



## Consolidated By-law 50-2021 of The Corporation of the City of Oshawa

This consolidated by-law is made available for information and convenience purposes only. For accuracy, By-law 50-2021 along with amending By-laws 86-2024 and 124-2024 should be reviewed.

Being a by-law to repeal By-law 98-2013, as amended, and replace it with a new Trespass By-law, of The Corporation of the City of Oshawa (the "Trespass By-law").

Whereas:

1. the City of Oshawa has the right as an owner and occupier of premises to restrict or prohibit entry to such premises, and the *Trespass to Property Act*, R.S.O. 1990, c. T.21 governs the enforcement of that right; and,
2. the Council of the City of Oshawa recognizes its responsibility to exercise its rights in accordance with the *Canadian Charter of Rights and Freedoms*; and,
3. the Council of the City of Oshawa desires to replace the former Trespass By-law 98-2013, as amended;

Now therefore The Corporation of the City of Oshawa by its Council enacts as follows:

### Short Title

1. The short title of this By-law is the "Trespass By-law".

### Definitions

2. In this By-law,

"Appeal Fee" means the fee to commence an appeal in accordance with Fees and Charges By-law 109-2024, or its successor; (124-2024)

"Authorized Person" means any of the following persons:

- (a) a security guard employed by or under contract with the City;
- (b) a Municipal Law Enforcement Officer appointed to enforce the By-laws of the City;
- (c) a police officer employed by a municipal police force, by the Ontario Provincial Police or by the Royal Canadian Mounted Police;
- (d) Supervisor, Manager, Director of the City's Recreation and Culture Services and Operations Services;
- (e) a Senior Staff Person;
- (f) a Senior Executive Staff Person; and,
- (g) Chief Administrative Officer.

"City" means the Corporation of the City of Oshawa;

"City Employee" means all full-time, part-time, temporary, seasonal and staff hired on a contract basis for a defined period of time, of the City of Oshawa as well as, Students

"City Facility(ies)" means all physical property, buildings, facilities, lands, premises, goods and other assets owned, leased and/or maintained by the Corporation of the City of Oshawa;

"Council" means Oshawa Council as a whole;

“Hearing Officer” means each person from time to time appointed by the Chief Administrative Officer pursuant to Screening and Hearing Officer By-law 17-2024, or its successor;  
(124-2024)

“Meeting Room” means that part of a City Facility in which the Council of the City of Oshawa or one of its Standing Committees is holding a meeting pursuant to Procedure By-law 128-2022, as amended, or its successor;  
(124-2024)

“Person” means an individual, partnership, association, organization, firm or corporation;

“Prohibited Conduct” includes:

- (a) damage to or vandalism of a City Facility;
- (b) interference with the operation of a City Facility;
- (c) interference with others’ use of a City Facility;
- (d) contravention of a law of Canada, a law of the Province of Ontario or a municipal by-law;
- (e) contravention of a City of Oshawa policy governing the conduct of Persons entering City Facility;

“Senior Executive Staff Person” means the Director, Facilities Management Services, Corporate Security Manager, a member of the Corporate Leadership Team including the Chief Administrative Officer;

“Senior Staff Person” means each Director of a City Branch; and,

“Service Oshawa” means the City’s Customer Service Division and includes each person from time to time employed therein.

### **Trespass Notice**

3. (1) For the purposes of this By-law, a Trespass Notice means a notice prohibiting entry to one or more City Facility by a person or group of persons.

### **Oral or Written**

- (2) A Trespass Notice may be given orally or in writing.

### **Confirm Oral in Writing**

- (3) A Trespass Notice given orally and prohibiting entry to no more than one City Facility shall be documented in writing as soon as is practicable.

### **Factors in Giving Trespass Notice**

4. In determining whether to give or extend a Trespass Notice to a Person pursuant to this By-law, the locations where entry is prohibited, and the duration of the prohibition, consideration shall be given to the following factors:
  - (a) the feasibility and effectiveness of any warnings to the Person or graduated restrictions placed on the Person;
  - (b) any operational or City employee requirements or limitations;
  - (c) the severity of the harm or potential harm caused by the Person’s Prohibited Conduct to City Employees, Council, Contracted Service Provided, Students or Volunteers, members of the public or City Facility;
  - (d) the Person’s level of ability and circumstances;
  - (e) the history of the Person’s conduct and interactions on City Facility;
  - (f) the likelihood of recurrence of the Prohibited Conduct by the Person; and
  - (g) the impact of restrictions or prohibitions on the Person.

## **Term of Trespass Notice**

5. An Authorized Person who has reason to believe that a Person has engaged in Prohibited Conduct may give to the Person a Trespass Notice that prohibits entry to one or more City Facility for not more than seven (7) days.
6. A Senior Staff Person who has reason to believe that a Person has engaged in Prohibited Conduct may give to the Person a Trespass Notice that prohibits entry to one or more City Facility for not more than one (1) year.
7. A Senior Executive Staff Person who has reason to believe that a Person has engaged in Prohibited Conduct may give to the Person a Trespass Notice that prohibits entry to one or more City Facility for not more than three (3) years.
8. The Chief Administrative Officer who has reason to believe that a Person has engaged in Prohibited Conduct may give to the Person a Trespass Notice that prohibits entry to one or more City Facility for not more than five (5) years.
- 8.1 The Chief Administrative Officer who has reason to believe that a Person has engaged in repeated Prohibited Conduct may give to the Person a Trespass Notice that prohibits entry to one or more City Facility for not more than twenty (20) years.  
(86-2024)

## **Extension of Term of Trespass Notice**

9. Prior to the termination of a Trespass Notice given pursuant to sections 5 to 7, a Senior Executive Staff Person may extend the term of the Trespass Notice for not more than two (2) years by giving the Person notice of the extension if the Senior Executive Staff Person has reason to believe that the Person has during the term of the Trespass Notice under review:
  - (a) violated the Trespass Notice; or
  - (b) engaged in further or continued Prohibited Conduct.

## **Revocation**

10. An Authorized Person who has issued a Trespass Notice, or someone to whom they report directly or indirectly, may revoke the Trespass Notice and may impose such conditions respecting the revocation as the Authorized Person considers appropriate.

## **Appeal**

11. (1) The right of a Person to appeal against the Trespass Notice expires if it has not been exercised in the manner prescribed in Section 11(2) before 4:30 p.m. on the twenty-first (21<sup>st</sup>) day after the day on which the Trespass Notice was issued under Sections 6 to 8.1 or extended under Section 9, in which case:  
(86-2024)
  - (a) The Person shall be deemed to have abandoned the appeal;
  - (b) The Trespass Notice shall be deemed to be affirmed; and,
  - (c) The Trespass Notice shall not be subject to review including review by any Court.
- (2) A Person who has received a Trespass Notice in Sections 6 to 8 or extension of a Trespass Notice in Section 9 with a term of more than one month may appeal the Trespass Notice by giving written notice of the Appeal to the Clerk and paying any Appeal Fee within three weeks of receiving the Trespass Notice.
- (3) A Trespass Notice shall remain in effect during the appeal period from the date that the Person has appealed the notice up to and including the date of the hearing of the appeal with the Hearings Officer.

## **Manner of Hearing**

- (4) An appeal pursuant to subsection 11(1) shall be heard by a Hearings Officer in a manner appropriate to the circumstances of the Person and the Prohibited Conduct underlying the Trespass Notice as determined by the Hearings Officer.

## **Notice of Hearing**

- (5) The Hearings Officer shall provide notice of date, time and manner of the hearing of the appeal no fewer than seven (7) days prior to the hearing to the Person who received the Trespass Notice and to the Senior Staff Person, Senior Executive Staff Person or Chief Administrative Officer who gave the Trespass Notice under appeal.

## **Powers on Appeal**

- (6) On an appeal pursuant to subsection 11(1), subject to subsection 11(7), a Hearings Officer may:
  - (a) revoke the Trespass Notice;
  - (b) shorten the term of the Trespass Notice;
  - (c) remove prohibited locations from the Trespass Notice; or
  - (d) affirm the Trespass Notice.

## **Failure to Participate or Attend**

- (7) If a Person who appeals a Trespass Notice fails to participate in or attend the hearing of the appeal as notified pursuant to subsection 11(5) or fails to pay the Appeal Fee before the time scheduled for a hearing of the appeal pursuant to subsection 11(2):
  - (a) The Person shall be deemed to have abandoned the appeal;
  - (b) The Trespass Notice is deemed to be affirmed; and,
  - (c) The Trespass Notice shall not be subject to review including review by any Court.

## **Decision Final**

- (8) A decision of a Hearings Officer is final and not subject to review by any Court.

## **Meetings Exception**

12. A Trespass Notice is not effective to the extent that the Trespass Notice prevents a Person from entering or remaining in a Meeting Room provided the Person complies with the following conditions, including but not limited to:
  - (a) the Person notifies the City Clerk of their intention to attend the meeting no later than one (1) business day prior to the scheduled start of the meeting;
  - (b) the Person enters the Meeting Room no earlier than 15 minutes prior to the scheduled start of the meeting;
  - (c) the Person remains in the Meeting Room no longer than 15 minutes after the meeting is adjourned; and,
  - (d) the Person complies with any directions given by the Chair of the meeting respecting conduct at the meeting.

## **Invitation to Attend**

13. (1) A Senior Staff Person or Senior Executive Staff Person may give to a Person who has received a Trespass Notice an Invitation to Attend a City Facility which shall specify the following:

- (a) the purpose for attending at the City Facility;
- (b) the date and time of the approved attendance at the City Facility;
- (c) the address of the City Facility where the Person is approved to attend; and
- (d) instructions for who to contact when the Person arrives for the approved attendance at the City Facility; and
- (e) that the Trespass Notice remains in effect except for the approved attendance in accordance with the Invitation to Attend.

### **Effect of Invitation to Attend**

- (2) A Trespass Notice is not effective during the period and only to the extent that the Trespass Notice prevents a Person from entering or remaining at the City Facility specified in the Invitation to Attend.

### **Request for Invitation to Attend**

- (3) If a Person who has received a Trespass Notice needs to enter City Facility to conduct business with the City and is prevented from doing so by the Trespass Notice, the Person may request an Invitation to Attend from the Authorized Person who gave the Person the Trespass Notice a minimum of (1) business day prior to the requested date of attending at the City Facility, which request shall include the following information:
  - (a) the purpose for attending at the City Facility;
  - (b) the reasons why attending at the City Facility is necessary; and
  - (c) the address of the City Facility where the Person wishes to attend.

### **Manner of Attendance**

- (4) The manner in which a Person, who has received a Trespass Notice and has requested or is extended an Invitation to Attend as per Section 13 of this By-law, is attending at a City Facility shall be determined by the Senior Staff Person, and which may include the option of electronic participation including but not limited to: telephone, video conferencing and computers with Internet access and conferencing software or programming.

### **Methods of Giving Notice**

- 14. (1) A notice given by the City pursuant to this By-law in writing may be given in any of the following ways:
  - (a) personally;
  - (b) by fax to the recipient's last known fax number;
  - (c) by e-mail to the recipient's last known e-mail address; or
  - (d) by registered or regular mail or courier or hand delivery addressed to the recipient's last known address.

### **Deemed Effective**

- (2) Notice given in accordance with subsection (1) shall be deemed to be effective:
  - (a) on the date it is personally given or delivered by courier or hand delivered;
  - (b) on the date on which the fax is sent;
  - (c) on the date the e-mail is sent; or
  - (d) on the fifth day after the date of mailing by registered or regular mail.

## Conflict

15. Nothing in the By-law limits the authority of any person to give a Trespass Notice granted by any other City of Oshawa By-law, whether or not the other By-law uses the words "Trespass Notice".

## General

16. Nothing in this By-law limits the City's ability to enforce its rights under the *Trespass to Property Act* by any legal means. Without limitation, the Director, Facilities Management Services may cause to be investigated and to be undertaken such enforcement as the said Director considers appropriate respecting each alleged contravention of the Act.
17. It is Council's opinion that the delegations in this By-law to Authorized Persons, Senior Staff Persons, Senior Executive Staff Persons, the Chief Administrative Officer and to the Hearings Officer are of a minor nature. In forming this opinion, Council has had regard to the number of people, the size of geographic area and the time period affected by the exercise of each delegated power.

## Severability

18. Should a court of competent jurisdiction declare any part of the whole of any provision of this by-law to be invalid or of no force and effect, the provision or part shall be deemed to have been severed from this by-law, and it is the intention of Council that the remainder of the by-law survive and be applied and enforced in accordance with its terms to the extent possible under law.

## Enactment & Transition

19. This by-law shall come into full force and effect on the date of passage.
20. By-law 98-2013, as amended, is hereby repealed.
21. Any Trespass Notices issued under By-law 98-2013, as amended remain in full force and effect, shall be deemed to have been issued under this Trespass By-law, and shall expire in accordance with their original term. Trespass Notices issued under By-law 98-2013, as amended may be extended in accordance with the provisions of section 9 of this By-law, *mutatis mutandis*. For the purposes of any appeal of a Trespass Notice issued under By-law 98-2013, as amended the appeal process set out in this By-law shall apply.

By-law passed this twenty-sixth day of April, 2021.

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Mayor

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City Clerk