

## Request for Decision

### Trespass to Property Act Policy

|               |                         |
|---------------|-------------------------|
| Presented To: | City Council            |
| Presented:    | Tuesday, Dec 13, 2016   |
| Report Date   | Wednesday, Nov 16, 2016 |
| Type:         | Managers' Reports       |

### Resolution

That Council adopts the Trespass to Property Act Policy as described in the report from the Executive Director Administrative Services/City Clerk dated November 16, 2016.

### Background

#### Signed By

**Report Prepared By**

Paul Denniston  
By-law Coordinator - Security  
*Digitally Signed Nov 16, 16*

**Division Review**

Brendan Adair  
Manager of Security and By-Law  
*Digitally Signed Nov 16, 16*

**Recommended by the Department**

Caroline Hallsworth  
Executive Director, Administrative  
Services/City Clerk  
*Digitally Signed Nov 24, 16*

**Recommended by the C.A.O.**

Ed Archer  
Chief Administrative Officer  
*Digitally Signed Nov 30, 16*

## **Trespass to Property Act Policy- City of Greater Sudbury**

### **Executive Summary**

The City of Greater Sudbury uses the provisions of the Trespass to Property Act as one of a number of tools to manage and deter security risks and ensure the safety of citizens and staff in CGS facilities. The purpose of the Trespass to Property Act Policy is to centralize and standardize the administrative process for issuing notices under this legislation so as to allow for better management of this tool in the context a broader security strategy.

### **Background**

Using legislative authorities pursuant to the Trespass to Property Act, this report will highlight the new, standardized process that City of Greater Sudbury staff will use to address a number of incidents in facilities while listing possible consequences of actions should they occur.

### **As per the *Trespass to Property Act, R.S.O. 1990, c T.21***

#### ***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 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 or a person authorized by the occupier,*

*is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.*

*R.S.O. 1990, c. T.21, s. 2 (1); 2016, c. 8, Sched. 6, s. 1.*

#### ***“occupier” includes,***

*(a) a person who is in physical possession of premises, or*

*(b) a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises,*

*even if there is more than one occupier of the same premises; (“occupant”)*

### **Common Practice of Other Municipalities**

Many municipalities (ex. Mississauga, Guelph, Windsor, Brampton) have policies in place to script their response to incidents at public facilities and properties with the intent to protect staff and the public and delegate authority to address a number of incidents.

### **Designated Authority- Trespass to Property Act**

At all City of Greater Sudbury facilities, the most senior employee working in the facility at the time of an incident will be authorized to issue a 72 hour written trespass notice and will be designated as the “occupier” under the Act. Furthermore, based on their designated authorities as law enforcement officers, any Police Officer, Municipal Law Enforcement Officer or contracted Security Guard employed by the City of Greater Sudbury will also be authorized to issue 72 hour trespass notices on behalf of the City. Amendments to the Delegation By-Law will be required to add this authority.

### **Behaviours that may trigger a Trespass Order**

In general, behaviours of citizens that may result in the issuance of a trespass notice can be characterized as a breach of City policy, rule, regulation, Bylaw or provincial or federal law. Examples of this can be, but are not limited to, the following:

- Any activity that obstructs, prevents or hinders the rights of others to use and enjoy any City facility or property or which obstructs, prevents or hinders the operations of the City of any of its employees, agents or contractors in the delivery of a service.
- any act towards staff or citizen that are perceived to be threatening, intimidating or sexual in nature,
- using profanity, obscene language or racial slurs
- committing any nuisance, disturbing the peace or acting contrary to public order
- Any damage to a City Facility or City property

### **Trespass Process**

All CGS facility Managers will be provided with a copy of the Trespass Policy and standardized documentation, including a template trespass notice that can be used whenever an incident

occurs. Where safe to do so, this will allow for immediate trespass an individual for an initial period of 72 hours. The instructions will indicate that Police are to be called if public or staff safety is threatened.

Copies of all 72 hour notices will be provided electronically to Bylaw and Security Services within 24 hours at trespass@greatersudbury.ca. In receipt of all information, Management staff will investigate further and based on the outcomes of the investigation, a number of different paths may be followed which will range from no further action, issuance of a longer notice under the Trespass to Property Act, or involvement by police or other agencies. All trespass notices issued by the City of Greater Sudbury will be forwarded to the Greater Sudbury Police Service to be entered into their trespass database and decide if further investigation is warranted.

Currently there is no consistency in regards to where an individual will be trespassed from following an incident. Issuing a trespass notice that restricts access from only some CGS facilities tends to move the behaviours around between departments and buildings. In most instances, Trespass Notices will apply to all CGS buildings during the period of the notice. To ensure no hardship to citizens who need to access to specific municipal services to conduct business, the notice will advise that they are to contact Security and By-Law Services to arrange for escorted access to a pre-arranged appointment to access the service required.

All Notices of Trespass will be maintained and reviewed on a bi-annual basis by Corporate Security so as to ensure consistent attention and assessment is paid to all incidents of trespass within the Municipality.

**Trespass Guidelines**

| <b>Prohibited Activity</b>  | <b>1<sup>st</sup> Occurrence</b> | <b>2<sup>nd</sup> Occurrence</b> | <b>Subsequent Occurrences</b> |
|---|----------------------------------|----------------------------------|-------------------------------|
| Causing a disturbance in the work place<br>Disregard for City rules, polices or procedures<br>Use of vulgar language, shouting, | Minimum<br>72hrs                 | Minimum<br>one (1)<br>month      | Minimum six<br>(6) months     |

|   |                        |                         |                            |
|---|------------------------|-------------------------|----------------------------|
| Direct or indirect threat towards staff or the public<br>Aggressive, intimidating or harassing behavior(s) towards staff or citizen<br>Vandalism of City property | Minimum six (6) months | Minimum one (1) Year    | Minimum two (2) years      |
| Assault<br>Weapon related offence<br>Theft  | Minimum two (2) years  | Minimum three (3) years | Minimum of three (3) years |

**Violations of Issued Trespass Notice**

As per the *Trespass to Property Act, R.S.O. 1990, T.21*

**Arrest without warrant on premises**

*9. (1) A police officer, or the occupier of the premises, or a person authorized by the occupier may arrest without warrant any person her or she believes to reasonable and probable grounds to be on the premises in contravention of section 2. R.S.O. 1990, c. T.21, s. 9(1)*

Any violation of a previously issued and still current trespass notice from the City of Greater Sudbury will result in Police being immediately contacted to attend with an extension of the length of trespass being applied by Bylaw and Security Services.

**Appeal**

Any person in receipt of a trespass from the City of Greater Sudbury that is beyond 72 hours may, within five business days, appeal the receipt of the Notice and/or length of trespass. All appeals must be in writing and shall be forwarded to the attention of the City Clerk. The matter will be jointly heard by the ELT member responsible for Security and By-Law Services and the ELT Member in whose facility the incident occurred.

## **Summary**

Based on authorities for trespass provided to City of Greater Sudbury employees through the Trespass to Property Act, and when considering similar policy that exists in other municipalities, a draft Trespass to Property Act Policy has been developed for Council's consideration.

## **Trespass to Property Act Policy- City of Greater Sudbury**

### **Statement**

To ensure the safety and well being of staff and citizens at City of Greater Sudbury facilities, all City of Greater Sudbury staff hold the responsibility to immediately report and respond to prohibited activities in City of Greater Sudbury properties. The purpose of the Trespass to Property Act Policy is to centralize and standardize the administrative process for issuing notices under this legislation so as to allow for better management of this tool in the context a broader security strategy.

### **Legislative Authority**

Any action taken within the context of this policy can be done so by legislative authority as owner or occupier of its property pursuant to the Trespass to Property Act, R.S.O. 1990, T.21.

### **Staff Authority**

Responding to incidents of prohibited activity, the most senior staff in a City of Greater Sudbury facility at the time of the incident is deemed to be the “occupier” and “authorized person” and shall issue a 72-hour trespass notice.

### **Police and Municipal Law Enforcement Officer Authority**

Police officers with the Greater Sudbury Police or other services designated by legislation and designated Municipal Law Enforcement Officers of the City of Greater Sudbury, and contract security staff employed by the City of Greater Sudbury will be designated as *occupiers* for the purpose of this policy and will therefore be authorized to issue a 72-hour trespass notice.

### **Security and Bylaw Services Authority**

Following an incident at any City of Greater Sudbury facility or property, management representatives from Security and Bylaw Services will have the designated authority to issue a trespass notice beyond 72-hours in accordance with the schedule associated with this policy.

**Trespass Policy Guidelines**

| <b>Prohibited Activity</b>  | <b>1<sup>st</sup> Occurrence</b> | <b>2<sup>nd</sup> Occurrence</b> | <b>Subsequent Occurrences</b> |
|---|----------------------------------|----------------------------------|-------------------------------|
| Causing a disturbance in the work place<br>Disregard for City rules, polices or procedures<br>Use of vulgar language, shouting,                                   | Minimum<br>72hrs                 | Minimum<br>one (1)<br>month      | Minimum six<br>(6) months     |
| Direct or indirect threat towards staff or the public<br>Aggressive, intimidating or harassing behavior(s) towards staff or citizen<br>Vandalism of City property | Minimum<br>six (6)<br>months     | Minimum<br>one (1) Year          | Minimum two<br>(2) years      |
| Assault<br>Weapon related offence<br>Theft  | Minimum<br>two (2)<br>years      | Minimum<br>three (3)<br>years    | Minimum of<br>three (3) years |

**Application**

All 72-hour trespass notices will apply to all City of Greater Sudbury buildings.

Notices of longer than 72 hours in duration will apply to all CGS buildings during the period of the notice. To ensure no hardship to citizens who need to access to specific municipal services to conduct business, the notice will advise that the citizen is to contact Security and By-Law Services to arrange for escorted access to a pre-arranged appointment to access the service required.

## **Appeal Process**

Trespass notices issued by the City of Greater Sudbury that are 72-hours in length are not subject to an appeal.

Trespass Notices of longer than 72 hours duration may be appealed, within five business days. All appeals must be in writing and shall be forwarded to the attention of the City Clerk. The matter will be jointly reviewed by the ELT member responsible for Security and By-Law Services and the ELT Member in whose facility the incident occurred.