

As of the date when this memo is published, masks are already mandatory in public spaces in at least [Kingston](#), [Windsor](#), [Ottawa](#) (the first to do it) and [Toronto](#). Soon, Waterloo Region [follows suit](#). Other locations are also likely to comply with this latest trend in the fight against COVID-19. Do any of these new by-laws or public health orders impact condominiums? The answer, as usual, is that it depends.

A typical residential condominium isn't public space (the whole of every condominium is, technically, private property). Yes, there are lobbies, hallways, garages and other parts of condominium lands that may be public-facing, but they are usually, by definition, private spaces, 'common' only to the owners and residents of the condominium itself. But none of that means that all condominiums are necessarily exempt.



The Toronto by-law, for example, requires masks to be worn in locations used for real estate open houses, and in common areas (lobbies, elevators, etc.) of buildings providing short-term rentals. These requirements clearly will affect some condominiums. Furthermore, not every condominium is exclusively residential (and some are exclusively non-residential). If there are units used as hotel suites, retail spaces, offices, restaurants, entertainment facilities and so forth, that are open to the public, then masks will be mandatory in those parts of the condominium. Other municipalities' restrictions contain similar or identical descriptions of the applicable public spaces.

Each condominium will have to examine the order or by-law enacted in its jurisdiction to reach a determination as to the extent to which it is subject to it.

### How mandatory is it, really?

The answer to this question might also be seen as, "it depends," but it's really not. While Toronto has established an enforceable by-law that requires business owners to establish and enforce the use of masks, the City of Ottawa has so far only issued recommendations from its Medical Officer of Health, which include this statement,

Implementation of the policy should be enacted and enforced in 'good faith' and should be primarily used as a means to educate people on Mask use in public spaces.

Ottawa is also [considering making a by-law](#); but, technically, whether it comes in the form of a by-law, regulation, order or recommendation, every operator of a business or organization is already subject to the following obligation under Ont. Reg. 263/20:

The person responsible for a business or organization that is open shall operate the business or organization in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.

The operative word here is "shall". In standard legal-speak, that makes a thing mandatory.

In any case, even if the orders are just recommendations, and even though most common areas of most condominiums are likely not subject to them anyway, there are good arguments that condo boards should make the proper use of masks mandatory anyway in all common areas and amenities of the condominium just as a matter of health protection and care for the community – subject to appropriate exemptions (such as for small children, people with relevant medical conditions or disabilities, etc.), as most municipal orders and by-laws also address. There is no reason that condominiums cannot make their own rules about this, rather than wait for or rely on municipal or provincial direction before doing anything.