

Trespass Notice Policy

Policy #	85
Effective Date	September 20 2022
Final Approver	Council.

1.0 Interpretation

1.1 In this policy, unless the context requires otherwise:

"authorized person" means a *senior staff person, a manager, a supervisor, a by-law enforcement officer, or otherwise the City employee with the most authority present on or at public premises at any particular time;*

"by-law enforcement officer" means a person appointed as a municipal law enforcement officer of the *City;*

"Charter of Rights and Freedoms" means Part 1 of the *Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c. 11;*

"chief of police" means the chief of police for the *Kingston Police* appointed by the Kingston Police Services Board;

"City" means the Corporation of the City of Kingston;

"City employee" means a person who performs work or supplies services directly to the *City* for monetary compensation under an employment contract and includes *senior staff persons and by-law enforcement officers* but does not include *council members;*

"Clerk" means the person appointed clerk by the *City;*

"CMT member" means a member of the *City's* corporate management team and includes the person appointed chief administrative officer by the *City*, the person appointed treasurer by the *City*, and a commissioner responsible for the leadership and operation of a portfolio of *City* departments;

"council member" means a person elected to office on the council of the *City;*

"direct supervisor" means the *manager, director, or CMT member* to whom a *City* employee directly reports;

"director" means the director of a *City* department;

"harmful behaviour" includes behaviour which:

- (a) unreasonably interferes with another *visitor's* use or enjoyment of *public premises* or with the *City's* operation, use or enjoyment of *public premises*, including by causing potential or actual damage to *City* property;
- (b) creates a potential or actual danger to the health or safety of another person or another person's property while on *public premises*; or
- (c) contravenes any federal or provincial legislation or *City* by-law, policy, code of conduct or other rule, including the *Trespass to Property Act*;

"highway" has the meaning given to it in the *Municipal Act, 2001*, S.O. 2001, c. 25;

"Human Rights Code" means the *Human Rights Code*, R.S.O. 1990, c. H.19;

"Kingston Police" means the police force established by council of the *City* pursuant to the *Police Services Act*, R.S.O. 1990, c. P.15;

"manager" means a *City* employee who reports directly to a *director*;

"meeting" has the meaning given to it in the *City's By-Law Number 2021-41*;

"Occupational Health and Safety Act" means the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1;

"Occupiers' Liability Act" means the *Occupiers' Liability Act*, R.S.O. 1990, c. O.2;

"police officer" means the *chief of police* or any other member of the *Kingston Police*;

"premises" has the meaning given to it in the *Trespass to Property Act* and includes *public premises*;

"public premises" means those *premises* owned or occupied by the *City* to which members of the public are ordinarily permitted to access for a variety of purposes, including recreation, cultural activities, learning, accessing municipal programs or services, and assembly and expression as guaranteed by the *Charter of Rights and Freedoms*, and includes a park, a transit bus, a transit bus stop and a transit shelter but does not otherwise include a *highway*;

"screening officer" means any person designated from time to time to perform the functions of a screening officer pursuant to the *City's By-Law Number 2020-69*;

"security guard" means a person who performs work for the *City* that consists primarily of guarding or patrolling *public premises* for the purpose of protecting persons or property;

"senior staff person" means a *CMT member* or a *director*;

"supervisor" means a *City employee* who reports directly to a *manager*;

"supervisor of Occupational Health" means the *City employee* who reports directly to the *director* of Human Resources & Organizational Development and is responsible for the occupational health and safety of *City employees*;

"trespass notice" means a notice given to a *visitor*, orally 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*;

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

"visitor" means a person, other than a *council member* or *City employee*, who is on or at *public premises*.

- 1.2 In this policy, "include", "includes" and "including" indicate that the subsequent list is not exhaustive.
- 1.3 A reference to any legislation, regulation, by-law, rule, policy or provision thereof includes a reference to any legislation, regulation, by-law, rule or provision thereof enacted in substitution thereof or amendment thereof.
- 1.4 A reference to legislation includes all of the regulations made thereunder.
- 1.5 A reference to the position or title of any *City employee* includes a reference to any position or title created in substitution thereof.

2.0 Purpose

- 2.1 The purpose of this policy is to provide the *City* with a formal system for giving *trespass notices* which recognizes that:
 - (a) the *City* is committed to ensuring that *visitors* are able to use or enjoy *public premises*, as and when permitted by the *City*, without unreasonable interference by another *visitor*;
 - (b) the *City* owes a duty under the *Occupiers' Liability Act* to take such care as in all the circumstances is reasonable to see that *visitors*, and the property brought on its *premises* by *visitors*, are reasonably safe while on its *premises*;
 - (c) every *City employee* is entitled to a healthy and safe workplace in accordance with the *Occupational Health and Safety Act* and the *City's* "Workplace Violence and Harassment Prevention Program", "Respect in the

Workplace Policy”, “Health, Safety & Wellness Mandate Policy” and Rideaucrest Long-Term Care Home’s “Violence Towards Staff Policy”;

- (d) all persons have the following fundamental freedoms as guaranteed by the *Charter of Rights and Freedoms*:
 - (i) freedom of conscience and religion;
 - (ii) freedom of thought, belief, opinion and expression, including freedom of the press and other media communication;
 - (iii) freedom of peaceful assembly; and
 - (iv) freedom of association;
- (e) every person has a right to equal treatment with respect to services, goods and facilities without discrimination in accordance with the *Human Rights Code*; and
- (f) the City has an Encampment Protocol and Encampment Procedures.

3.0 Trespass Notices

- 3.1 An *authorized person* who believes or suspects that a *visitor* has engaged in *harmful behaviour* while in or on *public premises* may give a warning orally or in writing to such *visitor* that the City may give the *visitor* a *trespass notice* if the *visitor* continues to engage in *harmful behaviour* while in or on *public premises*.
- 3.2 An *authorized person* who has reasonable grounds to believe that a *visitor* has engaged in *harmful behaviour* while in or on *public premises* may give a *trespass notice* orally or in writing to such *visitor* prohibiting entry in respect of any part of that *public premises* for a period of up to 96 hours.
- 3.3 Before exercising the authority delegated under section 3.1 or 3.2, an *authorized person*, other than a *senior staff person*, a *manager*, a *supervisor*, or a *by-law enforcement officer*, must, if it is safe to do so, report to the *authorized person's direct supervisor* the *authorized person's* belief or suspicion that a *visitor* has engaged in *harmful behaviour* while in or on the *public premises* and, if it is safe to do so, wait until such *direct supervisor* is present on or at the *public premises*.
- 3.4 A *senior staff person* who has reasonable grounds to believe that a *visitor* has engaged in *harmful behaviour* while in or on *public premises* may give a *trespass notice* in writing to such *visitor*:
 - (a) prohibiting entry in respect of any part of any *public premises* for a period of up to 24 months;

- (b) imposing terms and conditions on the *visitor's* entry in respect of any part of any *public premises* for a period of up to 24 months;
- (c) prohibiting one or more particular activities and entry for the purpose of such activities in respect of any part of any *public premises* for a period of up to 24 months;
- (d) imposing terms and conditions on the *visitor* engaging in one or more particular activities and entry for the purpose of such activities in respect of any part of any *public premises* for a period of up to 24 months; or
- (e) any combination of those measures.

3.5 A *CMT member* who has reasonable grounds to believe that a *visitor* has engaged in *harmful behaviour* while in or on *public premises* may give a *trespass notice* in writing to such *visitor*:

- (a) prohibiting entry in respect of any part of any *public premises* for a period of up to five years;
- (b) imposing terms and conditions on the *visitor's* entry in respect of any part of any *public premises* for a period of up to five years;
- (c) prohibiting one or more particular activities and entry for the purpose of such one or more prohibited activities in respect of any part of any *public premises* for a period of up to five years;
- (d) imposing terms and conditions on the *visitor* engaging in one or more particular activities and entry for the purpose of such one or more particular activities in respect of any part of any *public premises* for a period of up to five years; or
- (e) any combination of those measures.

3.6 A *City employee* must not give a warning or *trespass notice* to a *visitor* unless authorized to do so in accordance with section 3.1, 3.2, 3.4 or 3.5.

3.7 In exercising the authority delegated under section 3.2, 3.4 or 3.5, an *authorized person* must impose the least restrictive measures necessary to achieve the purpose set out in section 2.1, considering all relevant factors, including:

- (a) the nature and severity of the *visitor's harmful behaviour* while in or on *public premises*;
- (b) the likelihood that the *visitor's harmful behaviour* will recur while in or on *public premises*;

- (c) any warnings that were previously given to the *visitor* under this policy;
- (d) the nature, severity and duration of any measures previously imposed on the *visitor* under this policy;
- (e) if known, the *visitor's* personal circumstances, including access to *meetings*, housing, family, employment, *City* services and supports, and community agencies and service providers, and the likely impact of measures on such access;
- (f) the degree and kind of measures necessary for the safety of *City employees* and other *visitors* in or on *public premises*; and
- (g) the degree and kind of measures necessary for the security of *public premises*, including the prevention of damage to *City* property.

3.8 When giving an oral or written warning or an oral *trespass notice* to a *visitor*, an *authorized person*:

- (a) must make a written report in the prescribed form describing the measures being imposed and the particulars of the *harmful behaviour* the *visitor* engaged in which made those measures necessary; and
- (b) give a copy of such report to all *directors*, all *screening officers*, the *supervisor of Occupational Health* and the *chief of police*.

3.9 When giving a written *trespass notice* to a *visitor*, an *authorized person*:

- (a) must use Form 1, attached as Appendix 10.1 to this policy;
- (b) must include in the written *trespass notice* a description of the measures being imposed and the particulars of the *harmful behaviour* the *visitor* engaged in which made those measures necessary;
- (c) may give a written *trespass notice* to a *visitor* by courier, registered mail, or email, provided that the *authorized person* has reason to believe that the *visitor* will receive the written *trespass notice*;
- (d) subject to sections 3.10 and 3.11, may give a written *trespass notice* to a *visitor* by personal service;
- (e) must give a copy of the written *trespass notice* to all *directors*, all *screening officers*, the *supervisor of Occupational Health* and the *chief of police*.

- 3.10 When giving a *trespass notice* to a *visitor*, an *authorized person* must not give the *trespass notice* orally or by personal service if doing so may, or if the *authorized person* believes that doing so may, endanger the safety of any person.
- 3.11 If an *authorized person* believes that giving a *trespass notice* orally or by personal service may endanger the safety of any person, the *authorized person* may request that a *police officer* give the *trespass notice* to a *visitor* orally or by personal service, and a *police officer* may give a *trespass notice* to a *visitor* orally or by personal service when and as requested to do so pursuant to this section.

4.0 Reviews

- 4.1 Within 21 days after being given a written *trespass notice* under section 3.4 or 3.5, a person may request, in writing to the *Clerk*, a review of the measures imposed in the *trespass notice*, provided that the person includes in the request for review:
- (a) a clear statement as to which measures in the *trespass notice* the person wishes to be reviewed;
 - (b) written submissions, including any supporting information or documents, about why those measures are not necessary to achieve the purpose set out in section 2.1; and
 - (c) the person's contact information, including name, telephone number and email address.
- 4.2 Within 21 days of each anniversary of being given a written *trespass notice* under section 3.4 or 3.5, if there has been a material change in circumstance, a person may request, in writing to the *Clerk*, a review of the measures imposed in the *trespass notice*, provided that the person includes in the request for review:
- (a) a clear statement describing the material change in circumstance;
 - (b) a clear statement as to which measures in the *trespass notice* the person wishes to be reviewed;
 - (c) written submissions, including any supporting information or documents, about why the material change in circumstance makes those measures no longer necessary to achieve the purpose set out in section 2.1; and
 - (d) the person's contact information, including name, telephone number and email address.
- 4.3 A request for review does not stay the operation of a *trespass notice*.

- 4.4 Provided that the conditions in section 4.1 or 4.2 are met, the *Clerk* must refer a person's request for review and any written submissions, supporting information or documents to a *screening officer* for review.
- 4.5 A *screening officer* who is referred a request for review must:
- (a) give notice of the review to the *senior staff person* who gave the written *trespass notice* under review, including a copy of the request for review and any written submissions, supporting information or documents included in the request for review; and
 - (b) inform the *senior staff person* who gave the written *trespass notice* under review that the *senior staff person* may, by a date that is specified in the notice that is at least 14 days after the *senior staff person* is given notice, make written submissions, including any supporting information or documents, about why the measures in the *trespass notice* under review are necessary to achieve the purpose set out in section 2.1.
- 4.6 A *screening officer* will conduct a review in writing, unless, in the opinion of the *screening officer*, the circumstances require otherwise.
- 4.7 When conducting a review, the *screening officer* may seek and consider additional information or documents from any person, and may consult with other *City employees*, legal counsel, or other advisors, all as the *screening officer* considers necessary.
- 4.8 When conducting a review, the *screening officer* must:
- (a) consider any submissions, including any supporting information or documents, made by the person who requested the review and the *senior staff person* who gave the *trespass notice* about whether the measures in the *trespass notice* under review are necessary to achieve the purpose set out in section 2.1; and
 - (b) ensure that the measures imposed are the least restrictive measures necessary to achieve the purpose set out in section 2.1, considering all relevant factors, including those set out in section 3.7.
- 4.9 When conducting a review, the *screening officer* may uphold, vary or set aside some or all of the measures under review, and the *screening officer's* decision is final.
- 4.10 Upon making a decision, the *screening officer* must issue a written decision to, and if necessary, give a varied *trespass notice* to:
- (a) the person who requested the review;

- (b) the *senior staff person* who gave the *trespass notice*;
- (c) all *directors*;
- (d) all *screening officers*;
- (e) the *supervisor of Occupational Health*; and
- (f) the *chief of police*.

4.11 When issuing a written decision or giving a varied *trespass notice* pursuant to section 4.10, the *screening officer* may do so by courier, registered mail or email.

5.0 Duty to Report

- 5.1 Any *City employee* or *security guard* who believes a *visitor's harmful behaviour* constitutes an immediate threat to any person's safety, must, as soon as it is safe to do so, report the threat to the *Kingston Police* by calling 9-1-1.
- 5.2 Without limiting the generality of section 5.1, any *City employee* or *security guard* who believes that a *visitor* has engaged in *harmful behaviour* which includes physical violence or the threat of physical violence must, as soon as it is safe to do so, report the *harmful behaviour*:
- (a) first, to the *Kingston Police* by calling 9-1-1; and
 - (b) second, to a *supervisor, manager* or *senior staff person* in accordance with the *Occupational Health and Safety Act*, the *City's Workplace Violence and Harassment Prevention Program* and the *City's Workplace Violence and Harassment Policy*.
- 5.3 The *City* does not require, expect, encourage or condone any response to an incident of *harmful behaviour* by a *City employee* or *security guard* which may, or which the *City employee* or *security guard* believes may, unreasonably threaten the safety of any person.
- 5.4 A *City employee* or *security guard* who believes that a *visitor* is committing or has committed an offence under the *Trespass to Property Act* by:
- (a) entering onto *public premises* when entry is prohibited by the *Trespass to Property Act*;
 - (b) engaging in an activity on *public premises* when the activity is prohibited under the *Trespass to Property Act*; or
 - (c) not leaving *public premises* immediately after the *visitor* is directed to do so by an *authorized person*;

must, as soon as it is safe to do so, first report the offence to the *Kingston Police* or, if necessary to ensure the safety of any person or the security of *public premises*, must, as soon as it is safe to do so, report the offence to the *Kingston Police* by calling 9-1-1, and second report the offence to all *directors*, all *screening officers*, and the *supervisor of Occupational Health*.

6.0 Administration

- 6.1 *Senior staff persons* must take reasonable steps within their authority to:
- (a) identify and assess the risks posed by incidents of *harmful behaviour* which the *senior staff person* receives a report of or otherwise becomes aware of;
 - (b) manage the risks posed by future incidents of similar *harmful behaviour*; and
 - (c) direct compliance with this policy.
- 6.2 The *Clerk* must, as and when necessary, select a *screening officer* to maintain and circulate to all *directors* a written list of all *trespass notices* in effect in respect of any part of *public premises*.
- 6.3 The *screening officer* selected by the *Clerk* under section 6.2 must maintain and, on the first business day of each month, circulate to all *senior staff persons* a written report listing all *trespass notices* in effect in respect of any part of *public premises*, which must include the following information in respect of each such *trespass notice*:
- (a) the affected *visitor's* identity, if known;
 - (b) the affected public premises or parts of public premises;
 - (c) the particular activity or activities, if any, which are prohibited and for which entry for the purpose of such activity or activities is prohibited or one or more particular activities are prohibited;
 - (d) the date the *trespass notice* was given;
 - (e) the duration of the prohibition; and
 - (f) a summary of the nature and severity of the *harmful behaviour* which caused the *trespass notice* to be given, if known.
- 6.4 The *director* of Legal Services may:
- (a) prescribe forms of notices, reports or other documents to be given, made or maintained under this policy; and

(b) amend this policy by substituting a new Form 1 for Appendix 10.1.

6.5 A *City employee* who breaches this policy may be subject to discipline up to and including dismissal.

7.0 Application

7.1 This policy applies to *City employees*, and *security guards*.

8.0 Approval Authority

Role	Position	Date Approved
Quality Review		
Subject Matter Expert	Legal Services Department.	September 20 2022
Legal Review	City Solicitor; and Senior Legal Counsel.	September 20 2022
Management Review	Directors.	September 20 2022
Final Approval	Council.	September 20 2022

9.0 Revision History

Effective Date	Revision	Description of Change
Sept. 20, 2022	1	New Policy