to breathing difficulties, cognitive difficulties, hearing or communication difficulties);
  - d. Persons engaged in a sport or other strenuous physical activity for whom wearing a Face Covering would inhibit breathing or be physically impracticable;

- e. Persons who cannot wear or remove a Face Covering without assistance, including persons accommodated under the *Accessibility for Ontarians with Disabilities Act (AODA)*, 2005, S.O. 2005, c. 11, as amended, or who are protected under the *Ontario Human Rights Code*, R.S.O. 1990, c. H. 19, as amended;
  - f. A person while assisting or accommodating another person with a hearing disability; and
  - g. A person while consuming food or drink as part of a religious activity within a place of worship.
- (c) No person shall be required to provide proof of any of the exemptions set out in subsection 2.(b) of this section.
- (d) A person who is required to wear a Face Covering in an Enclosed Public Space may remove such Face Covering temporarily to access services provided by the business or organization where it is reasonably required to do so.
- (e) Every person who is the owner or operator of an Enclosed Public Space shall prepare a policy providing that no person is permitted to enter such Enclosed Public Space unless they are wearing a Face Covering, and requiring Employees of such owner or operator to provide verbal reminders of this By-law to all persons entering the Enclosed Public Space without a Face Covering or who unreasonably remove their Face Covering. Employees of such owner or operator shall be trained to implement and abide by the policy.
- (f) Every person who is the owner or operator of an Enclosed Public Space shall post legible and clearly visible signage conspicuously at all entrances to the Enclosed Public Space containing the following text:

STOP

Protect each other

Wear a face covering to cover your nose, mouth and chin

Required by the Face Covering By-Law

Does not include children under the age of 2 or those who are unable to wear a face covering as a result of a medical condition or disability.

or alternatively, signage designed and issued by Southwestern Public Health in respect of mandatory face covering in enclosed public spaces.

- (g) Every person who is the owner or operator of an Enclosed Public Space shall ensure the availability of alcohol-based hand rub (60% alcohol or higher) at all entrances and exits.
- (h) Every person who is an employer to whom this By-Law applies and whose Employees are required to or may be inside an Enclosed Employee Space in the course of their employment, shall prepare a policy respecting the use of Enclosed Employee Spaces by Employees, which shall include the following:
  - a. The requirement that Employees practice physical distancing of 2 meters between one another;
  - b. The requirement that Employees wear Face Coverings where physical distancing is not possible;
  - c. Routine screening of Employees for COVID-19 symptoms, and the requirement that those with symptoms stay home and are advised to be tested for COVID-19;

- d. Promotion of proper hand hygiene and cough and sneeze etiquette; and
- e. Procedures for enhanced cleaning and disinfecting of surfaces.

Such employers shall ensure that all Employees are trained to implement and abide by the policy.

- (i) Employees working in Enclosed Public Spaces are not required to wear a Face Covering where sufficient barriers are provided to protect such Employees from close contact with members of the public. A sufficient barrier consists of a solid surface such as glass or plexiglass that forms a barrier between Employees and members of the public. Barriers that allow for potential exposure and transmission because they allow members of the public to be within unobstructed reach of employees do not provide complete separation will not be considered sufficient, and in such situations, Employees are required to wear Face Coverings.
- (j) For the purposes of subsections 2. (e), (f), (g), (h) and (i) of this section, a “person” who is an “owner”, “operator” or “employer” shall include, but not be limited to, a corporation.

#### **Administration, Inspection, and Enforcement**

4. This By-Law may be enforced by an Officer, which shall include,
  - (a) a police officer;
  - (b) a by-law enforcement officer appointed by Elgin;
  - (c) a by-law enforcement officer contracted by Elgin for enforcement of by-laws enacted by Elgin;
  - (d) a by-law enforcement officer or agent appointed or contracted by any lower tier municipality located within Elgin the territorial limits of the City of St. Thomas and/or the Town of Aylmer; and
  - (e) such other person as designated from time to time by Elgin.
5. 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*.
6. An Officer, for the purposes of the inspection under section 5 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 and remove 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.
7. 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 5.

8. Any person, owner 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.
9. Upon conviction of an offence under this By-Law, a person, owner or operator shall be liable to a fine in accordance with section 429 of the *Municipal Act, 2001*, as follows:
  - (a) a minimum of \$500 and a maximum fine of \$100,000;
  - (b) in the case of a continuing offence, for each day or part of a day that the offence continues, a minimum of \$500, and a maximum fine of \$10,000, and the total of all fines for each included offence is not to limited to \$100,000; and
  - (c) in the case of a multiple offence, for each offence included in the multiple offence, a minimum fine of \$500, and a maximum fine of \$10,000, and the total of all fines for each included offence is not limited to \$100,000.
10. 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.
11. An offence under this By-Law may constitute a continuing offence or a multiple offence as set out in the *Municipal Act, 2001*.

#### **General**

12. 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.
13. 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.
14. This By-Law may be cited as the "Face Covering By-Law".
15. This By-Law comes into force and effect on August 6, 2020 at 11:59 p.m. and shall remain in effect until the earlier of December 31, 2020, or until such time as O. Reg. 364/20, being Rules for Areas in Stage 3, originally made under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, as amended, and continued under *The Reopening Ontario ("A Flexible Response to COVID-19") Act*, S.O. 2020, c. 17, as amended, is revoked.

READ A FIRST, SECOND, AND THIRD TIME and finally passed this 6th day of August, 2020

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David Mennill, Warden

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Julie Gonyou, Clerk