

**THE CITY OF EDMONTON
BYLAW 19408
TEMPORARY MANDATORY FACE COVERINGS BYLAW**

Edmonton City Council enacts:

PART I – GENERAL

PURPOSE

1. The purpose of this bylaw is to temporarily mandate the wearing of face coverings in indoor public places and public vehicles.

Commented [JDB1]: A purpose provision is highly advisable to include as it allows a plain language description of the legislation for the general public as well as a useful guide to interpretation for courts. However, the provision could be improved by stating why the bylaw is necessary, namely that the face coverings are to “limit the transmission of respiratory droplets.”

DEFINITIONS

2. In this bylaw:
 - (a) “face covering” means a medical or non-medical mask or other face covering that fully covers the nose, mouth, and chin;
 - (b) “public place” means any property, whether publicly or privately owned, to which members of the public have access as of right or by express or implied invitation, whether on payment of any fee or not;
 - (c) “public vehicle” means a bus or light rail vehicle operated by Edmonton Transit Service, or a vehicle for hire as defined in the Vehicle for Hire Bylaw, Bylaw 17400; and
 - (d) “violation ticket” has the same meaning as defined in the *Provincial Offences Procedure Act*, RSA 2000, c P-34.

Commented [JDB2]: “Other face covering” is potentially ambiguous; it could be interpreted as being in the nature of a mask such as a bandana or scarf, but it could also include a face shield. If that is intended, it should be made clearer. See, for example, the definition of “mask” in my draft bylaw.

Some mandatory mask laws are drafted to expressly exclude face shields and require masks (e.g. Quebec’s mask order). Currently, the evidence is not clear as to how effective face shields are compared to masks. However, at this stage it may make sense to permit face shields so as to encourage greater compliance by those who oppose wearing a mask. It is unlikely that many people will opt to use a face shield given the greater difficulties in carrying them around.

Commented [JDB3]: These details are important to prevent people from wearing masks that have been altered so that they do not effectively limit the transmission of respiratory droplets.

Commented [JDB4]: This definition is the same as in the *Public Places Bylaw* (Bylaw 14614) and, as such, captures outdoor spaces such as golf courses. However, the only use of this term in this bylaw is limited to “indoor, enclosed, or substantially enclosed” public places. Since “public place” *on its own* is never used in the bylaw, it would be better to have a definition of “enclosed public space” that provides more clarity as to the premises that the bylaw is to apply to. See, for example, the definition of “enclosed public space” in my draft bylaw.

RULES FOR INTERPRETATION

3. The marginal notes and headings in this bylaw are for ease of reference only.

PART II – FACE COVERINGS

FACE COVERINGS MANDATORY

4. A person must wear a face covering at all times while in an indoor, enclosed, or substantially enclosed public place or in a public vehicle.

Commented [JDB5]: As I note above, it is better to use a more concise term of “enclosed public space” and then provide a definition less uncertain than the adjectives “indoor, enclosed, or substantially enclosed”

EXCEPTIONS

5. Section 4 does not apply to the following persons:

- (a) persons under the age of 2;
- (b) persons who are unable to place, use, or remove a face covering without assistance;
- (c) persons unable to wear a face covering due to a mental or physical concern or limitation, or protected ground under the *Alberta Human Rights Act*;
- (d) persons consuming food or drink in designated seating areas or as part of religious or spiritual ceremony;
- (e) persons engaged in water activities or physical exercise;
- (f) persons providing care or assistance to a person with a disability where a face covering would hinder that caregiving or assistance; and
- (g) persons engaging in services that require the temporary removal of a face covering.

Commented [JDB6]: This seems excessive. Current evidence indicates that young children (i.e. those under 12 years of age) transmit the virus (SARS-CoV-2) at a much lower rate than adults. Given the difficulties of having a 2-year-old wear a mask, it may make more sense to raise this age (to 5 or even 12) rather than risk having the parents of young children harassed for failing to ensure a mask is on their child at all times.

Commented [JDB7]: Under the *Municipal Government Act*, the *Alberta Human Rights Act* prevails over any municipal bylaw, so this provision is unnecessary. It may also be unadvisable as it may encourage individuals to belligerently refuse to wear a mask when requested. If a specific reference to the *Human Rights Act* is to be included in a bylaw, it would be better to have it as a separate section that starts with “For greater certainty” as well as listing specific examples of exceptions to limit the risk that individuals make outlandish assertions of a protected grounds exception.

Commented [JDB8]: This provision is ambiguous as to whether the exception applies to all religious ceremonies or only those religious ceremonies where one is consuming food or drink (e.g. taking the Eucharist). It would be best to separate this into two paragraphs to remove that uncertainty (i.e. one paragraph permitting eating in a designated area and a separate paragraph permitting eating as part of a church service).

Commented [JDB9]: As walking can be physical exercise, this provision may allow for almost anyone to decide that they can be exempted. Exemptions such as this should not be general to individuals, but should be specific to the relevant public places where it is part of the business (e.g. gyms and pools). A better approach would be to permit business to adopt mask policies that allow for prescribed exemptions, including physical exercise and water activities. It is unlikely most businesses will attempt to exploit such exemptions in bad faith.

6. Section 4 does not apply to the following places:

- (a) schools and other educational facilities;
- (b) hospitals and health-care facilities;
- (c) child care facilities; and
- (d) areas exclusively accessed or used by the public place's employees or a public vehicle operator, provided that physical barriers or physical distancing practices are implemented between any person not required to wear a face covering by operation of this exception and any other person.

Commented [JDB10]: This provision allows such facilities to make their own mask rules. However, the manner that it is drafted means that such policies will not be enforceable under this bylaw. It may be better to draft the bylaw so the mask policies of these facilities may be enforced under this bylaw so that such facilities can avail of enforcement by a fine, rather than only trespass.

Commented [JDB11]: It is unclear what the difference between "accessed" and "used" is and why both are included; how can the public use a premise that they cannot access? For clearer language for such a provision see, for example, the exempted activities provisions in my draft bylaw.

Commented [JDB12]: "Public places" do not have "employees;" businesses have "employees" that may work in "public places." For clearer language for such a provision see, for example, the exempted activities provisions in my draft bylaw.

PART III – ENFORCEMENT

OFFENCE

7. A person who contravenes this bylaw is guilty of an offence.

FINES

8. A person found guilty of an offence under this bylaw is liable to a fine in an amount not less than \$100.

VIOLATION TICKET

9. (1) If a violation ticket is issued for an offence under this bylaw, the violation ticket may:

- (a) specify the fine amount established by this bylaw for the offence; or
- (b) require a person to appear in court without the alternative of making a voluntary payment.

(2) A person who commits an offence may, if a violation ticket is issued specifying the fine amount established by this bylaw for the offence, make a voluntary payment equal to the specified fine amount.

COMING INTO FORCE

10. This bylaw comes into force on August 1, 2020.

REPEAL

11. This bylaw is repealed on December 31, 2020.