


POLICY

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|  | Policy: | Notice of Trespass | | |
| | Department: | Office of the CAO | | |
| | Division: | Office of the CAO | By-Law No.: | N/A |
| | Administered By: | Chief Administrative Officer | Approval Date: | January 29, 2024 |
| | Replaces: | N/A | | |
| | Attachment(s): | N/A | | |

1. POLICY STATEMENT

- 1.1. The Corporation of the Town of Amherstburg is committed to ensuring the right of all citizens to peacefully and respectfully enjoy and utilize municipal property.

2. PURPOSE

- 2.1. This policy provides a framework for addressing disruptive and contradictory circumstances to the intent of the policy and the adopted Code(s) of Conduct, including usage parameters which ensure the safeguarding of access to municipal property through the issuance of notices of trespass in accordance with the Trespass to Property Act, R.S.O. 1990, T.21.

3. SCOPE

- 3.1. This policy applies to all Town of Amherstburg municipal premises.
- 3.2. This policy does not limit the legal rights of the Corporation of the Town of Amherstburg to respond to emergency situations involving trespassing on municipal premises.
- 3.3. This policy shall be reviewed every five (5) years from the date it becomes effective, and/or sooner at the discretion of the CAO or designate.

4. DEFINITIONS

- 4.1. **Authorized Persons** means, for the sake of this policy and for the purposes of enforcing the Trespass to Property Act, 1990, those positions identified and empowered by the Chief Administrative Officer to fulfill this responsibility.
- 4.2. **Ban** the prohibition of an individual(s) from entering municipal premises for a defined period of time.
- 4.3. **Municipal Premises** for the purposes of this policy means the same meaning as provided within the Trespass to Property Act:

“premises” means lands and structures, or either of them, and includes,

(a) water,

(b) ships and vessels,

(c) trailers and portable structures designed or used for residence, business or shelter,

(d) trains, railway cars, vehicles and aircraft, except while in operation. (“lieux”) R.S.O. 1990, c. T.21, s. 1 (1).

- 4.4. **Occupier** means the same meaning as provided within the Trespass to Property Act which includes:
- (a) a person who is in physical possession of the premises, or
 - (b) a person who has responsibility for and control over the condition of the premises or the activities there carried on, or control over persons allowed to enter the premises.
- 4.5. **Trespass(ing)** means the same meaning as provided within the Trespass to Property Act which states as follows:
- Trespass an offence
- 2(1) Every person who is not acting under a right or authority conferred by law and who,
- (a) without the express permission of the occupier, the proof of which rests on the defendant,
 - (i) enters on the premises when entry is prohibited under this Act, or
 - (ii) engages in an activity on premises when the activity is prohibited under this Act; or
 - (b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises of a person authorized by the occupier,
- 4.6. **Trespass Notice** means a notice given to a person, verbally or in writing that one or more activities are prohibited, or entry is prohibited, in respect of any part of public premises pursuant to the Trespass to Property Act.

Common definitions, acronyms, and terms are available in the Glossary located on the Town's Policies webpage.

5. **INTERPRETATIONS**

Any reference in this policy to any statute or any section of a statute shall, unless expressly stated, be deemed to be reference to the statute as amended, restated or re-enacted from time to time. Any references to a by-law or Town policy shall be deemed to be a reference to the most recent passed policy or by-law and any replacements thereto.

6. **GENERAL CONDITIONS**

6.1. **Issuing Warnings**

- 6.1.1. Specific notice by an authorized person that entry is prohibited is not required to keep persons out where the site is completely enclosed by a fence which has been specifically designed to keep persons off the property.
- 6.1.2. In order to prohibit general entry to municipal premises, it is necessary to have signs or markings; otherwise it is necessary to confront a trespasser and give verbal notice.
- 6.1.3. An authorized person, or a person upon review and agreement of an authorized person, who believes or suspects that the conduct of a person is disruptive to the conduct of Town business or activities or is threatening to the staff or other users of Town facilities may issue a warning should the person continue to engage in the behaviour while in or on Town property. Where deemed appropriate or reasonable to do so, warnings may not always precede the

issuance of a formal Notice of Trespass letter.

6.2. Addressing Conduct

- 6.2.1. A person issuing a warning shall apply the following guidelines when confronting the person:
 - 6.2.1.1. Obtain and document a description of the person.
 - 6.2.1.2. Note the date, time and location.
 - 6.2.1.3. Introduce yourself (name, position and authority to act).
 - 6.2.1.4. Demonstrate a courteous, calm and assured presentation.
 - 6.2.1.5. Ask the person to identify themselves (name and address). Keep a reasonable distance and do not touch the person.
 - 6.2.1.6. Inform the person of the specific disruptive or contradictory behaviour and direct them to leave the premises if they do not modify their behaviour.
- 6.2.2. If the person complies and modifies their behaviour or leaves the premises voluntarily, no further action is necessary. The person who issued the warning, however, must document the particulars of the interaction with the person using the Town's adopted Incident/Accident reporting process. The authorized person who approved the warning shall review the report for correctness and completeness.
 - 6.2.2.1. Additionally, the authorized person shall inform their direct report, the CAO and the Clerk about any warnings issued by forwarding a copy of the incident/accident report.
- 6.2.3. In the event that the person declines to vacate the premises and/or has caused damage to property, the person authorized to issued the warning has the authority to contact the police.

6.3. Written Notice of Trespass

- 6.3.1. Should the authorized person reasonably conclude that the individual to whom was issued the warning is likely to have future attendance that is undesirable, posing threats to staff or other users, or causing disruption to the use of municipal property, a formal trespass notice may be issued. It is important to note that issuing this letter is not required before contacting the police if the trespassing persists as stated in 6.2.3.
- 6.3.2. All written Notices of Trespass to be issued by the Town shall, prior to issuance, be forwarded for review to the CAO or designate to determine whether the circumstances warrant the issuance of a written Notice of Trespass. The CAO or designate shall, in appropriate circumstances issue the Notice of Trespass.
- 6.3.3. The CAO shall inform Council about any Notice of Trespass issued or subsequent actions taken in accordance with this policy.

6.4. Length of Ban

- 6.4.1. A first Notice of Trespass may be issued for a period of a seven to ten days. In instances of subsequent cases, or where a particular incident is of a more serious or threatening nature, the length of the ban may be for a period of six months up to and including an indefinite timeframe, as approved by the CAO. It shall be understood that extended or indefinite bans are to be considered the exception, rather than the rule.
- 6.4.2. Where a notice exceeds six months, the notice shall be subject to review prior to expiry and shall include a consultation with the involved staff members to ensure the person's re-entry to Town premises is handled considering all relevant factors.

6.5. Appeals of Notice of Trespass

- 6.5.1. A person has the option to appeal the measures outlined in the written Notice of Trespass by contacting the Clerk to complete the necessary appeal form within 21 days of the effective date.
- 6.5.2. A request for review does not halt the enforcement of a Notice of Trespass.
- 6.5.3. Provided that the appeal request is completed in full by the appellant, the Clerk shall refer a person's request, along with all submitted documentation to the CAO for review.
- 6.5.4. When conducting the review, the CAO shall consider any submissions, including supporting information or documents by the person who requested the review and the authorized person who issued the Notice of Trespass. The CAO may uphold, vary or withdrawal some or all of the measures under review and the CAO's decision is final.
- 6.5.5. The CAO must issue a written decision to the person who requested the review and notify the authorized person who issued the Notice of Trespass.

6.6. Records

- 6.6.1. The Notice of Trespass as issued by the CAO shall be filed in accordance with the records retention policy.

7. RESPONSIBILITIES

- 7.1. **Council** has the authority and responsibility to:
 - 7.1.1. Adopt the Notice of Trespass policy.
- 7.2. The **CAO or designate** has the authority and responsibility to:
 - 7.2.1. Review all written Notices of Trespass issued by the Town before issuance to assess whether circumstances warrant the Notice of Trespass.

- 7.2.2. Promptly initiate communications and updates to Council regarding the issuance of a Notice of Trespass.
 - 7.2.3. Review and approve duration of Notice of Trespass.
 - 7.2.4. Assess and decide the results for requests to appeal the measures imposed by the Notice of Trespass.
 - 7.2.5. Issue written decisions to the person requesting to appeal a Notice of Trespass.
- 7.3. The **Clerk** has the authority and responsibility to:
- 7.3.1. Respond to requests to appeal Notices of Trespass.
 - 7.3.2. Ensure that criteria for appealing are met prior to forwarding the appeals form to the CAO for review and decision.
- 7.4. The **Authorized Person** has the authority and responsibility to:
- 7.4.1. Issue a warning or a formal Notice of Trespass letter to a person whose conduct is disruptive of poses a threat to staff or other users of Town facilities.
 - 7.4.2. Generate written statements that document the specifics of any warnings or formal notices issued to a trespasser.
 - 7.4.3. Advise their direct report of any action they have taken and notify the CAO in writing of all the particulars of the event leading up to filing charges with law enforcement.
- 7.5. **Staff** have the responsibility to:
- 7.5.1. Ensure their understanding and compliance with the policy and seek clarification where needed to follow the policy expectations.

8. **LEGISLATIVE REFERENCES**

- 8.1. Trespass to Property Act, R.S.O. 1990, T.21.