

THE ONTARIO GAZETTE/LA GAZETTE DE L'ONTARIO 663 317 ONTARIO REGULATION
50/20 made under the EMERGENCY MANAGEMENT AND CIVIL PROTECTION ACT

Made: March 17, 2020 (7:30 am)

Filed: March 18, 2020 Published on e-Laws: March 19, 2020

Printed in The Ontario Gazette: April 4, 2020

DECLARATION OF EMERGENCY WHEREAS the outbreak of a communicable disease namely COVID-19 coronavirus disease constitutes a danger of major proportions that could result in serious harm to persons; AND WHEREAS the criteria set out in subsection 7.0.1(3) of the Emergency Management and Civil Protection Act, R.S.O. 1990, chapter E.9 (the "Act") have been satisfied; NOW THEREFORE, an emergency is hereby declared pursuant to section 7.0.1 of the Act in the whole of the Province of Ontario. 14/20

Temporary Mandatory Mask By-law (By-law No. 2020 – 186)

Introduction

A by-law of the City of Ottawa of temporary application requiring that masks be worn in certain enclosed public spaces to limit the spread of COVID-19.

WHEREAS pursuant to subsection 8(3) of the *Municipal Act, 2001*, S.O. 2001, c.25 (the "*Municipal Act*"), municipalities may regulate or prohibit, or require persons to do certain things respecting a matter;

AND WHEREAS pursuant to subsection 10(2), paragraphs 6 and 8, of the *Municipal Act*, a municipality may pass by-laws respecting the health, safety, and well-being of persons, and the protection of persons;

AND WHEREAS on March 17, 2020, an emergency was declared in the Province of Ontario (Order in Council 518/2020) pursuant to Section 7.1 of the *Emergency Management and Civil Protection Act* due to the spread of the Novel Coronavirus, which causes COVID-19, a disease that is communicable from person to person close contact, primarily through respiratory droplets that are released through the nose and mouth;

AND WHEREAS COVID-19 carries the risk of serious complications such as pneumonia and respiratory failure, and may cause death;

AND WHEREAS on March 11, 2020, the World Health Organization declared the spread of COVID-19 to be a pandemic;

AND WHEREAS on March 25, 2020, Mayor Jim Watson declared a state of emergency for the City of Ottawa due to the spread of COVID-19 in Ottawa;

AND WHEREAS the vast majority of persons in Ottawa remain susceptible to COVID-19 and it continues to be transmitted in Ottawa, and with the resurgence of COVID-19 being observed in many countries new outbreaks of COVID-19 could occur in Ottawa at any time, and there is increasing scientific evidence of the effectiveness of masks to prevent community transmission leading to provincial, national and international public health organizations recommending the wearing of masks when physical distancing cannot be assured;

AND WHEREAS, in light of the public health emergency caused by the spread of COVID-19, it is therefore deemed desirable to put into place temporary regulations requiring persons to wear masks in enclosed public spaces where close contact between persons is likely and increases the risk of spreading COVID-19, subject to certain exceptions;

AND WHEREAS the temporary mandatory requirement to wear masks in enclosed public spaces is further deemed to be a reasonable, practicable and effective method of limiting the spread of COVID-19 for the health, safety and well-being of residents of the City of Ottawa;

THEREFORE the Council of the City of Ottawa enacts as follows:

Section 1 - Definitions

In this by-law:

“**Council**” means the elected municipal council of the City of Ottawa;

“**Enclosed Public Space**” means the interior area of any building or structure 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:

- a. restaurants, cafés, cafeterias, banquet halls;
- b. retail establishments and shopping malls;
- c. churches, mosques, synagogues, temples, or other places of worship;

- d. libraries, museums, art galleries, recreational facilities, bingo halls, cinemas, theatres, concert venues, special event venues, convention centres, or other similar entertainment, cultural, or leisure facilities;
- e. sports facilities, sports clubs, gyms, yoga studios, dance studios, and stadiums;
- f. hotels, motels, or short-term rental premises;
- g. premises under the control of a regulated health professional under the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, as amended;
- h. hospitals and independent health facilities, such as lobbies, food courts and cafeterias, and shops;
- i. temporary facilities, such as construction trailers and temporary sales offices;
- j. municipal facilities, including City Hall (110 Laurier Avenue West, and any community centre, cultural, arts or leisure centre, recreational or sporting facility, parks building, client service centre or indoor parking facility; and,
- k. other businesses, organizations and places that are permitted to operate in accordance with the Emergency Orders passed by the Province of Ontario pursuant to the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c.E.9, as amended,

but the following are not considered an Enclosed Public Space for the purposes of this by-law:

- l. schools under the *Education Act*, R.S.O. 1990, c. E.2, as amended;
- m. childcare centres and providers governed by the *Child Care and Early Years Act, 2014*, S.O. 2014, c. 11, as amended;
- n. portions of buildings that are being used for the purpose of providing day camps;
- o. offices of professional service providers such as lawyers and accountants where clients receive services in areas not open to the general public; and
- p. Public Transit Properties, which are separately regulated under Section 5 of this by-law.

“Mask” means a cloth (non-medical) mask, medical mask or other face covering such as a bandana or scarf, that securely covers the nose, mouth and chin, and is in contact with the surrounding face without gapping, and filters respiratory droplets;

“**Operator**” means the person who controls, governs, directs, or is responsible for the activity carried on within the Enclosed Public Space and includes the person who is actually in charge at any particular time; and,

“**person**” includes an individual, a corporation, a partnership, and an association, as applicable.

Section 2 - Exemptions

1. This by-law does not apply to:

1. a child who is younger than two (2) years of age, or a child who is under five (5) years of age chronologically or developmentally and who refuses to wear a Mask and cannot be persuaded to do so by their caregiver;
 2. a person with a medical condition, including breathing or cognitive difficulties, or a disability, that prevents them from safely wearing a Mask,
 3. a person who is unable to put on or remove their Mask without the assistance of another person; and,
 4. a person who needs to temporarily remove their Mask while in the Enclosed Public Space for the purposes of:
 1. receiving services that require the removal of their Mask;
 2. actively engaging in an athletic or fitness activity including water-based activities, including lifeguards working at indoor pools;
 3. consuming food or drink; or
 4. an emergency or medical purpose.
2. No person shall be required to provide proof of any of the exemptions set out in subsection (1).
3. A person who is employed by or is an agent of the Operator of an Enclosed Public Space is not obligated to wear a Mask under this by-law while:
- 1.

1. in an area of the premises that is not designated for public access, or
2. when located either within or behind a physical barrier, including but not limited to a plexiglass barrier.

Section 3 - Mandatory mask in enclosed public space

Subject to Section 2, every person who enters or remains in an Enclosed Public Space shall wear a Mask in a manner that covers their mouth, nose, and chin.

Section 4 - Duty of operator

1. The Operator of an Enclosed Public Space shall ensure that every person who is not wearing a Mask while in the premises is provided with a verbal reminder to do so as soon as practicable following entry, and if applicable, of the exemptions set out in Section 2.
2. The Operator of an Enclosed Public Space shall post, at every entrance to the premises used by the public, prominent and clearly visible signage that contains the following messages:
All persons entering or remaining in these premises must wear a mask that covers the nose, mouth, and chin as required under City of Ottawa By-law 2020-186.
Toutes les personnes qui entrent ou restent dans ces locaux doivent porter un masque qui couvre le nez, la bouche et le menton, comme l'exige le règlement 2020-186 de la Ville d'Ottawa.
3. The Operator of an Enclosed Public Space shall ensure the availability of alcohol-based hand rub at all public entrances and exits of the premises.

Section 5 - Public transit property

1. Subject to Section 2, every person who enters or remains on public transit property must wear a Mask in a manner that covers their mouth, nose, and chin.
2. For the purposes of this Section, public transit property means the areas accessible to the public of any bus, train, station, platform, shelter, Para Transpo vehicle, and contracted taxicab that are used by the City of Ottawa for the provision of its passenger transportation system.

Section 6 - Interpretation

Nothing in this by-law is intended to conflict with a Federal or Provincial statute, regulation or order, including an order made under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c.E.9, as amended.

Section 7 to 9 - Offences and penalties

Section 7

Any person who contravenes any of the provisions of this by-law is guilty of an offence.

Section 8

Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

Section 9

1. Every person who is convicted of an offence under this by-law is liable to a minimum fine not exceeding \$500 and to a maximum fine not exceeding \$100,000 for each day that the offence occurs or continues pursuant to subsections 429(1), (2) and (3) of the *Municipal Act, 2001*, and all such offences are designated as continuing offences as provided for in subsection 429(2), paragraph 2, of the *Municipal Act, 2001*.
2. In addition to subsection (1), the total of all daily fines for the offence is not limited to \$100,000 as provided for in subsection 429(3), paragraph 2, of the *Municipal Act, 2001*.
3. When a person has been convicted of an offence under this by-law, the Ontario Court of Justice or any court of competent jurisdiction may, in addition to any penalty imposed on the person convicted, issue an order
 1. prohibiting the continuation or repetition of the offence by the person convicted; and
 2. requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

Section 10 - Effective date and term

1. This by-law shall come into effect upon enactment.
2. This by-law is deemed to no longer be in effect and shall be revoked at 12:01 a.m. on the day after the next regularly scheduled Council meeting following the Council meeting of July 15th, 2020, unless it is extended by Council.

Section 11 - Short title

This by-law may be cited as the "Temporary Mandatory Mask By-law". ENACTED AND PASSED this 15th day of July 2020.

Canada: Will The Federal Government Declare A State Of Emergency?

07 July 2020

by [Bradley Zander](#)

Thompson Dorfman Sweatman LLP

0 Liked this Article



In response to the COVID-19 pandemic, all Canadian provinces, including [Manitoba](#), have now declared public health emergencies. To date, the federal government has not yet followed suit. While this may surprise some readers given the increasingly rapid spread of COVID-19 throughout the country, there are at least two principal reasons described below why the federal cabinet has not yet declared a state of emergency as permitted by the *Emergencies Act*.

The *Emergencies Act* replaced the *War Measures Act* in 1988 and to date, the *Emergencies Act* has never been invoked. The last time the *War Measures Act* was invoked occurred in October 1970 during the October Crisis in the Province of Quebec by Prime Minister Pierre Elliott Trudeau.

Under what Circumstances will the Federal Government Declare a State of Emergency?

Under section 6(1) of the *Emergencies Act*, a federal public welfare emergency can be declared if, on reasonable grounds, the cabinet believes there exists an emergency that is caused by a real or imminent disease that results or may result in danger to life or property, social disruption or a breakdown in the flow of essential goods, services or resources, so serious as to be a national emergency.

The first limitation on the federal government's ability to declare a nation-wide state of emergency is that the emergency must be of such proportions or nature as to exceed the capacity or authority of provincial governments to deal with it. Given the breadth of powers available to provincial governments under their own emergency legislation, such as, the authority to: acquire or use any real or personal property considered necessary to combat or alleviate the effects of an emergency; regulate the distribution and availability of essential goods, services and resources; control, limit or prohibit travel to or from any area or on any road, street or highway; and order evacuations of buildings or areas, it may be unnecessary for the federal government to declare a national state of emergency unless unforeseen circumstances arise. In addition, prior to declaring a federal public welfare emergency, the federal cabinet is required to consult with provincial cabinets in affected provinces. The *Emergencies Act* does not provide specific details as to the scope of this duty to consult.

The second limitation is that the public health emergency must be of such severity that it cannot otherwise be effectively dealt with under any other laws of Canada, including but not limited to the *Quarantine Act* and the *Aeronautics Act*. To date, the minister of transport has already exercised his authority under the *Aeronautics Act* to deny boarding of travelers who display symptoms of COVID-19.

What Powers does the Federal Government have under the Emergencies Act?

While a federal public welfare emergency is in effect, the federal cabinet may make such orders or regulations with respect to the:

1. regulation or prohibition of travel to, from or within any specified area;
2. evacuation of persons from any specified area;
3. requisition, use or disposition of property, including private property;
4. regulation of the distribution and availability of essential goods, services and resources;
5. establishment of emergency shelters and hospitals; and
6. direction to any person, or any person of a class of persons, to provide essential services of a type that the person is competent to provide, such as medical services.

Failure to comply with any such orders may result in a fine of up to \$5,000 and for terms of imprisonment of up to five years, or both.

Legislative Oversight

Under the *Emergencies Act*, the House of Commons and Senate must be allowed to debate and vote on a state of emergency proclamation within 7 sitting days of an emergency declaration by the federal cabinet and if Parliament is adjourned, both houses must be called back into session within 7 days. If the state of emergency is not ratified by the House of Commons and Senate, the state of emergency is immediately revoked. In addition to the authority of Parliament to debate and ratify a federal state of emergency, a declaration by the federal cabinet is subject to judicial review by court challenge on the basis that the federal cabinet has not complied with the legislation as written or that certain actions taken by the Government of Canada under the *Emergencies Act* violate or are inconsistent with the Constitution.

Summary

To date, none of Canada's provincial governments have publicly called on the federal government to declare a federal public welfare emergency. Rather, provincial governments are relying on their own efforts to limit the spread of COVID-19 within their borders, as provided for under provincial legislation. Assuming these efforts prove sufficient in slowing and reducing the spread of COVID-19, it is not lawful for the federal cabinet to declare a national public welfare emergency. In the event that it is ultimately deemed necessary to declare a federal public welfare emergency, Parliament will be called on to ratify the government's decision. However, once declared, the federal cabinet will have significant discretion to exercise far-reaching authority under the *Emergencies Act*.

Originally published 03 July, 2020

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.