

Subject: Trespass By-law and Conduct of Persons Policy

Report to: Corporate Services Committee

Report date: Wednesday, October 9, 2024

Recommendations

1. That Council **APPROVE** the Public Conduct Policy attached as Appendix A to Report CSD 41-2024 and **REPEAL** Corporate Policy C-A-025 Managing Public Spaces in a Safe and Welcoming Environment, including the related Procedure; and
2. That Council **APPROVE** the Trespass By-law in the form attached as Appendix B to Report CSD 41-2024.

Key Facts

- The purpose of this report is to seek Council’s approval of the proposed Public Conduct Policy (the “Policy”) and Trespass By-law, attached as appendices to this report.
- Several Ontario municipalities have recently introduced or amended public conduct policies/by-laws to address significant developments in Ontario law.
- It is a best practice to establish a comprehensive policy and resolution framework to guide staff in identifying and responding to inappropriate behaviour that qualifies as Misconduct in a manner that is clear, consistent, reasonable, proportional to the individual’s conduct, and compliant with applicable law.
- The Region does have certain policies governing conduct by and towards staff but does not presently have a comprehensive corporate-wide policy governing public conduct when attending or accessing Regional premises and services or engaging with Regional staff, volunteers, Members of Council or other members of the public.
- The proposed Policy and Trespass By-law uphold and balance important *Charter*-protected public rights with important statutory obligations under the *Occupational Health and Safety Act* to promote a safe and harassment-free workplace, and provide a fair, consistent, and defensible approach to responding to Misconduct.
- The Policy and Trespass By-law would provide the following benefits:
 - establish clear expectations of acceptable conduct for members of the public, staff and Members of Council across all departments, facilities and programs;

- clearly delegate authority to make decisions and issue restrictions in response to Misconduct;
 - provide needed decision-making guidance and a resolution framework to:
 - reduce uncertainty and guard against arbitrary action;
 - ensure Misconduct is properly identified based on a consideration of the specific facts at hand recognizing unreasonable/difficult behaviour does not necessarily equate to Misconduct, and
 - address Misconduct in a clear, consistent, reasonable, proportional, and legally compliant manner.
 - safeguard important public rights and reduce associated risk of court challenges; and
 - foster safe, respectful, and harassment-free engagement between members of the public, staff, volunteers, and Members of Council.
- Subject to Council approval of the proposed Policy, a supporting procedure, approved by CLT, will be issued to guide implementation.

Financial Considerations

There are no direct financial implications arising from the proposed Policy and Trespass By-law.

The deployment of internal resources for training, support, investigation, and appeal purposes will be required to ensure a successful implementation of the Policy across all corporate departments and can be accommodated within the existing Council approved budget. An appeal fee, if desired, could be established under the Region's Fees and Charges By-law. Subject to Council approval and direction, Staff propose that the potential need and justification for an appeal fee can be assessed in future based on actual appeal volume and associated resource impacts.

Analysis

i. Background – The Need for Policy Tools to Responsibly Address Misconduct

The Policy supports the Region's commitment to delivering services and engaging with members of the public in a fair, responsive, and understanding manner, while fostering a safe, respectful, and harassment-free workplace and space for its employees, volunteers, Members of Council, and the public. To achieve these objectives, there may

be circumstances that require action to protect staff, volunteers, Members of Council, and members of the public from inappropriate behaviour, referred to in the proposed policy as “Misconduct”.

Various departments at the Region are from time to time required to manage inappropriate behaviours exhibited by members of the public. Such behaviours can occur in a variety of settings (in person, by phone, electronically etc.) and can be directed towards staff, other members of the public, or Regional property. Staff currently respond to instances of inappropriate conduct using existing corporate policies and division-level protocols where available, or managerial discretion. At present, the Region does have certain policies governing conduct by staff and towards staff (Respectful Workplace Conduct, Harassment in the Workplace, Workplace Violence Prevention Program), but it does not have a comprehensive corporate-wide policy governing public conduct when engaging with staff and services. Additionally, there is an existing Corporate Policy C-A-025 “Managing Public Spaces in a Safe and Welcoming Environment”; however, it is not sufficiently responsive to the corporate need or legal landscape, and as such staff recommend it be repealed.

To establish clear expectations for public interactions and equip staff with tools to appropriately manage unreasonable behaviour, consistent with legislative requirements and Ontario case law, staff recommend the establishment of a comprehensive policy and resolution framework that identifies and responds to Misconduct in a manner that is clear, consistent, reasonable, proportional to the individual’s conduct, and in compliance with applicable law.

To that end, in developing the proposed Policy and the Trespass By-law, staff conducted a comprehensive jurisdictional scan of other Ontario municipalities and a review of relevant legal decisions in Ontario with an aim of identifying best practices. Several Ontario municipalities (at least 10, including Ottawa, Burlington, Hamilton, Whitby, Ajax, Brantford, Elliot Lake, Halton Region, Waterloo Region, and Durham Region) have recently introduced or amended public conduct policies/by-laws.

Staff also carried out cross-departmental review and engagement to ensure alignment with business requirements so that the proposed Policy and Trespass By-law will function to complement department-specific protocols; recognizing that public interactions across the Region’s diverse service areas, some of which are subject to rigorous sector-specific regulation, cannot be fully addressed through a single “one-size-fits-all” approach. Department/Division-specific protocols/procedures tailored to the unique needs and legislative requirements of specific service areas will remain as

essential complements to the overarching policy guidance, consistency and resolution tools provided by the Policy and By-law. The proposed Policy, supporting procedure, and Trespass By-law have been approved by the Corporate Leadership Team (CLT).

ii. Key Principles & Considerations - Proportionality & Minimal Impairment

A municipality is not an ordinary owner and occupier of property. As a public sector entity, its powers, including the right as owner and occupier of premises to restrict or prohibit entry and limit permitted activities on its premises, must be exercised in accordance with the *Canadian Charter of Rights and Freedoms* (“*Charter*”).

A decision to classify someone’s conduct as Misconduct could have serious consequences for the affected individual. Decisions from Ontario courts have made it clear that municipalities and public sector entities must not arbitrarily restrict members of the public from accessing municipal property or services. Any restrictions applied to an individual’s right to access municipal services or property must be:

- minimally impairing;
- rationally connected to a valid and sufficiently important public purpose; and
- proportional to the inappropriate conduct that occurred.

A municipality must also balance the public’s *Charter* rights with its statutory obligations as an employer, to promote a safe and harassment-free workplace under the *Occupational Health and Safety Act*.

Given this nuanced balance of important rights and obligations at play, and as recognized by numerous municipalities across Ontario, it is best practice to establish a policy and resolution framework for staff to identify and respond to Misconduct in a manner that is clear, consistent, reasonable, proportional, and compliant with applicable law.

iii. Content of the Public Conduct Policy

Broad Scope – Applicable to All Premises, Services, Events, and Interactions

The proposed Policy, attached as Appendix A, will apply to all persons attending, accessing, or using Regional properties, facilities, services, programs, meetings or events, and all forms of public interactions and communications with Regional staff, volunteers, Members of Council, or members of the public, including in-person,

telephone, written communications, and all forms of virtual and electronic communications.

As noted, the Policy would apply to public interactions with Members of Council. The intention is to provide Councillors with the same policy guidance available to staff in identifying and responding to potential Misconduct, while maintaining a distinct resolution framework through the Integrity Commissioner in accordance with the Code of Conduct for Members of Council.

Targeting Misconduct – Unjustified Disruption, Distress and Harm

Not all unreasonable or difficult behaviour constitutes Misconduct. The term Misconduct applies to a range of inappropriate conduct and interactions, from disruptive conduct, such as frivolous or vexatious requests, to more severely offending conduct such as aggressive, intimidating, or disrespectful behaviour, threats of violence, or actual violence. The overriding question is whether the behaviour is likely to cause, or has caused, an unjustified disruption, distress or harm to staff, volunteers, Members of Council, or members of the public.

To guide staff, the Policy describes general categories of inappropriate behaviour that may amount to Misconduct, depending on the particular circumstances. Further guidance for identifying and responding to Misconduct will be outlined within a Public Conduct Procedure approved by CLT for issuance subject to Council approval of the Policy. A copy of the Procedure is attached to this report as Appendix C for information purposes.

Relevant Considerations – Ensuring Response Tailored to the Circumstances

The central guiding principle under the proposed Policy is that any restrictions imposed to address Misconduct must be tailored to the individual circumstances of each case and proportionate to the harm, or potential harm, arising from the Misconduct. Generally, where appropriate, a graduated system of warnings, suspensions, and prohibitions should be employed with an aim of imposing the least onerous sanction that will achieve the objectives of the Policy.

To guide decision-makers, the Policy sets out an unexhaustive list of relevant factors to consider when deciding upon any restrictions, including:

- the severity of the Misconduct;
- whether there is a repeated pattern or history of Misconduct;

- the likelihood of recurrence of the Misconduct by the individual;
- the personal circumstances of the individual;
- whether staff have made reasonable efforts to address or resolve the issue;
- any relevant extenuating circumstances;
- the impact of restrictions or prohibitions on the individual; and
- any other factor relevant to a consideration of the issues.

Going through such an analysis and making reasonable investigation and gathering the facts necessary to conduct such an analysis, is an important safeguard against arbitrary or rash decisions and the improper labelling of all unreasonable or difficult behaviour as Misconduct.

Senior-Level Decision-Makers, Escalation Framework and Procedural Fairness

The proposed Policy assigns authority to make determinations and impose restrictions to defined senior-level staff, namely, Directors, Commissioners, or the Deputy CAO. Senior-level decision-making, oversight and embedded escalation aligns with the approach taken by comparable municipalities and recognizes the elevated importance of decisions that may potentially limit an individual's access to Regional property or services.

When alleged Misconduct is reported, experienced, or observed by staff, their role is to document the matter and report it to their Supervisor, Manager or Director. Directors will then review all information, ensure investigation is complete, decide whether any consequences or restrictions should be imposed, and if so, communicate those restrictions, together with any applicable review date or appeal rights, to the affected individual.

While Directors are assigned as primary decision-makers, the Policy provides for escalation to the Commissioner level or Deputy CAO in certain instances such as where the alleged Misconduct concerns multiple departments or service areas.

The proposed Policy authorizes Directors, Commissioners, and the Deputy CAO to prohibit an individual's entry on or to one or more Regional premises where appropriate, only after consideration of all possible alternative measures. If a Trespass Notice is issued, then the Trespass By-law must be followed.

The Policy affords procedural appeal rights to members of the public to ensure fairness and transparency, which are further outlined in the supporting procedure. Appeals will

follow an escalation framework depending on who imposed the restrictions being challenged. Appeals will be decided by: Commissioners (where restrictions imposed by a Director); the Deputy CAO (where restrictions imposed by a Commissioner); or the CAO (where restrictions imposed by the Deputy CAO).

As a further procedural fairness measure, the supporting procedure allows for a discretionary restriction review date to be set (i.e. when the restrictions will be revisited to consider whether modification or continuation is appropriate).

iv. Content of the Proposed Trespass By-law

The proposed Trespass By-law (the “By-law”), attached as Appendix B, is more limited in application than the Policy. It would apply in conjunction with the Policy and only where restrictions prohibit an individual from physically entering one or more Regional properties. This is the most severe form of restriction that the Region would impose – and only as a last resort, after considering all other possible alternative measures under the Policy.

The By-law would govern issuance of a Trespass Notice to an individual stating that, as a result of their conduct, they are prohibited from entering on or to one or more Regional premises, and if they do so, they will be trespassing and could be subject to charges under the *Trespass to Property Act*.

The By-law provides for appeals and for temporary exceptions from a Trespass Notice to be requested in certain circumstances, to ensure a measured and fair approach.

v. Implementation

Successful implementation of the proposed Policy across all corporate departments will require focused training, engagement, and support at all staff levels, from frontline staff to senior leadership. In partnership with Human Resources staff, a communication and training program will be developed leveraging existing learning and training platforms, which include both virtual and in-person training, and resources such as FAQs to support a unified understanding of how and when the Policy and By-law should be utilized and strive to complement other existing corporate training initiatives such as de-escalation training.

Alternatives Reviewed

Regional Council could choose not to approve the proposed Policy and Trespass By-law. This is not recommended given that there is presently no comprehensive corporate-wide policy governing public conduct when engaging with Regional staff and services. The proposed Policy and By-law will provide needed guidance and resolution tools to address Misconduct in a manner that is fair, consistent, proportionate, minimally impairing, and compliant with applicable law.

Relationship to Council Strategic Priorities

The proposed Policy and Trespass By-law support Council's Strategic Priorities for an Effective and Equitable Region by furthering the Region's objectives to support a skilled and aligned workforce and ensure a safe, respectful, and welcoming Niagara.

Other Pertinent Reports

N/A

Prepared by:

Scott Crocco
Legal Counsel
Corporate Services

Recommended by:

Dan Carnegie
Commissioner of Corporate Services

Submitted by:

Ron Tripp, P.Eng.
Chief Administrative Officer

This report was prepared in consultation with Donna Gibbs, Director, Legal and Court Services, Franco Meffe, Director, Human Resources, and Ann-Marie Norio, Regional Clerk.

Appendices

Appendix 1	Proposed Public Conduct Policy
Appendix 2	Draft Trespass By-law
Appendix 3	Draft Public Conduct Procedure