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Report 19-020
(LS19031/PW19068(a)/CM19006(a))
CM: October 23, 2019
Ward: City Wide

Bill No. 259

CITY OF HAMILTON

BY-LAW NO. 19-259

To Administer Notices and Other Matters under the Trespass to Property Act

WHEREAS the City of Hamilton 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;

WHEREAS the Council of the City of Hamilton recognizes its responsibility to exercise its rights in accordance with the *Canadian Charter of Rights and Freedoms*.

NOW THEREFORE the Council of the City of Hamilton 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 pursuant to section 10 as set out in the User Fees and Charges By-law in effect from time to time;

“authorized person” means any of the following persons:

- (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 and 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;
- (d) a police officer; and
- (e) a senior staff person.

“City premises” means lands, structures, improvements, or any of the them that are owned or occupied by the City of Hamilton;

“meeting room” means that part of a City premises in which the Council of the City of Hamilton or one of its Standing Committees is holding a meeting pursuant to the Procedural By-law No. 10-053 or a successor by-law;

“prohibited conduct” includes:

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

“senior executive person” means any of the following persons employed by the City of Hamilton:

- (a) the General Manager or Acting General Manager responsible for the facility or program area affected by the prohibited conduct and the General Manager or Acting General Manager responsible for facilities and corporate security; and,

“senior staff person” means any of the following persons employed by the City of Hamilton:

- (a) the Director or Acting Director responsible for the facility or program area affected by the prohibited conduct and the Director responsible for facilities and corporate security.

Trespass Notice

3 (1) For the purposes of this By-law, a Trespass Notice means a notice prohibiting entry to one or more City premises 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 one or more City premises for longer than seven days shall be confirmed in writing as soon as is practicable, but the failure to do so does not make the oral notice ineffective.

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 staff requirements or limitations;
- (c) the severity of the harm or potential harm caused by the person's prohibited conduct to staff, members of the public or property;
- (d) the person's level of ability and circumstances;
- (e) the history of the person's conduct and interactions on City premises;
- (f) the likelihood of recurrence of the prohibited conduct by the person; and
- (g) the impact of restrictions or prohibitions on the person.

Suspension from City Premises

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 premises for not more than seven days.

Ban from City Premises

6 (1) 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 premises for not more than two years.

Extension of Suspension

(2) A senior staff person may extend the term of a Trespass Notice given pursuant to section 5 to a term of not more than two years by giving to the person notice of the extension.

Longer Ban from City Premises

7 (1) A senior executive 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 premises for not more than five years.

Extension of Ban

(2) A senior executive person may extend the term of a Trespass Notice given or extended pursuant to sections 5 or 6 to a term of not more than five years by giving to the person notice of the extension.

Review and Extension

8 (1) Prior to the termination of a Trespass Notice given or extended pursuant to section 6 or this section, a senior staff person may extend the term of the Trespass Notice for not more than two more years by giving the person notice of the extension if the senior staff person has reason to believe that the person has during term of the Trespass Notice under review:

- (a) violated the Trespass Notice; or
- (b) engaged in further or continued prohibited conduct.

Notice of Termination

(2) If a Trespass Notice is given without a termination date and a senior staff person determines not to extend a Trespass notice pursuant to subsection (1), the senior staff person shall promptly advise the person that the Trespass Notice has been terminated.

Revocation

9 A person who has given 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 person considers appropriate.

Appeal

10 (1) A person who has received a Trespass Notice or extension of a Trespass notice 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.

Manner of Hearing

(2) An appeal pursuant to subsection (1) shall be heard by an Appeal Officer in a manner appropriate to the circumstances of the person and the prohibited conduct underlying the Trespass Notice as determined by the Appeal Officer.

Notice of Hearing

(3) The Appeal Officer shall provide notice of date, time and manner of the hearing of the appeal no fewer than seven days prior to the hearing to the person who received the Trespass Notice and to the senior staff person who gave the Trespass Notice under appeal.

Powers on Appeal

(4) On an appeal pursuant to subsection (1), subject to subsection (5), an Appeal 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

(5) If a person who appeals a Trespass Notice fails to participate in or attend the hearing of the appeal as notified pursuant to subsection (3), the Trespass Notice is deemed to be affirmed.

Decision Final

(6) A decision of an Appeal Officer is final and not subject to review by Council.

Appeal Officer

(7) For the purposes of this section, subject to subsection (8), an Appeal Officer shall mean any one of the following persons:

- (a) City Solicitor;
- (b) Deputy City Solicitor;
- (c) City Manager.

Involvement in Determining Terms

(8) Despite subsection (7), no person who was involved in the determination of the terms of the Trespass Notice under appeal shall be the Appeal Officer who hears the appeal.

Meetings Exception

11 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 in a meeting room provided the person complies with the following conditions:

- (a) the person notifies the City Clerk of their intention to attend the meeting no later than 24 hours 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

12 (1) A senior staff person may give to a person who has received a Trespass Notice an Invitation to Attend a City premises which shall 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; and
- (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.

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 premises 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 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, 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.

Methods of Giving Notice

13 (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

14 Nothing in the By-law limits the authority of any person to give a Trespass Notice granted by any other City of Hamilton By-law, whether or not the other By-law uses the words “Trespass Notice”.

General

15 Nothing in this By-law limits the City’s ability to enforce its rights under the *Trespass to Property Act* any legal means.

Severability

16 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

17 This By-law comes into force on the day it is passed.

PASSED this 23rd day of October, 2019.

F. Eisenberger
Mayor

A. Holland
City Clerk