

## The Corporation of the City of Burlington

### City of Burlington By-law #-2023

A by-law to establish a system for administering notices and other matters under the *Trespass to Property Act*, RSO, 1990, c. T.21

Whereas The Corporation of the City of Burlington (the “City of Burlington”) has the right as owner and occupier of premises to restrict or prohibit entry and limit permitted activities on such premises; and

Whereas the City of Burlington is committed to ensuring a safe and respectful environment for everyone; and

Whereas the City of Burlington has a general duty under the *Occupiers’ Liability Act* to take such care as in all the circumstances is reasonable to see that persons entering on its premises, and the property brought on the premises are reasonably safe. The City of Burlington has further duties under the *Occupational Health and Safety Act* and the *Criminal Code of Canada* to address workplace violence and harassment; and

Whereas City Council respects the rights of all individuals under the *Canadian Charter of Rights and Freedoms* and acknowledges its responsibility to exercise its authority in a manner that does not violate those rights; and

Whereas City Council intends to establish a system for administering notices of trespass and related matters;

Now therefore the Council of The Corporation of the City of Burlington enacts as follows:

#### **PART 1: DEFINITIONS**

1.1 In this By-law:

“**Act**” means the *Trespass to Property Act*, R.S.O. 1990, c. T.21;

“**appeal fee**” means the fee, if any, from time to time established by the City’s Rates and Fees By-Law, in relation to an appeal under Part 4 of this by-law;

“**appeal officer**” means the Executive Director of the affected City department or the Executive Director of a different City department, as appointed by the City Manager to hear an appeal under this by-law;

**“authorization letter”** means a letter or other written notification authorizing a municipal, provincial, or other police department with jurisdiction over City premises to enforce the provisions of a Trespass Notice or the *Trespass to Property Act*, R.S.O. 1990, c. T.21 on City premises;

**“authorized person”** means each of:

- (a) a security guard employed by or under contract with the City;
- (b) such persons employed by the City who, as a matter of their regular duties or due to circumstances, are responsible for or have control over the condition of any City premises or the activities there carried on, or control over persons allowed to enter the City premises;
- (c) a municipal law enforcement officer; and,
- (d) a police officer;

**“by-law”** means this by-law and any schedule to this by-law;

**“City”** or **“City of Burlington”** means The Corporation of the Corporation of the City of Burlington;

**“City premises”** means:

- (a) any land owned or leased by the City and includes each building and other improvement thereon; and,
- (b) any City of Burlington transit vehicles;

**“Council”** means the City’s Council;

**“meeting room”** means that part of a City premises in which Council or one of its Standing Committees is holding a meeting pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

**“person”** includes an individual, partnership, association, firm or corporation;

**“prohibited conduct”** means:

- (a) damage to or vandalism of a City premises;
- (b) unreasonable interference with the operation of City premises;
- (c) unreasonable interference with others’ use of City premises;

(d) contravention of a law of Canada, a law of the Province of Ontario or a municipal by-law on City premises; or

(e) contravention of a City policy governing the conduct of persons on City premises.

**“senior staff person”** means the the Director or Executive Director responsible for the City premises or program area affected by the prohibited conduct, the Director or Executive Director assigned by the City Manager to investigate and/or make any decisions regarding the issuance of a Trespass Notice, or the Manager of Court Administration; and

**“Trespass Notice”** means a notice, given orally or in writing, prohibiting entry to one or more City premises by a person or a group of persons.

## **PART 2: FACTORS IN GIVING TRESPASS NOTICE**

2.1 In determining whether to give, modify, extend, suspend or revoke a Trespass Notice given to a person pursuant to any part of this by-law, or in conducting an appeal under Part 4 of this by-law, consideration shall be given to the following factors:

- (a) any operational or staff requirements or limitations;
- (b) the severity of the harm or potential harm caused by the person’s prohibited conduct to staff, members of the public, or property;
- (c) the person’s level of ability and circumstances, if known;
- (d) the history of the person’s conduct and interactions on City premises;
- (e) the likelihood of recurrence of the prohibited conduct by the person;
- (f) the person’s conduct during the term of any Trespass Notice issued to the person pursuant to this by-law;
- (g) the impact of restrictions or prohibitions on the person; and
- (h) any other factor relevant to a consideration of the issues.

### **PART 3: TRESPASS NOTICE**

- 3.1 Any 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 on or to one or more City premises for a period not exceeding seven days.
- 3.2 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 on or to one or more City premises for a period not exceeding five years.
- 3.3 A Trespass Notice given orally and prohibiting entry to one or more City premises for longer than seven days shall be confirmed in writing with the following information as soon as is practicable, but the failure to do so does not make the oral notice ineffective:
  - (a) a copy of the Trespass Notice;
  - (b) a summary of the matter which has led to the issuance of the Trespass Notice;
  - (c) the rationale for the Trespass Notice; and,
  - (d) information regarding the person's right to appeal the Trespass Notice in accordance with this by-law, if applicable.
- 3.4 Prior to the expiry of any Trespass Notice or any extension of a Trespass Notice given pursuant to this by-law, a senior staff person may extend the term of a Trespass Notice for a further period not exceeding two years by giving to the person notice of the extension, where:
  - (a) the senior staff person determines it is appropriate;
  - (b) the person to whom the Trespass Notice was issued contravened the Trespass Notice; or
  - (c) the person engaged in further or continued prohibited conduct.
- 3.5 A senior staff person may revoke or suspend a Trespass Notice given under sections 3.1 or 3.2 or extended under section 3.4 and may impose such conditions respecting the revocation or suspension as the senior staff person considers appropriate.
- 3.6 Without limiting any other provision of this by-law, any senior staff person or the City Manager and/or their designate is authorized to issue authorization letters where that person has determined that doing so is appropriate in the circumstances.

## **PART 4: APPEAL**

- 4.1 A person who has received a Trespass Notice or extension of a Trespass Notice with an aggregate term of more than one month may appeal to the appeal officer by submitting a written request to the City Clerk together with payment of the appeal fee within fourteen days after being served with the Trespass Notice or extension of the Trespass Notice.
- 4.2 No person who was involved in the determination of the terms of the Trespass Notice or any extension of the Trespass Notice shall be the appeal officer that hears an appeal under Part 4 of this by-law.
- 4.3 A person who appeals pursuant to section 4.1 shall be given no fewer than fourteen days' notice of:
  - (a) the manner of the hearing, whether in person, by phone, or in writing; and
  - (b) the date, time, and place of the appeal hearing.
- 4.4 The following applies to the appeal hearing:
  - (a) if a person who appeals a Trespass Notice fails to participate in or attend the hearing of the appeal as notified pursuant to section 4.3, the Trespass Notice shall be affirmed and the appeal shall be dismissed; and
  - (b) before making their decision, the appeal officer shall give each of the senior staff person and, subject to subsection 4.4(a), the appellant, an opportunity to be heard, orally or in writing, at the time and place scheduled for the appeal.
- 4.5 On an appeal, the appeal officer may:
  - (a) revoke the Trespass Notice;
  - (b) modify the Trespass Notice, including shortening the term of the Trespass Notice or removing prohibited locations from the Trespass Notice; or
  - (c) affirm the Trespass Notice.
- 4.6 The appeal officer shall give their final decision in writing in accordance with Part 5 of this by-law and shall give reasons in writing if requested by a party within seven days after the decision is given.

- 4.7 The decision of an appeal officer is final and is not subject to appeal or further review.

## **PART 5: NOTICES**

### **Methods of Giving Notice**

- 5.1 Any 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 e-mail to the recipient's last known e-mail address; or
  - (c) by registered or regular mail or courier or hand delivery addressed to the recipient's last known address.

### **Deemed Effective**

- 5.2 Notice given in accordance with section 5.1 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 the e-mail is sent; or
  - (c) on the fifth day after the date of mailing by registered or regular mail.

## **PART 6: EXCEPTIONS**

- 6.1 A Trespass Notice issued pursuant to this by-law does not prevent a person from entering or remaining in a meeting room if the person complies with the following conditions:
- (a) the person notifies the City Clerk of the person's intention to attend the meeting no later than one day prior to the scheduled commencement of the meeting;
  - (b) the person enters the meeting room no earlier than fifteen minutes prior to the scheduled commencement of the meeting;
  - (c) the person remains in the meeting room no longer than fifteen minutes after the meeting is adjourned; and

- (d) the person complies with each direction given by the Mayor or the Committee Chair, as applicable, respecting conduct at the meeting.
- 6.2 A Trespass Notice issued pursuant to this by-law does not prevent a person from entering City premises for the purpose of voting in a municipal, provincial, or federal election if the person complies with the following conditions:
- (a) the person notifies the City Clerk of the person's intention to attend the City premises for the purpose of voting in an election no later than one day prior to the scheduled voting day;
  - (b) the person remains at the City premises no longer than is required for the person to vote in the election; and
  - (c) the person complies with each direction given by the City Clerk, as applicable, respecting conduct while attending City premises under this section.
- 6.3 If a person who has received a Trespass Notice needs to enter City premises 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 senior staff person who gave the person the Trespass Notice or their delegate, which request shall include the following information:
- (a) the purpose for attending at the City premises;
  - (b) the reasons why attending at the City premises is necessary; and
  - (c) the address of the City premises where the person wishes to attend.
- 6.4 A senior staff person or their delegate may give to a person who has received a Trespass Notice an invitation to attend a City premises which may specify the following:
- (a) the purpose for attending at the City premises;
  - (b) the date and time of the approved attendance at the City premises;
  - (c) the address of the City premises where the person is approved to attend;
  - (d) instructions for who to contact when the person arrives for the approved attendance at the City premises; and,
  - (e) that the Trespass Notice remains in effect except for the approved attendance in accordance with the invitation to attend.

**PART 7: GENERAL**

- 7.1 Nothing in this by-law limits the City's ability to enforce its rights under the Act by any legal means.
- 7.2 Any Trespass Notices issued prior to the passage of this by-law shall remain in full force and effect, shall be deemed to have been issued under this by-law, and shall expire in accordance with its original terms unless extended in accordance with this by-law. For the purposes of any appeal of a Trespass Notice issued prior to the passage of this by-law, the appeal process set out in this by-law shall apply.
- 7.3 If a court of competent jurisdiction declares any provision or part of a provision of this by-law invalid, the provision or part of a provision is deemed severable from this by-law and it is the intention of Council that the remainder of this by-law shall continue in force.
- 7.4 The short title of this by-law is the "Trespass By-law".
- 7.5 This by-law shall come into full force on the day it is passed.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

---

Marianne Meed Ward, Mayor

---

Kevin Arjoon, City Clerk