

# COVID-19 and Masks: Real Estate Perspective

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On June 5<sup>th</sup> 2020, the World Health Organization (WHO) published an updated guidance which strongly recommends the use of masks for control of COVID-19, not only in public transportations, but also in spaces where physical distancing is difficult. This includes, among others, stores, schools and places of worship. These new recommendations are based on recent academic research indicating that masks have an important preventive role to play in the transmission of viruses including COVID-19, our current concern<sup>1</sup>.

Before we discuss the position of the province of Quebec regarding the use of masks from the commercial point of view, at this time, a quick review of how other states deal with this issue is useful.

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<sup>1</sup> The report is available:

“Coronavirus disease (COVID-19) advice for the public: When and how to use masks”, World Health Organization, accessed June 14, 2020, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/when-and-how-to-use-masks>

“WHO Director-General's opening remarks at the media briefing on COVID-19 - 5 June 2020”, World Health Organization, accessed June 14, 2020, <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---5-june-2020>

- **ONTARIO** : Officially, the Government of Ontario recommends the use of masks<sup>2</sup> and, in its Stage 2 of the province’s reopening plan, the Government wrote that masks should be worn in personal care services and in restaurants and bars<sup>3</sup>. However, the mayor of Toronto, John Tory, announced the mandatory use of face masks when using the city’s public transit system starting on July 2<sup>nd</sup>, 2020<sup>4</sup>. On June 12<sup>th</sup>, Wellington-Dufferin-Guelph Public Health issued an order prohibiting people from entering the premises of commercial establishments if they do not have a mask<sup>5</sup>. Doug Ford also announced that businesses have the right to have a “no mask, no service” policy<sup>6</sup>. Therefore, our Ontarian neighbours seem to slightly shift towards a pro mask position.
  
- **UNITED STATES** : The approach in the United States differs by state. The governmental indications oscillate between recommending and making mandatory the use of face masks in retail stores, notably in confined or crowded environments. While some states require solely employees or certain types of employees to use masks, others also made the use of masks mandatory for clients<sup>7</sup>. Here are some examples of states where both employees and clients are required to use masks:

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<sup>2</sup> “Face covering and face masks”, Government of Ontario, accessed June 14, 2020, <https://www.ontario.ca/page/face-coverings-and-face-masks>

<sup>3</sup> “A Framework for Reopening our Province: Stage 2”, Government of Ontario, accessed June 14 2020, <https://www.ontario.ca/page/framework-reopening-our-province-stage-2>

<sup>4</sup> Relevant extract of the press conference is available at :  
 “Coronavirus outbreak: Toronto Mayor Tory announces mandatory usage of face masks on TTC”, *Global News*, June 11, 2020, [https://globalnews.ca/video/7054279/coronavirus-outbreak-toronto-mayor-tory-announces-mandatory-usage-of-face-masks-on-ttc?fbclid=IwAR0B-2PMFCcofAxEAaDT0nSyB3-82blAS1boh0\\_F-CLQCYQRgUPqGZVWDsA](https://globalnews.ca/video/7054279/coronavirus-outbreak-toronto-mayor-tory-announces-mandatory-usage-of-face-masks-on-ttc?fbclid=IwAR0B-2PMFCcofAxEAaDT0nSyB3-82blAS1boh0_F-CLQCYQRgUPqGZVWDsA)

<sup>5</sup> “CLASS ORDER”, WDG Public Health, accessed June 14, 2020, [https://www.wdgpublichealth.ca/sites/default/files/file-attachments/class\\_order\\_-\\_face\\_masking\\_june\\_12.pdf](https://www.wdgpublichealth.ca/sites/default/files/file-attachments/class_order_-_face_masking_june_12.pdf)

<sup>6</sup> Frank Gunn & The Canadian Press, “Businesses have the right to require masks on customers, Doug Ford says”, *The Globe and Mail*, May 25, 2020, <https://www.theglobeandmail.com/business/article-businesses-have-the-right-to-require-masks-on-customers-doug-ford/>

<sup>7</sup> “Facing Your Face Mask Duties – A List of Statewide Orders, as of June 12, 2020”  
 Littler Mendelson P.C., accessed June 14, 2020, <https://www.littler.com/publication-press/publication/facing-your-face-mask-duties-list-statewide-orders>

- **Connecticut** : In the document " Reopen Connecticut ", Connecticut requires all employees and clients to wear a mask or a face covering cloth for retail businesses and shopping centres<sup>8</sup>.
- **New York**: According to New York executive orders, business owners and building owners can deny individuals access to their premises or building if they refuse to wear a mask. The State of New York even specifies that preventing someone to enter their shop for this reason does not violate the quiet enjoyment of the premises<sup>9</sup>.
- **Maine**: All individuals must wear cloth face coverings in public spaces where physical distancing measures are difficult to maintain<sup>10</sup>. In a more recent executive order, the State of Maine also specified that business owners can refuse to let a client enter their retail store if the client refuses to wear a mask<sup>11</sup>.
- **FRANCE** : France has made the use of masks mandatory when a one meter distance between individuals is not possible at work, for teachers in schools and for users of public transportation<sup>12</sup>. However, wearing a mask is not mandatory in retail stores<sup>13</sup>, but as the French Prime Minister Édouard Philippe stated: "A business owner can

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<sup>8</sup> "Reopen Connecticut", CT.gov, accessed June 14, 2020, [https://portal.ct.gov/-/media/DECD/Covid\\_Business\\_Recovery/CTReopensRetail--051620.pdf](https://portal.ct.gov/-/media/DECD/Covid_Business_Recovery/CTReopensRetail--051620.pdf)

<sup>9</sup> Executive order:

"No. 202.34: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency", GOVERNOR ANDREW M. CUOMO, accessed June 14, 2020, <https://www.governor.ny.gov/news/no-20234-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

<sup>10</sup> "Executive Order 49: An Order to Stay Safer at Home (PDF)", Office Of Governor Janet T. Mills, accessed June 14, 2020, [https://www.mainepublic.org/sites/mpbn/files/202004/an\\_order\\_to\\_stay\\_safer\\_at\\_home.pdf](https://www.mainepublic.org/sites/mpbn/files/202004/an_order_to_stay_safer_at_home.pdf)

<sup>11</sup> "Executive Order 55: An Order to Further Implement the Restarting Plan (PDF)", Office Of Governor Janet T. Mills, accessed June 14, 2020, <https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/An%20Order%20to%20Further%20Implement%20the%20Restarting%20Plan.pdf>

<sup>12</sup> "CORONAVIRUS Quand porter un masque?", Gouvernement.fr, accessed June 14, 2020, [https://www.gouvernement.fr/sites/default/files/quand\\_porter\\_un\\_masque.pdf](https://www.gouvernement.fr/sites/default/files/quand_porter_un_masque.pdf)

<sup>13</sup> "CORONAVIRUS Quand porter un masque?", Gouvernement.fr, accessed June 14, 2020, [https://www.gouvernement.fr/sites/default/files/quand\\_porter\\_un\\_masque.pdf](https://www.gouvernement.fr/sites/default/files/quand_porter_un_masque.pdf)

make the access to its retail store conditional on the use of a mask”<sup>14</sup> [Author’s Translation]. Some retailers and commercial centres, such as Decathlon, decided to impose the use of masks<sup>15</sup>.

- **UNITED KINGDOM** : The United Kingdom recommends the use of masks in confined environments where physical distancing measures are difficult to maintain, without making it mandatory<sup>16</sup>. However, as of June 15<sup>th</sup>, the use of facemasks will be mandatory in public transportation<sup>17</sup>. Even though from a retail perspective, there does not seem to be any obligation regarding the use of masks, the United Kingdom seems to lean toward the use of masks, in accordance with the WHO’s recommendations.

Here in Quebec, the government is still hesitant to impose the use of face masks in retail stores or in other public spaces. However, pursuant to the Article 123 of the *Public Health Act*, the government could make the use of face masks mandatory provided that it demonstrates the necessity of such a measure for the protection of the population<sup>18</sup>. This seems justifiable from a legal standpoint, especially taking into account the recent recommendations from the WHO. The mandatory use of masks may lead to legal

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<sup>14</sup> Anaïs Condomines, “Le port du masque est-il obligatoire dans les commerces?”, *Libération*, May 10, 2020, [https://www.liberation.fr/checknews/2020/05/10/le-port-du-masque-est-il-obligatoire-dans-les-commerces\\_1787927](https://www.liberation.fr/checknews/2020/05/10/le-port-du-masque-est-il-obligatoire-dans-les-commerces_1787927)

<sup>15</sup> *Ibid*

<sup>16</sup> “Staying safe outside your home”, GOV.UK, accessed June 14, 2020, <https://www.gov.uk/government/publications/staying-safe-outside-your-home/staying-safe-outside-your-home>

“OUR PLAN TO REBUILD: The UK Government’s COVID-19 recovery strategy”, GOV.UK, accessed June 14, 2020, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/884760/Our\\_plan\\_to\\_rebuild\\_The\\_UK\\_Government\\_s\\_COVID-19\\_recovery\\_strategy.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/884760/Our_plan_to_rebuild_The_UK_Government_s_COVID-19_recovery_strategy.pdf)

<sup>17</sup> “Face coverings to become mandatory on public transport”, GOV.UK, accessed June 14, 2020, <https://www.gov.uk/government/news/face-coverings-to-become-mandatory-on-public-transport>

<sup>18</sup> *PUBLIC HEALTH ACT*, RLRQ, c. S-2.2

challenges under the *Canadian Charter of Rights and Freedoms* (federal) and the *Charter of Human Rights and Freedoms* (provincial). But considering this current health crisis, such restrictions would most likely be considered as just and reasonable, a position endorsed by both Julius Grey and professor Patrick Taillon in recent media interviews<sup>19</sup>. In light of the recent WHO's recommendations and of the actions taken by governmental authorities with law systems similar to ours, our government has all the reasons to explicitly authorize business owners to, at least, decide for themselves if they wish or not to impose the use of masks in their own retail stores.

Regardless of its agenda, the government should carefully look at the actions taken by other states on the use of masks, since, in the current context, waiting is a luxury that we simply do not have.

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<sup>19</sup> “Une obligation serait contraire à la Charte, mais justifiée”, *TVA Nouvelles*, May 13, 2020, [https://www.tvanouvelles.ca/2020/05/13/une-obligation-serait-contraire-a-la-charte-mais-justifiee?fbclid=IwAR0eqi4i-kCz5Yk9GXTbCP2xZYPhhX9Ujphle\\_OMTl6yJgEgiBxNmh7Wnjs](https://www.tvanouvelles.ca/2020/05/13/une-obligation-serait-contraire-a-la-charte-mais-justifiee?fbclid=IwAR0eqi4i-kCz5Yk9GXTbCP2xZYPhhX9Ujphle_OMTl6yJgEgiBxNmh7Wnjs)  
Julien McEvoy, “Impossible d’exiger le port du masque?”, *Radio-Canada*, May 13, 2020, <https://ici.radio-canada.ca/nouvelle/1702481/coronavirus-covid-quebec-legault-arruda-masque-couvre-visage>