

## **RECORD OF DECISION – CMOH Order 40-2021**

### **Re: 2021 COVID-19 Response**

Whereas I, Dr. Deena Hinshaw, Chief Medical Officer of Health (CMOH) have initiated an investigation into the existence of COVID-19 within the Province of Alberta.

Whereas the investigation has confirmed that COVID-19 is present in Alberta and constitutes a public health emergency as a novel or highly infectious agent that poses a significant risk to public health.

Whereas under section 29(2.1) of the *Public Health Act*, I have the authority by order to prohibit a person from attending a location for any period and subject to any conditions that I consider appropriate, where I have determined that the person engaging in that activity could transmit an infectious agent. I also have the authority to take whatever other steps that are, in my opinion, necessary in order to lessen the impact of the public health emergency.

Whereas having determined that additional measures are necessary to protect Albertans from exposure to COVID-19 and to prevent the spread of COVID-19, I hereby make the following order:

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## **Part 1 – Application**

- 1.1 This Order applies throughout the Province of Alberta and rescinds:
  - (a) the reference to Part 2 in the Table of Contents of Record of Decision – CMOH Order 34-2021;
  - (b) clause 1.4 in CMOH Order 34-2021; and
  - (c) Part 2 of Record of Decision – CMOH Order 34-2021.
- 1.2 This Order does not apply to those subject matters covered by CMOH Order 10-2020. If a section in this Order is inconsistent, or in conflict with a provision in Record of Decision – CMOH Order 10-2020, the sections in CMOH Order 10-2020 apply to the extent of the inconsistency or conflict.
- 1.3 If a section in this Order is inconsistent or in conflict with a provision in Record of Decision – CMOH Order 37-2021 the provisions in Record of Decision – CMOH Order 37-2021 prevails to the extent of the inconsistency or conflict.
- 1.4 This Order is effective September 4, 2021 at 8:00 a.m. Mountain Standard Time.

## **Part 2 – Definitions**

- 2.1 For the purposes of this Order:
  - (a) “authorizing health professional” means one of the following regulated members under the *Health Professions Act* who holds a practice permit:
    - i. nurse practitioners;
    - ii. physicians;
    - iii. psychologists.
  - (b) “Class A, B or C liquor licence” has the same meaning given to it under the *Gaming, Liquor and Cannabis Regulation, AR 143/96*, under the *Gaming, Liquor and Cannabis Act*.
  - (c) “commercial vehicle” means a vehicle operated on a highway by or on behalf of a person for the purpose of providing transportation, but does not include a private passenger vehicle;
  - (d) “day care” has the same meaning given to it in the *Early Learning and Child Care Regulation*;
  - (e) “face mask” means a medical or non-medical mask or other face covering that covers a person’s nose, mouth and chin;
  - (f) “facility-based program” has the same meaning given to it in the *Early Learning and Child Care Act*;

- (g) “Facility Licence” has the same meaning given to it under the *Gaming, Liquor and Cannabis Regulation*, AR 143/96, under the *Gaming, Liquor and Cannabis Act*.
- (h) “family day home program” has the same meaning given to it in the *Early Learning and Child Care Act*;
- (i) “farming or ranching operation” means the primary production of eggs, milk, grain, seeds, fruit, vegetables, honey, livestock, diversified livestock animals within the meaning of the *Livestock Industry Diversification Act*, poultry or bees, an operation that produces cultured fish within the meaning of the *Fisheries (Alberta) Act*, and any other primary agricultural operation specified in the regulations, but does not include the operation of a greenhouse, mushroom farm, nursery or sod farm;
- (j) “fitness activity” means a physical activity that occurs at a gym, fitness studio, dance studio, rink, pool, arena or recreation centre and includes dance classes, rowing, spin, pole dancing, yoga, boxing, boot camp, Pilates and other activities of a similar nature;
- (k) “food-serving business or entity” means a restaurant, café, bar, pub or similar business or entity;
- (l) “Gaming Licence” has the same meaning given to it under the *Gaming, Liquor and Cannabis Regulation*, AR 143/96, under the *Gaming, Liquor and Cannabis Act*.
- (m) “group family child care program” has the same meaning given to it in the former *Child Care Licensing Regulation*;
- (n) “health condition” means the following mental or physical limitations:
  - i. sensory processing disorders;
  - ii. developmental delays;
  - iii. mental illnesses including: anxiety disorders; psychotic disorders; dissociative identity disorder; and depressive disorders;
  - iv. facial trauma or recent oral maxillofacial surgery;
  - v. contact dermatitis or allergic reactions to mask components; or
  - vi. clinically significant acute respiratory distress.
- (o) “highway” means any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place or any part of any of them, whether publicly or privately owned, that the public is ordinarily entitled or permitted to use for the passage or parking of vehicles and includes:
  - i. a sidewalk, including a boulevard adjacent to the sidewalk;
  - ii. if a ditch lies adjacent to and parallel with the roadway, the ditch; and
  - iii. if a highway right of way is contained between fences or between a fence and one side of the roadway, all the land between the fences, or all the land between the fence and the edge of the roadway, as the case may be,

but does not include a place declared by regulation not to be a highway.

- (p) “innovative child care program” has the same meaning given to it in the former *Child Care Licensing Regulation*;
- (q) “masking directive or guidance” means a directive or guidance document made by a regional health authority, or a contracted service provider of a regional health authority, which sets out directions or guidance respecting the use of face masks in facilities or settings operated by the regional health authority or the contracted service provider.
- (r) “medical exception letter” means written confirmation provided to a person by an authorizing health professional which verifies that the person has a health condition that prevents the person from wearing a face mask while attending an indoor public place and
  - i. clearly sets out the information required by section 4.3 of this Order; and
  - ii. is valid for a period of one year from the date on which it is made.
- (s) “outdoor patio and dining area” means an area that meets the following requirements:
  - i. patios and dining areas with a roof with no more than one enclosing wall;
  - ii. patios and dining areas without a roof, with one or more enclosing walls;
  - iii. for the purposes of this Order, umbrellas and pergolas are not considered to be roofs; and
  - iv. for the purposes of this Order, a fence or a half-wall is not an enclosing wall.
- (t) “out of school care” has the same meaning given to it in the Early Learning and Child Care Regulation;
- (u) “performance activity” means singing, playing a musical instrument, dancing, acting or other activities of a similar nature.
- (v) “physical activity” means a fitness activity or sport activity that is offered by a business or entity.
- (w) “preschool care”, has the same meaning given to it in the Early Learning and Child Care Regulation;
- (x) “public place” has the same meaning given to it in the Public Health Act, and for greater certainty does not include a rental accommodation used solely for the purposes of a private residence, and does not include a school building;
- (y) “school building” has the same meaning given to it in the Education Act;
- (z) “Special Event Licence” has the same meaning given to it under Gaming, Liquor and Cannabis Regulation, AR 143/96, under the Gaming, Liquor and Cannabis Act; and

- (aa) “sport activity” means sports training, practices, events, games, scrimmages, competitions, gameplay, league play, and other activities of a similar nature.

### **Part 3 – Indoor masking requirements**

- 3.1 Except as set out in this Order, a person must wear a face mask at all times while attending an indoor public place.
- 3.2 For greater certainty, an indoor public place means all indoor spaces under the control of a business or entity, including all areas where the public or employees of the business or entity may attend.
- 3.3 For greater certainty, except as otherwise set out in this Order, masks must be worn by persons attending at businesses or entities and workplaces.
- 3.4 A person driving or being transported in a commercial vehicle on a highway with one or more additional persons must wear a face mask at all times.
- 3.5 A person must comply with all masking directives or guidance while attending at a facility operated by a regional health authority under the *Regional Health Authorities Act* or a facility operated by a contracted service provider of a regional health authority.

### **Part 4 – Masking exceptions**

#### **A. General exceptions to indoor masking**

- 4.1 Despite Part 3 of this Order, a person is not required to wear a face mask at all times while attending an indoor public place if the person is:
- (a) unable to place, use or remove a face mask without assistance;
  - (b) seated while consuming food or drink;
  - (c) providing or receiving care or assistance where a face mask would hinder that caregiving or assistance;
  - (d) alone at a workstation and separated by at least two metres distance from all other persons;
  - (e) the subject of a workplace hazard assessment in which it is determined that the person’s safety will be at risk if the person wears a mask while working;
  - (f) separated from every other person by a physical barrier that prevents droplet transmission;
  - (g) a person who needs to temporarily remove their face mask while in the public place for the purposes of:
    - i. receiving a service that requires the temporary removal of their face mask;
    - ii. an emergency or medical purpose, or
    - iii. establishing their identity.

- 4.2 For greater certainty, masks must be worn at a wedding or funeral that is held in an indoor public place.

**B. Exceptions for health conditions**

- 4.3 Despite Part 3 of this Order, a person who is unable to wear a face mask due to a health condition as determined by an authorizing health professional is excepted from wearing a face mask while attending an indoor public place.
- 4.4 For the purposes of section 4.2, the health condition must be verified by a medical exception letter that includes the following:
- (a) the name of the person to whom the exception applies;
  - (b) the name, phone number, email address, professional registration number, and signature of the authorizing health professional; and
  - (c) the date on which the written confirmation was provided.
- 4.5 For greater certainty, although the medical exception letter must verify that a health condition applies, the medical exception letter must not include specific information about the health condition.

**C. Exceptions for children**

- 4.6 Despite Part 3 of this Order, a child under two years of age does not need to wear a face mask at all times while attending an indoor public place.
- 4.7 Despite Part 3 of this Order, a child does not need to wear a face mask while attending any of the following child care programs:
- (a) a facility-based program providing day care, out of school care or preschool care;
  - (b) a family day home program;
  - (c) a group family child care program;
  - (d) an innovative child care program.

**D. Exceptions for farming or ranching operations**

- 4.8 Despite Part 3 of this Order, a person does not need to wear a face mask while working at a farming or ranching operation, unless the person is interacting with a member of the public.

**E. Exceptions for physical and performance activities**

- 4.9 Despite Part 3 of this Order, a person is not required to wear a face mask while participating in a physical activity.
- 4.10 Despite Part 3 of this Order, a person participating in a performance activity is not required to wear a mask.



## **F. Exceptions for places of worship**

- 4.11 Despite Part 3 of this Order, a person is not required to wear a face mask while participating at a worship service at a place of worship.

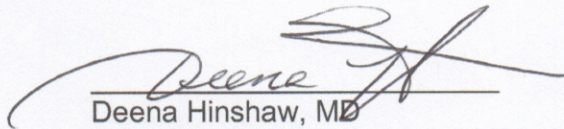
## **Part 5 – Time limitations on alcohol service and consumption**

- 5.1 An operator of a food-serving business or entity that offers or provides food and beverage services must require persons to remain seated while consuming food or beverages.
- 5.2 An operator of a business or entity with a Class A or C liquor licence, including but not limited to restaurants, bars, lounges, pubs, cafes, legions or private clubs is prohibited from serving liquor after 10 p.m.
- 5.3 An operator of a business or entity with a Gaming Licence or Facility Licence or a Class B liquor licence, including but not limited to bowling alleys, casinos, bingo halls, pool halls and indoor recreation entertainment centers is prohibited from serving liquor after 10 p.m.
- 5.4 A person who holds a Special Event Licence is prohibited from serving liquor after 10 p.m. and must ensure that liquor consumption at the event ends at 11 p.m..
- 5.5 An operator of a food-serving business or entity with a Class A, B, or C liquor licence or with a Gaming Licence or Facility Licence must ensure that liquor consumption at the food-serving business or entity ends at 11 p.m..
- 5.6 For greater certainty, an operator of a business or entity with a Class A, B or C liquor licence, may, subject to applicable laws, provide liquor by take-out or delivery at any time, including after 10 p.m..

## **Part 6 – General**

- 6.1 Notwithstanding anything in this Order, the Chief Medical Officer of Health may exempt a person or a class of persons from the application of this Order.
- 6.2 This Order remains in effect until rescinded by the Chief Medical Officer of Health.

Signed on this 3 day of September, 2021.

  
Deena Hinshaw, MD  
Chief Medical Officer of Health