

# **The Corporation of the Town of The Blue Mountains**

## **By-Law Number 2020 –**

### **Being a By-law to require mandatory face coverings in indoor and enclosed spaces accessible to the public in the Town of The Blue Mountains**

Whereas COVID-19, a disease caused by a novel coronavirus, is designated as a disease of public health significance and a communicable disease pursuant to Ontario Regulation 135/18 made under the Health Protection and Promotion Act, R.S.O. 1990, c.H.7, as amended;

And Whereas the Province of Ontario has enacted Ontario Regulation 364/20 which requires persons responsible for a business or operation which is open to ensure that any person in the indoor area of the business or organization wears a mask or face covering;

AND WHEREAS the Town of The Blue Mountains wishes to reinforce and augment, but not conflict with, the Provincial regulations.

And Whereas COVID-19 can cause acute and severe respiratory illness and death in humans;

And Whereas the spread of COVID-19 is of immediate and compelling public health importance in the jurisdiction of the Town of The Blue Mountains ("Town"), since its spread was declared a pandemic by the World Health Organization;

And Whereas the Town of The Blue Mountains has a significant tourism economy which attracts visitors from across the Province, Country and World;

And Whereas the Chief Medical Officer of Health of Ontario and the Chief Public Health Officer of Canada has advised that COVID-19 is transmitted from person to person predominantly through respiratory droplets that are released from the nose and mouth, through contact with contaminated surfaces, and through poor hand hygiene;

And Whereas the Chief Medical Officer of Health of Ontario and the Chief Public Health Officer of Canada has advised that COVID-19 may be transmitted from persons who have minimal or no signs or symptoms of illness;

And Whereas the Chief Medical Officer of Health of Ontario and the Chief Public Health Officer of Canada has advised that epidemiological evidence indicates that the widespread use of Face Coverings by all persons decreases spread of respiratory droplets, and expert medical opinions support the widespread use of Face Coverings to decrease transmission of COVID-19;

And Whereas use of Face Coverings is recommended by the Chief Medical Officer of Health of Ontario and the Chief Public Health Officer of Canada in situations where physical distancing (spatial separation of individuals by at least two metres) is difficult to maintain;

And Whereas the Chief Medical Officer of Health of Ontario and the Chief Public Health Officer of Canada has advised that an increase in the number of cases of COVID-19 will increase disease transmission, potential for outbreaks in congregate settings, and the morbidity and mortality of COVID-19 within the population of the jurisdiction and territory of the Town of The Blue Mountains;

And Whereas the Council of The Corporation of the Town of The Blue Mountains, has therefore determined that it is necessary to require that individuals wear Face Coverings in certain enclosed places when they are open to the public, subject to certain exemptions to that requirement;

And Whereas the Chief Medical Officer of Health of Ontario and the Chief Public Health Officer of Canada has advised that the wearing of Face Coverings acts as a "source control" for the spread of particles of the novel coronavirus which causes COVID-19, and as such the Town has

concluded that the wearing of Face Coverings is only effective as a measure to preserve the health and safety of individuals in the Town if Face Coverings are worn by as many persons as possible when they are present in indoor or enclosed places, including but not limited to members of the public;

And Whereas subsection 8(1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended (“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 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 the Council of The Corporation of the Town of The Blue Mountains is authorized under section 425(1) of the *Municipal Act, 2001*, S.O. 2001, C.25, as amended, to pass a by-law providing that a person who contravenes a by-law of the Town commits an offence and, pursuant to section 429(1) of that Act, is authorized to establish a system of fines for offences under such a by-law;

And Whereas Subsection 436(1)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 Council of The Corporation of the Town of The Blue Mountains hereby enacts as follows:

### **Short Title**

This By-law shall be known as the “Mandatory Face Covering By-law”.

### **Part 1 – Definitions**

1. For the purposes of this By-law:

**“By-law”** means this By-law;

**“Council”** means Town Council of The Corporation of the Town of The Blue Mountains;

**“Face Covering”** means a mask or face covering (including a bandana or scarf) constructed 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. For greater clarity, a Face Covering may include, but is not required to be, a medical mask such as surgical masks, N95 or other masks required by healthcare workers;

**“Medical Officer of Health”** means the Medical Officer of Health for the Grey Bruce Health Unit and includes their lawful delegate;

**“Municipal Act, 2001”** means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

**“Municipality”** means the Town and their local boards or agencies, including Fire Services;

**“Officer”** means:

- (a) a provincial offences officer of a Municipality or other person appointed by or under the authority of a municipal by-law to enforce municipal by-laws;
- (b) a public health inspector acting under the direction of the Medical Officer of Health; or
- (c) an officer of the Ontario Provincial Police or the Royal Canadian Mounted Police.

**“Operator”** means a Person or organization who alone or with others, owns and/or has control over and/or directs, the operation of a Public Establishment or vehicle described in subsection 9(2) of this By-law, but does not include a Municipality;

**“Person”** or any expression referring to a person, means an individual of any age and includes a partnership, limited partnership, and a corporation and its directors and officers, and the heirs, executors, assignees and administrators;

**“Premises”** means lands and structures, or either of them, and includes,

- (a) Buildings,
- (b) Ships and vessels,
- (c) Tents, trailers, pavilions, and portable structures designed or used for residence, business or shelter, and
- (d) Trains, railway cars, vehicles and aircraft, except while in operation

**“Provincial Offences Act”** means the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended;

**“Town”** means The Corporation of the Town of The Blue Mountains and/or the municipal boundaries of the Town of The Blue Mountains;

## **Part 2 – Public Establishments**

2. For the purposes of this By-law, “Public Establishment” means all or any portion of a Premises in the Town that is located:

- (a) Indoors, or an area enclosed by three (3) or more walls; a ceiling; and a floor, and whether or not the ceiling, walls or floor are natural or man-made; and
- (b) where the public is ordinarily invited or permitted access, whether a fee is charged, or a membership is required for entry.

3. For greater clarity, Public Establishments shall include the following:

- (a) retail stores where goods and services are sold to customers;
- (b) businesses that primarily sell food including restaurants, supermarkets, grocery stores, bakeries and convenience stores;
- (c) churches, mosques, temples, synagogues and other places of worship, except during a religious rite or ceremony that is incompatible with the face being covered;
- (d) indoor sports and recreational facilities, pavilions and clubhouses;
- (e) shopping malls or similar structure which contains multiple places of business;
- (f) businesses providing personal care services;
- (g) common areas of hotels, motels, apartment buildings, condominiums and other multi-unit buildings or townhouse complexes (including those that permit short term rentals), such as lobbies, elevators, meeting rooms, or other common use facilities;

- (h) libraries, museums, galleries and other similar facilities;
  - (i) banquet halls, conventions centres, arenas, stadiums and other event spaces;
  - (j) concert venues, theatres, cinemas, casinos and other entertainment establishments;
  - (k) premises utilized as an open house, presentation centre, or other facility for real estate purposes;
  - (l) buildings owned and operated by the Municipality; and
  - (m) other businesses, organizations and places that are open to the public.
4. Notwithstanding sections 2 and 3, Public Establishment shall not include the following:
- (a) day cares, schools, post-secondary institutions and other facilities used solely for educational purposes;
  - (b) school transportation vehicles;
  - (c) hospitals and portions of buildings used by regulated health professionals;
  - (d) buildings and services owned or operated by the Province of Ontario or the Federal Government of Canada;
  - (e) Fire and police stations, Emergency Medical Services buildings, and the vehicles associated thereto;
  - (f) portions of community centres, arenas or other buildings that are being used for the purpose of providing day camps for children or for the training of amateur or professional athletes; and
  - (g) portions of community centres, arenas or other buildings owned or operated by the Municipality used for the purposes of providing community services or programs for which registration is required.

### **Part 3 – Face Covering Notice**

- 5. Every Operator shall post Notices at all entrances to the Public Establishment in the form of clearly visible signage/placard identifying that Persons are required to wear a Face Covering in accordance with this By-law, as shown at Schedule 'A' hereto.
- 6. The Operator shall, upon request, identify to an Officer all locations of posted Notice(s).
- 7. No Operator of a Public Establishment shall permit a Person to enter or to remain in a Public Establishment or a vehicle as described in subsection 8(2) without a Face Covering in accordance with this By-law.

### **Part 4 – Face Coverings**

- 8. Every Person shall wear a Face Covering:
  - (a) before entering and while inside a Public Establishment; and
  - (b) before entering and while riding in a vehicle used by the public as part of the operations of a Public Establishment.
- 9. Every Person shall ensure that any Person under his or her care including children comply with section 8 of this By-law.
- 10. A Person shall wear appropriate personal protective equipment that provides protection of the Person's eyes, nose and mouth if, in the course of providing services in a Public Establishment, the Person,
  - (a) is required to come within 2 metres of another person who is not wearing a mask or face covering in accordance with this By-law during any period when that Person is

- in a Public Establishment; and
- (b) is not separated by plexiglass or some other impermeable barrier from the Person described in clause (a).

## **Part 5 – Exemptions**

11. Notwithstanding Part 3 and Part 4 of this By-law, the following Persons shall be exempt from wearing a Face Covering if that Person(s):
  - (a) is a child who is 2 years of age or younger;
  - (b) is attending a school or private school within the meaning of the *Education Act* that is operated in accordance with a return to school direction issued by the Ministry of Education and approved by the Office of the Chief Medical Officer of Health;
  - (c) is attending a childcare program at a place that is in compliance with the childcare re-opening guidance issued by the Ministry of Education;
  - (d) is receiving residential services and supports in a residence listed in the definition of “residential services and supports” in subsection 4 (2) of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*;
  - (e) is in a correctional institution or in a custody and detention program for young persons in conflict with the law;
  - (f) is performing or rehearsing in a film or television production or in a concert, artistic event, theatrical performance or other performance;
  - (g) has a medical condition that inhibits their ability to wear a mask or face covering;
  - (h) is unable to put on or remove their mask or face covering without the assistance of another person;
  - (i) needs to temporarily remove their mask or face covering while in the indoor area,
    - to receive services that require the removal of their mask or face covering,
    - to engage in an athletic or fitness activity,
    - to consume food or drink, or
    - as may be necessary for the purposes of health and safety;
  - (j) is being accommodated in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*;
  - (k) is being reasonably accommodated in accordance with the *Human Rights Code*; or
  - (l) performs work for the business or organization, is in an area that is not accessible to members of the public and is able to maintain a physical distance of at least two metres from every other person while in the indoor area.
  - (m) police, fire, or paramedics during an emergency call;
12. For greater certainty, it is not necessary for a person to present evidence to the person responsible for a Public Establishment or an Officer that they are entitled to any of the exemptions set out in Section 11 .

## **Part 6 – Administration, Enforcement and Inspection**

13. The Town’s Legal Services Division is responsible for the administration and enforcement of this By-law and may appoint delegates or assign duties to Town employees for those purposes.
14. The provisions of this By-law may be enforced by an Officer.
14. (1) An Officer may enter any lands, buildings, and structures, except a private

residence, 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.

- (2) For greater certainty, for the purposes of conducting an inspection pursuant to this By-law, an Officer 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 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.
15. No person shall provide false information or give a false statement to an Officer, employee and/or agent of the Municipality in the lawful exercise of a power or duty under this by-law
16. No person shall hinder or obstruct, nor attempt to hinder or obstruct, either directly or indirectly, an Officer, employee and/or agent of the Municipality in the lawful exercise of a power or duty under this by-law.
17. Every person shall comply with any Order issued under the authority of this bylaw.

#### **Part 7 – Orders**

18. An Officer may order any Person found in contravention or a Person who caused or permitted a contravention of this By-law to:
  - (1) leave a Public Establishment; or
  - (2) immediately correct the contravention by putting on and continuing to wear a Face Covering; or
19. An Officer may order an Operator found in contravention of Part 3 of this By-law to forthwith correct the contravention.
  - (1) It is a defense to an Order or Offence under this Section if the Operator has made a *bona fide* effort to comply with Section 7 of this By-law.
20. An order made pursuant to this Part shall be given by an Officer in writing.
21. An order in writing shall:
  - (1) identify the following:
    - (a) the location where the contravention occurred;
    - (b) the reasonable particulars of the contravention; and
    - (c) the date and time by which compliance with the order is required; and
  - (2) be served personally to the Person to whom it is directed by registered mail to the Person and shall be deemed to be served on the fifth day after mailing.

## **Part 8 – Offences and Penalties**

22. (1) Every Person over the age of 12 who contravenes any provision of this By-law, including failing to comply with an order made under this By-law, is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the *Provincial Offences Act* and the *Municipal Act, 2001*, as each may be amended from time to time.
- (2) In addition to section 22(1), any Person who is charged with an offence under this By-law by the laying of an information under Part III of the *Provincial Offences Act* and is found guilty of the offence is liable, pursuant to the *Municipal Act, 2001*, to the following fines:
- (a) a minimum fine not exceeding \$500 and a maximum fine not exceeding \$100,000;
  - (b) in the case of a continuing offence, for each day or part of a day that the offence continues, a minimum fine not exceeding \$500, and a maximum fine not exceeding \$10,000, and the total of all daily fines for the offence is not limited to \$100,000; and
  - (c) in the case of a multiple offence, for each offence included in the multiple offence, a minimum fine not exceeding \$500, and a maximum fine not exceeding \$10,000, and the total of all fines for each included offence is not limited to \$100,000.
- (3) If a Person is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed, the court in which the conviction has been entered, and any court of competent jurisdiction, may make an order prohibiting the continuation or repetition of the offence by the Person convicted.
23. An offence under this By-law may constitute a continuing offence for each day or part of a day that the offence continues, or a multiple offence for each separate offence, as set out in the *Municipal Act, 2001*.

## **Part 9 – General**

24. In the event of conflict, the specific conflicting provision of this By-law will be of no force and effect to the extent that it conflicts with:
- (1) Any Order or Regulation made pursuant to the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17*, as amended
  - (2) Any statute, regulation, rule, by-law, order or instrument of the Province of Ontario or the Government of Canada; or
  - (3) An Order under the *Health Protection and Promotion Act RSO 1990 c. H.7*
  - (4) A by-law enacted by the County of Grey.
25. Nothing in this By-law shall be construed as permitting the opening or access to a Public Establishment that is not permitted or is restricted by an Order of the Province of Ontario;
26. Words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the By-law otherwise requires.
27. Should a court of competent jurisdiction declare any part or provision of this By-law to be invalid or of no force and effect, it is the intention of Council in enacting this By-law that the remainder of its provisions remain valid and binding, and that it be applied and enforced in accordance with its terms to the fullest extent possible according to law.

**Part 10 – In Force and Effect**

28. This By-law shall come into force on December 14, 2020
29. This By-law shall be repealed on the day that is one (1) year after the day it comes into force, or on the day the World Health Organization or the Government of Canada declare the COVID-19 pandemic to be over, whichever is earliest.
30. Notwithstanding section 29 herein, Council may amend this by-law by Resolution to provide for another date on which it shall be repealed, but no such extension shall extend beyond the end of the pandemic, as declared by the World Health Organization or Government of Canada.

And Further that this By-law shall come into force and take effect upon the enactment thereof.

Enacted and passed this \_\_\_\_ day of \_\_\_\_\_, 2020

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Alar Soever, Mayor

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Corrina Giles, Town Clerk