

Authority: Item (g)(ii), General Issues
Committee Report 20-011
(PED20148/LS20022)
CM: August 13, 2020
Ward: City Wide
Bill No. 164

CITY OF HAMILTON

BY-LAW NO. 20-164

A By-law to Promote and Regulate Physical Distancing in the City of Hamilton and to Amend City of Hamilton By-law No. 17-225, being a By-law to Establish a System of Administrative Penalties

WHEREAS on March 11, 2020 the World Health Organization declared a worldwide pandemic regarding the Novel Coronavirus (“**COVID-19 Pandemic**”);

AND WHEREAS on March 17, 2020, a Declaration of Emergency was made by the Province of Ontario pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9 (“EMCPA”) related to the COVID-19 Pandemic and a number of emergency orders were made under that Act to address the COVID-19 Pandemic in Ontario;

AND WHEREAS Council of the City of Hamilton enacted a by-law on April 8, 2020 to support the intent and purpose of the emergency orders made under the EMCPA in order to protect the health, safety and well-being of persons in the City of Hamilton by prohibiting certain activities and regulating physical distancing during the COVID-19 Emergency;

AND WHEREAS on July 24, 2020, the COVID-19 Emergency was terminated, however the Province of Ontario gave Royal Assent to Bill 195, the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, S.O. 2020, c. 17*, which empowered the Provincial government to extend its current emergency orders made under the EMCPA every 30 days, for up to two years;

AND WHEREAS section 10(2) of the *Municipal Act, 2001, S.O. 2001, c.25* provides that a municipality may pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS the Medical Officer of Health has recommended physical distancing measures to prevent the spread of COVID-19, including maintaining a distance of at least two metres from other individuals who are not members of the same household or who are not members of the same social circle;

AND WHEREAS Council deems it necessary to re-enact another physical distancing by-law to reflect the fact that although the emergency declaration regarding COVID-19 is technically over, COVID-19 is still present in Hamilton and poses a serious risk to the health, safety and well-being of its residents;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

PART 1- DEFINITIONS

1.1 For the purposes of this By-law,

“Authorized Staff” means a Municipal Law Enforcement Officer or any employee of the City whose duties include those provided for or assigned under this By-law, and shall include a Police Officer, the Director, the Medical Officer of Health and public health inspectors;

“City” means the City of Hamilton;

“Director” means the Director of Licensing and By-law Services, or their respective designate, for the City of Hamilton;

“Head of Council” means the Mayor of the City;

“Medical Officer of Health” means the officer appointed to such position by the City of Hamilton under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, their deputies and designates for the purposes of this By-law;

“Police Officer” includes an officer of the Hamilton Police Service;

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

“Social Circle” means a social circle in accordance with the Province of Ontario’s guidelines, as amended, regarding creating a social circle during COVID-19 (such guidelines at the time of passing of this by-law can be found here: <https://www.ontario.ca/page/create-social-circle-during-covid-19>).

PART 2 – OFFENCES

2.1 Every person shall maintain a distance of at least two (2) metres from every other person who is not a member of the same household or who is not a member of their Social Circle, except:

- a) children who are participating in a day camp that is operated in a manner consistent with the safety guidelines for COVID-19 for summer day camps produced by the Office of the Chief Medical Officer of Health;
- b) people in 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 or a school operated by:
 - i. a band, a council of a band, of the Crown in right of Canada;
 - ii. an education authority that is authorized by a band, a council of a band or the Crown in right of Canada; or
 - iii. an entity that participates in the Anishinabek Education system;

- c) child care providers and children in child care facilities;
- d) hospitals, independent health facilities, or offices of regulated health professionals;
- e) when driving in a vehicle;
- f) where necessary for the purposes of facilitating the purchase of admission, goods or services;
- g) where necessary for the provision or receipt of goods and services;
- h) where necessary to provide or receive support, services, or other accommodations;
- i) where necessary for the purposes of health and safety; and
- j) any other person who is exempt from this requirement under provincial or federal legislation.

PART 3 – GENERAL EXEMPTIONS

3.1 This By-law does not apply to Police Officers, City employees or persons hired or engaged by the City to do work or perform services in a Public Space, while performing policing, municipal, or enforcement services, including but not limited to, the enforcement of this By-law.

PART 4 - ADMINISTRATION AND ENFORCEMENT

4.1 The Director is responsible for the administration and enforcement of this By-law and may appoint delegates or assign duties to City staff under this By-law.

4.2 City staff who carry out any action under this By-law are deemed to be Authorized Staff for the purposes of this By-law, in the absence of evidence to the contrary.

4.3 Authorized Staff may, at any reasonable time, enter and inspect all lands, buildings, structures or parts thereof that are subject to this By-law for the purposes of determining compliance with this By-law.

4.4 Despite section 4.3, inspections of any dwelling unit may only be performed in accordance with the *Municipal Act, 2001*.

4.5 For the purposes of this By-law, Authorized Staff may:

- a) require the production for inspection of documents or things relevant to the inspection;

- b) inspect and remove documents or things relevant to an inspection for the purposes of making copies or extracts;
- c) require information from any person concerning a matter related to an 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 an inspection.

4.6 Where any person contravenes any provision of this By-law, Authorized Staff may direct such person, verbally or in writing, to comply with this By-law. Every person so directed shall comply with such direction without delay.

4.7 No person shall prevent, hinder or obstruct, or attempt to hinder or obstruct any Authorized Staff in the exercise of any power or the performance of any activity or duty under this By-law.

PART 5 – OFFENCES AND PENALTIES

5.1 Every person who contravenes any provision of this By-law is guilty of an offence and is liable to pay a fine, and such other penalties, as provided for in the *Provincial Offences Act* and the *Municipal Act, 2001*.

5.2 Every person, other than a corporation, who contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first conviction; and not more than \$25,000 for any subsequent conviction.

5.3 Every corporation which contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first conviction and not more than \$100,000 for any subsequent conviction.

5.4 If an offence under the By-law is continued on more than one day, the person who committed it is liable to be convicted for a separate offence for each day on which it is continued.

5.5 Without limiting the above, every person who contravenes this By-law may also be liable, upon issuance of a penalty notice, to pay an Administrative Penalty in an amount specified in the City's Administrative Penalties By-law No. 17-225 (the "**APS By-law**").

PART 6 – AMENDMENTS TO THE APS BY-LAW

6.1 Schedule A of By-law No. 17-225 is amended by repealing Table 22 and replacing it with the following:

TABLE 22: BY-LAW NO. 20-164 To Promote and Regulate Physical Distancing				
ITEM	COLUMN 1 DESIGNATED BY-LAW & SECTION		COLUMN 2 SHORT FORM WORDING	COLUMN 3 SET PENALTY
1	20-164	2.1	Fail to maintain a distance of at least two (2) metres from another person	\$500.00
4	20-164	4.7	Obstructing an Officer or Authorized staff	\$500.00

6.2 In all other respects the APS By-law is confirmed.

PART 7 – MISCELLANEOUS

7.1 **Conflict:** In the event of a discrepancy between this By-law and any statute, regulation, rule, by-law, order or instrument of the Province of Ontario or the Government of Canada, the provision that is the most restrictive prevails.

7.2 **Severability:** Should any section of this By-law be declared by a Court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

7.3 **Short Title:** This By-law may be referred to as the Hamilton Physical Distancing By-law.

7.4 **Effective Date:** This By-law shall become effective on the date approved by City Council.

PASSED this 13th day of August, 2020.

M. Wilson
Acting Mayor

A. Holland
City Clerk