

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

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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

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Policy Owner	Corporate Administration, Office of the Chief Administrative Officer
Approval Body	Regional Council
Approval Date	
Effective Date	
Review by Date	

1. POLICY

Niagara Region is committed to delivering exceptional 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. In order to achieve these objectives, inappropriate behavior and misconduct by members of the public who require access to and/or make use of Regional premises or services may need to be limited in a manner that is clear, consistent, reasonable, and proportional to the individual's conduct.

2. PURPOSE

This policy contributes to the Region's objectives of delivering exceptional services and engaging with the public in a fair, responsive and understanding manner, while recognizing that 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 this policy as "Misconduct".

Some situations of Misconduct may cause concern for the reasonable safety of others at Regional premises or may interfere with the public's use and enjoyment of Regional services and facilities. Further, Misconduct may consume a disproportionate amount of staff and/or Council Member time and resources and compromise their ability to provide assistance or deliver effective and efficient service to others.

Accordingly, under this policy and associated procedures, inappropriate behaviour that qualifies as Misconduct may result in the application of restrictions against members of the public. Any restrictions applied will be reasonable, consistent and proportionate to address the particular Misconduct at hand, and communicated in a manner that is clear and understandable.

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3. SCOPE

General

This policy applies to:

- all persons attending, accessing and/or making use of any and all Regional properties, facilities, services, programs, meetings or events; and
- the conduct of all persons interacting with Regional staff, volunteers, Members of Council, or members of the public, in any manner, including, but not limited to:
 - i. in-person communications;
 - ii. written communications;
 - iii. telephone communications;
 - iv. all forms of virtual and electronic communications, including e-meetings, e-mail, text message, and social media;
 - v. at Regional property and facilities; and
- at non-Regional properties, facilities or workplaces where Regional services and programs or events are provided.

Implementation

This policy will be followed in determining whether behaviour constitutes Misconduct based on a consideration of all of the circumstances of a particular case. Once it has been determined that Misconduct has occurred, this policy, together with the Region’s Public Conduct Procedure, will be followed in the implementation of any restrictions and any applicable review or appeal of those restrictions.

This policy is not intended to apply to generally unreasonable or difficult individuals or in any way limit or detract from the Region’s commitment and duty to accommodate members of the public in its provision of respectful and inclusive services.

Further, this policy is meant to complement, not replace, department-specific training, protocols, procedures and guidelines applicable to staff interactions with the public. In their interactions with members of the public, staff shall engage in appropriate dialogue, communications, actions, de-escalation practices and resolutions in accordance with their applicable departmental training, protocols, procedures, guidelines and applicable sector-specific legislation, regulations, directives and guidelines. This may include the ability to end individual customer service interactions with the public or asking someone to leave the premises on an ad-hoc/“one-off” basis where deemed appropriate in staff’s discretion and in accordance with applicable departmental protocols, procedures and Management direction.

Where any conflict occurs between this policy and a departmental or divisional policy, this policy will take precedence, save and except departmental policies and procedures applicable to Region operated housing shelters or where there are

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applicable sector-specific legislation, regulations, directives or guidelines to the contrary.

This policy shall be applied in conjunction with the Region’s Trespass By-law, Respectful Workplace Conduct Policy, Harassment in the Workplace Policy and Procedures, Workplace Violence & Workplace Harassment Prevention Program Procedure, Code of Conduct for Members of Council, and Procedural By-law.

In addition, this policy shall be applied in conjunction with all corporate and department specific emergency procedures. **Staff should not, under any circumstances, place themselves at risk or jeopardize the safety of others when addressing inappropriate behaviour and/or Misconduct.** If an incident presents an immediate threat to persons or property, staff should contact 9-1-1 and then contact their supervisor.

Identifying Misconduct

The term “**Misconduct**” for the purposes of this policy applies to a range of inappropriate conduct and interactions, from disruptive conduct, such as frequent, unreasonable, frivolous or vexatious requests or meritless/unsubstantiated complaints by a member of the public, 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.

Not all unreasonable or difficult behaviour constitutes Misconduct, and this policy should not be applied to label all generally unreasonable or difficult behaviour as Misconduct.

Depending on the particular circumstances, Misconduct may include:

- verbal or non-verbal conduct that is, in the view of a reasonable person, designed to, or reasonably likely to, harm, distress, intimidate, harass, threaten, abuse, coerce, disparage, embarrass, disrespect or humiliate the recipient, or is part of a pattern of conduct by an individual that amounts to an abuse of a Regional program, service or process;
- behaviour that causes concern for the reasonable safety of staff or other individuals attending, accessing and/or making use of Regional premises, facilities, workplaces, services, programs or events;
- any conduct, which because of its nature or frequency, has a disproportionate and unreasonable impact on the Region, Members of Council, employees, volunteers, other members of the public, services, time and/or resources;
- behaviour that interferes with normal operations of the Region or which interferes with the ability of other persons to use and enjoy Regional services, programs and physical or digital spaces;

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- repeated requests or complaints by an individual that are unsubstantiated, have no serious purpose or value, or about a matter so trivial or meritless on its face that investigation would be disproportionate in terms of time and cost; or
- behaviour that is unacceptable in all circumstances – regardless of how stressed, angry, or frustrated an individual may be - because it unacceptably compromises the health, safety, and security of staff, volunteers, Members of Council, other members of the public or the individual themselves.

Further guidance and examples as to what may constitute Misconduct, together with the procedures to be followed in identifying and responding to Misconduct and implementing appropriate restrictions, and any applicable review or appeal of those restrictions, are outlined in the Region’s Public Conduct Procedure as approved by CLT.

Relevant Considerations in Addressing Misconduct

In determining if an individual’s behaviour qualifies as Misconduct and/or warrants the application of restriction(s) under this policy and related procedures, the specific circumstances of the matter will be considered, including, but not limited to the following:

- 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, if known to staff;
- whether the individual has been dealt with properly and in accordance with the relevant policies and procedures;
- 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;
- whether the individual is presenting new material or information about the situation or making a new request or complaint;
- any other factor relevant to a consideration of the issues; and,
- where prohibiting entry of an individual on or to one or more Regional premises and/or issuance of a Trespass Notice is being considered, compliance with the Trespass By-law.

Guiding Principle - Restrictions will be Measured and Proportional

Any restrictions imposed to address Misconduct under this policy and related procedure shall 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 shall be employed with an aim of imposing the least onerous sanction that will achieve

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the objectives of the Public Conduct Policy, including staff and public safety, inclusiveness, and freedom from harassment.

2.1. Roles and Responsibilities

Employees

Regional employees (including students and volunteers) are responsible for the following:

- if an employee experiences, witnesses, or receives a report regarding any incident or behaviour that may constitute Misconduct, that employee will report the matter to their Supervisor, Manager, Associate Director or Director, providing any supporting material in the manner outlined in the Region’s Public Conduct Procedure; and
- in their interactions with members of the public, employees shall engage in appropriate dialogue, communications, actions, de-escalation practices and resolutions in accordance with the Region’s Public Conduct Procedure as supplemented by their applicable departmental training, protocols, procedures, guidelines, Management direction and applicable sector-specific legislation, regulations, directives and guidelines. This may include the ability to end individual customer service interactions with the public or asking someone to leave the premises on an ad-hoc/“one-off” basis where deemed appropriate in staff’s discretion and in accordance with applicable departmental protocols/procedures and Management direction.

Supervisors, Managers and Associate Directors

Supervisors, Managers and Associate Directors are responsible for:

- receiving and reviewing all information regarding any alleged Misconduct; providing direction to their direct reports and engaging in the enforcement steps outlined in the Region’s Public Conduct Procedure in a manner which upholds the principles and provisions of this policy; and
- ensuring that Regional employees are provided with appropriate support, assistance, resources and resolution mechanisms provided under other applicable corporate policies and programs, including, without limitation, the Region’s Health and Safety Policy, Workplace Violence and Workplace Harassment Prevention Program Procedure and Employee and Family Assistance Program.

Directors

Directors are responsible for:

- receiving and reviewing all information regarding any alleged Misconduct; providing direction to their direct reports and carrying out the investigative, decision-making and enforcement responsibilities and actions outlined in the

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Region’s Public Conduct Procedure in a manner which upholds the principles and provisions of this policy, including:

- making the determination of whether to classify an individual’s conduct as Misconduct;
- determining whether any restriction(s) are to be imposed on the individual, including any temporary or interim restrictions, and communicating those restrictions, together with any applicable review date or appeal rights, to the individual;
- where appropriate, and only after consideration of all possible alternative measures, Directors are authorized to prohibit the individual’s entry on or to one or more Regional premises for a duration **not exceeding 7 days** by issuance of a Trespass Notice, in accordance with the Trespass By-law; and
- referring the matter to their Commissioner for investigating and determination, where deemed appropriate as a result of the circumstances surrounding the alleged Misconduct, including, without limitation, where the Director has **any actual or potential conflicts of interest**, situations where the alleged Misconduct may concern more than one Regional department, service or program, or where the Director believes the alleged Misconduct is of such severity that it warrants prohibiting the individual from entering on or to Regional property for a duration **exceeding 7 days**;
- ensuring that all direct reports are aware of and trained on this policy and the related procedure;
- ensuring that all direct reports are provided with appropriate support, assistance, resources and resolution mechanisms provided under other applicable corporate policies and programs, including, without limitation, the Region’s Health and Safety Policy, Workplace Violence and Workplace Harassment Prevention Program Procedure and Employee and Family Assistance Program; and
- ensuring that this policy and the related procedure is integrated into their applicable departmental/divisional protocols, procedures, guidelines and training.

Director of Legal and Court Services

The Director of Legal and Court Services shall provide legal support and guidance to all employees as needed for the purposes of implementation of this policy and related procedure in compliance with applicable law.

Commissioners

Commissioners are responsible for:

- carrying out all Director responsibilities and actions outlined in this policy and related procedure where a matter of potential Misconduct has been referred to the Commissioner for investigation and determination, or where otherwise

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deemed appropriate as a result of the circumstances surrounding the alleged Misconduct, including, without limitation, where the Director has **any actual or potential conflicts of interest**, situations where the alleged Misconduct may concern more than one Regional department, service or program, or where the Director or Commissioner believes the alleged Misconduct is of such severity that it warrants prohibiting the individual from entering on or to Regional property for a duration **exceeding 7 days**;

- where appropriate, and only after consideration of all possible alternative measures, Commissioners are authorized to prohibit the individual’s entry on or to one or more Regional premises for a duration **not exceeding 2 years**, by issuance of a Trespass Notice, in accordance with the Trespass By-law;
- referring investigation and determination of the potential Misconduct to another Commissioner, the Deputy CAO, or in consultation with the Director of Legal and Court Services and the Director of Human Resources, an independent third-party investigator, where deemed appropriate as a result of the circumstances surrounding the alleged Misconduct, including, without limitation, any actual or potential conflicts of interest or situations or where the Misconduct involves or has broad implications across multiple corporate departments;
- conducting appeals of any restriction(s) imposed by Directors where applicable, as outlined in the Region’s Public Conduct Procedure in a manner which upholds the principles and provisions of this policy;
- ensuring that all direct reports understand the purpose and scope of this policy and related procedure and comply with same;
- reviewing departmental or divisional policies and procedures for consistency and alignment with this policy, including to ensure:
 - reasonable and practicable measures are taken to protect staff, Council, members of the public, and Regional premises;
 - that all relevant statutory requirements are met;
 - consistency and accountability across Regional services; and
- the promotion of a culture of safety, security, civility and respect at Regional premises, facilities and workplaces and in the provision of services to the public.

Deputy CAO

The Deputy CAO is responsible for:

- carrying out all Director and Commissioner responsibilities and actions outlined in this policy and related procedure where a matter of potential Misconduct has been referred to the Deputy CAO for investigation and determination;
- where appropriate, and only after consideration of all possible alternative measures, the Deputy CAO is authorized to prohibit the individual’s entry on or to one or more Regional premises for a duration **not exceeding 5 years**, by issuance of a Trespass Notice, in accordance with the Trespass By-law;

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- conducting appeals of any restriction(s) imposed by Commissioners, where applicable, as outlined in the Region’s Public Conduct Procedure in a manner which upholds the principles and provisions of this policy; and
- promoting a culture of safety, security, civility, accommodation, inclusivity and respect at Regional premises, facilities and workplaces in the provision of services to the public.

CAO

The CAO is responsible for:

- conducting appeals of any restriction(s) imposed by the Deputy CAO, where applicable, as outlined in the Region’s Public Conduct Procedure in a manner which upholds the principles and provisions of this policy; and
- promoting a culture of safety, security, civility, accommodation, inclusivity and respect at Regional premises, facilities and workplaces in the provision of services to the public.

Corporate Leadership Team

The Corporate Leadership Team is responsible for:

- (i) approving and directing the development of corporate procedures to support this policy, including updates as needed from time to time; and
- (ii) ensuring other departmental or divisional policies and procedures are reviewed by Commissioners for consistency and alignment with this policy.

Members of Council

Members of Council may consult with the Integrity Commissioner regarding cases of potential Misconduct that the Member of Council wishes to address. Upon being consulted by a Member of Council, the Integrity Commissioner shall provide advice to the Member respecting any proposed action under this policy as it relates to the Member’s obligations under the Code of Conduct for Members of Council. The appeal mechanism for any restriction(s) placed on an individual through the procedure for Members of Council is the Integrity Commissioner pursuant to the Code of Conduct.

Members of Council may also wish to notify the Regional Clerk and the Regional Chair’s Office in situations where the potential Misconduct may impact or interfere with Regional meetings, events, other Members of Council and/or Staff.

References and Related Documents.

2.2. Legislation, By-Laws and/or Directives

- Trespass By-Law
- Procedural By-Law
- Occupational Health and Safety Act*, R.S.O. 1990, c. 0.1

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*Human Rights Code (Ontario), R.S.O. 1990, c. H.19
The Canadian Charter of Rights and Freedoms*

Procedures

Public Conduct Procedure

Related Policies, Procedures and Guidelines

Harassment in the Workplace Policy and Procedure – C-HR-012

Respectful Workplace Conduct Policy – C-HR-016

Respectful Workplace Conduct Procedures and Guidelines – C-HR-016-001

Workplace Violence & Workplace Harassment Prevention Program Procedure – C-HS-001-011

Employee Code of Conduct

Code of Conduct for Members of Council

Document Control

The electronic version of this document is recognized as the only valid version.

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Approval History

Approver(s)	Approved Date	Effective Date

Revision History

Revision No.	Date	Summary of Change(s)	Changed by

DRAFT

**THE REGIONAL MUNICIPALITY OF NIAGARA
BY-LAW NO. 2024 – XX**

A by-law to establish a system for administering notices and other matters under the *Trespass to Property Act*, RSO, 1990, c. T.21

Whereas The Regional Municipality of Niagara (“Niagara Region”) has the right as owner and occupier of premises to restrict or prohibit entry and limit permitted activities on such premises;

Whereas Niagara Region is committed to ensuring a safe and respectful environment for everyone;

Whereas Niagara Region has a general duty under the *Occupiers’ Liability Act* to take such care as in all the circumstances is reasonable to see that persons entering on its premises, and the property brought on the premises, are reasonably safe. Niagara Region has further duties under the *Occupational Health and Safety Act* and the *Criminal Code of Canada* to address workplace violence and harassment;

Whereas Niagara Region respects the rights of all individuals under the *Canadian Charter of Rights and Freedoms* and acknowledges its responsibility to exercise its authority in a manner that does not violate those rights; and

Whereas the Council of The Regional Municipality of Niagara intends to establish a system for administering notices of trespass and related matters;

Now therefore the Council of The Regional Municipality of Niagara enacts as follows:

PART 1: DEFINITIONS

1.1 In this By-law:

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

“**appeal fee**” means the fee, if any, from time to time established by the Niagara Region Fees and Charges By-Law, in relation to an appeal under Part 4 of this by-law;

“**appeal officer**” means the Chief Administrative Officer (“CAO”) who is authorized to hear an appeal under this by-law, or the Deputy CAO or Commissioner assigned to hear the appeal by the CAO in accordance with Part 4 of this by-law;

“**authorization letter**” means a letter or other written notification authorizing a municipal, provincial, or other police service with jurisdiction over Regional premises to enforce the provisions of a Trespass Notice or the *Trespass to Property Act*, R.S.O. 1990, c. T.21 on Regional premises;

“authorized person” means each of:

- (a) security personnel employed by or under contract with Niagara Region;
- (b) such persons employed by Niagara Region who, as a matter of their regular duties or due to circumstances, are responsible for and have control over the condition of any Regional premises or the activities there carried on, or control over persons allowed to enter the Regional premises, including, without limitation, the Director responsible for the Regional department, premises, service or program area affected by the prohibited conduct, or the Director of another Regional department assigned to investigate and/or make any decisions regarding the issuance of a Trespass Notice by a senior staff person;
- (c) a municipal law enforcement officer; and
- (d) a police officer;

“by-law” means this by-law and any schedule to this by-law;

“Niagara Region” or **“the Region”** means The Regional Municipality of Niagara;

“Regional premises” means any land, building, premises, facilities or infrastructure owned, occupied or leased by the Region and includes each building, structure and other improvement thereon;

“Council” means the Council of The Regional Municipality of Niagara;

“meeting room” means that part of a Regional premises in which Council or one of the Committees, as defined in the Procedural By-law, is holding a meeting pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

“person” includes an individual, partnership, association, firm or corporation;

“prohibited conduct” means:

- (a) damage to or vandalism of a Regional premises or any property thereon;
- (b) unreasonable interference with the operation of Regional premises;
- (c) unreasonable interference with others’ use of Regional premises;
- (d) contravention of a law of Canada, a law of the Province of Ontario or a municipal by-law on Regional premises; or
- (e) contravention of a Regional policy or signage governing the conduct of persons on Regional premises or in regard to Regional services, programs or events;

“senior staff person” means the Commissioner responsible for the Regional department, premises, service or program area affected by the prohibited conduct, or the Commissioner of another Regional department assigned to investigate and/or

make any decisions regarding the issuance of a Trespass Notice by an authorized person or senior staff person.

“**Trespass Notice**” means a notice, given orally or in writing, prohibiting entry to one or more Regional premises by a person or a group of persons.

PART 2: FACTORS IN GIVING TRESPASS NOTICE

- 2.1 In determining whether to give, modify, extend, suspend or revoke a Trespass Notice given to a person pursuant to any part of this by-law, or in conducting an appeal under Part 4 of this by-law, consideration shall be given to the following factors:
- (a) any operational or staff requirements or limitations;
 - (b) the severity of the harm or potential harm caused by the person’s prohibited conduct to staff, members of the public, or property;
 - (c) the person’s level of ability and circumstances, if known;
 - (d) the history of the person’s conduct and interactions on Regional premises;
 - (e) the likelihood of recurrence of the prohibited conduct by the person;
 - (f) the person’s conduct during the term of any Trespass Notice issued to the person pursuant to this by-law or during the term of any restrictions imposed on the person pursuant to a Regional policy or procedure;
 - (g) the impact of restrictions or prohibitions on the person; and
 - (h) any other factor relevant to a consideration of the issues.

PART 3: TRESPASS NOTICE

- 3.1 Any 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 on or to one or more Regional premises for a period **not exceeding 7 days**.
- 3.2 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 on or to one or more Regional premises for a period **not exceeding 2 years**.
- 3.3 The Deputy Chief Administrative Officer who has reason to believe that a person has engaged in prohibited conduct may give to the person a Trespass Notice that prohibits entry on or to one or more Regional premises for a period **not exceeding 5 years**.
- 3.4 A Trespass Notice given orally and prohibiting entry to one or more Regional premises for longer than seven days shall be confirmed in writing with the

following information as soon as is practicable, but the failure to do so does not make the oral notice ineffective:

- (a) a copy of the Trespass Notice;
 - (b) a summary of the matter which has led to the issuance of the Trespass Notice;
 - (c) the rationale for the Trespass Notice; and,
 - (d) information regarding the person's right to appeal the Trespass Notice in accordance with this by-law, if applicable.
- 3.5 Prior to the expiry of any Trespass Notice or any extension of a Trespass Notice given pursuant to this by-law, a senior staff person or the Deputy CAO may extend the term of a Trespass Notice for a further period not exceeding two years by giving to the person notice of the extension, where:
- (a) the senior staff person or Deputy CAO determines it is appropriate;
 - (b) the person to whom the Trespass Notice was issued contravened the Trespass Notice; or
 - (c) the person engaged in further or continued prohibited conduct.
- 3.6 A senior staff person or the Deputy CAO may revoke or suspend a Trespass Notice given under this section and may impose such conditions respecting the revocation or suspension as the senior staff person or the Deputy CAO considers appropriate.
- 3.7 Without limiting any other provision of this by-law, any senior staff person and/or the Deputy CAO are authorized to issue authorization letters where that person has determined that doing so is appropriate in the circumstances.

PART 4: APPEAL

- 4.1 A person who has received a Trespass Notice or extension of a Trespass Notice with an aggregate term of **more than 30 days** may appeal to the appeal officer by submitting a written request to the Regional Clerk together with payment of the appeal fee, if any, within fourteen days after being served with the Trespass Notice or extension of the Trespass Notice.
- 4.2 In circumstances where the appeal officer (CAO) was involved in the determination of the terms of the Trespass Notice or any extension of the Trespass Notice, or where the appeal officer (CAO) has any actual or potential conflicts of interest, the appeal officer (CAO) shall refer the appeal to the Deputy CAO or a Commissioner, as deemed appropriate in the discretion of the appeal officer, who shall carry out all duties of the appeal officer under this by-law in respect of the appeal.

- 4.3 A person who appeals pursuant to section 4.1 shall be given no fewer than fourteen days' notice of:
- (a) the manner of the hearing, whether in person, by phone, virtually or in writing; and
 - (b) the date, time, and place of the appeal hearing.
- 4.4 The following applies to the appeal hearing:
- (a) before making their decision, the appeal officer shall give each of the senior staff person (or the Deputy CAO where applicable) and, subject to subsection 4.3, the appellant, an opportunity to be heard, orally or in writing, at the time and place scheduled for the appeal; and
 - (b) if a person who appeals a Trespass Notice fails to participate in or attend the hearing of the appeal as notified pursuant to section 4.3, the Trespass Notice shall be affirmed and the appeal shall be dismissed.
- 4.5 On an appeal, the appeal officer may:
- (a) revoke the Trespass Notice;
 - (b) modify the Trespass Notice, including, without limitation, shortening the term of the Trespass Notice or removing prohibited locations from the Trespass Notice; or
 - (c) affirm the Trespass Notice.
- 4.6 The appeal officer shall give their final decision in writing in accordance with Part 5 of this by-law and shall give reasons in writing if requested by a party within seven days after the decision is given.
- 4.7 The decision of an appeal officer is final and is not subject to further appeal or review.

PART 5: NOTICES

Methods of Giving Notice

- 5.1 Any notice given by the Region pursuant to this by-law in writing may be given in any of the following ways:

- (a) personally;
- (b) by e-mail to the recipient's last known e-mail address; or
- (c) by registered or regular mail or courier or hand delivery addressed to the recipient's last known address.

Deemed Effective

5.2 Notice given in accordance with section 5.1 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 the e-mail is sent; or
- (c) on the fifth day after the date of mailing by registered or regular mail.

PART 6: EXCEPTIONS

6.1 A Trespass Notice issued pursuant to this by-law does not prevent a person from entering or remaining in a meeting room for the purpose of attending a Council or Committee meeting where virtual viewing or delegation is not made available by the Region, if the person complies with the following conditions:

- (a) the person notifies the Regional Clerk of the person's intention to attend the meeting no later than 24 hours prior to the scheduled commencement of the meeting;
- (b) the person enters the meeting room no earlier than 15 minutes prior to the scheduled commencement 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 each direction given by the Regional Chair or the Committee Chair, as applicable, and the Region's Procedural By-law, respecting conduct at the meeting.

6.2 If a person who has received a Trespass Notice needs to enter Regional premises to conduct business with the Region and is prevented from doing so by the Trespass Notice, the person may seek an exception by requesting an invitation to attend from the senior staff person who gave the person the Trespass Notice (or Deputy CAO where applicable, including where the Trespass Notice was issued by an authorized person), which request shall include the following information:

- (a) the purpose for attending at the Regional premises;
- (b) the reasons why attending at the Regional premises is necessary; and

- (c) the address of the Regional premises where the person wishes to attend.

Requests received under this section shall be responded to by the senior staff person or Deputy CAO who issued the Trespass Notice. The senior staff person or Deputy CAO are under no obligation to approve such a request, if in their discretion, taking into account the surrounding circumstances, including the considerations outlined in Part 2 of this by-law, particularly if there is a reasonable alternative available to the requesting individual to conduct the subject business by virtual, electronic or other means.

- 6.3 A senior staff person or the Deputy CAO may give to a person who has received a Trespass Notice an invitation to attend a Regional premises which may specify the following:

- (a) the purpose for attending at the Regional premises;
- (b) the date and time of the approved attendance at the Regional premises;
- (c) the address of the Regional premises where the person is approved to attend;
- (d) instructions for who to contact when the person arrives for the approved attendance at the Regional premises; and,
- (e) that the Trespass Notice remains in effect except for the approved attendance in accordance with the invitation to attend.

PART 7: GENERAL

- 7.1 Nothing in this by-law limits the Region's ability to enforce its rights under the Act by any legal means.
- 7.2 Any Trespass Notice issued prior to the passage of this by-law shall remain in full force and effect, shall be deemed to have been issued under this by-law, and shall expire in accordance with its original terms unless extended in accordance with this by-law. For the purposes of any appeal of a Trespass Notice issued prior to the passage of this by-law, the appeal process set out in this by-law shall apply.
- 7.3 If a court of competent jurisdiction declares any provision or part of a provision of this by-law invalid, the provision or part of a provision is deemed severable from this by-law, and it is the intention of Council that the remainder of this by-law shall continue in force.
- 7.4 The short title of this by-law is the "Trespass By-law".
- 7.5 This by-law shall come into full force on the day it is passed.

THIS By-law read and passed in the Council Chamber of The Regional Municipality of Niagara this XX day of XX, 2024.

THE REGIONAL MUNICIPALITY OF NIAGARA

Original signed by: _____
Regional Chair, Jim Bradley

Original signed by: _____
Regional Clerk, Ann-Marie Norio

DRAFT

Procedure Category Administration	Public Conduct Procedure
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Procedure Owner	Corporate Administration, Office of the CAO
Parent Policy	Public Conduct Policy
Approval Body	Corporate Leadership Team (CLT)
Approval Date	
Effective Date	
Review by Date	

1. PROCEDURE

This procedure supports the Region’s Public Conduct Policy and its commitment to delivering exceptional services and engaging with members of the public in a fair, responsive and understanding manner, while recognizing that 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 Public Conduct Policy and this procedure as “Misconduct”.

This procedure provides clear steps for staff to follow in identifying and addressing Misconduct, including potential restrictions which may be imposed, guiding factors to consider in imposing any restrictions, and applicable review and/or appeals of any such restrictions.

- PURPOSE**

This procedure will 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 in compliance with applicable law.

This procedure recognizes that the decision to classify someone’s conduct as Misconduct could have serious consequences for the affected individual, including impairment of rights protected under the *Canadian Charter of Rights and Freedoms*. Decisions from Ontario courts have made it clear that municipal governments must not arbitrarily restrict members of the public from accessing municipal property or services. Any restrictions must be proportional, minimally impairing, and imposed for a valid and sufficiently important public purpose.

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• **SCOPE**

General

This procedure applies to:

- (a) all persons attending, accessing and/or making use of Regional properties, facilities, services, programs, meetings or events; and
- (b) the conduct of all persons interacting with Regional staff, volunteers, Members of Council, or members of the public, in any manner, including, but not limited to:
 - i. in-person communications;
 - ii. written communications;
 - iii. telephone communications;
 - iv. all forms of virtual and electronic communications, including electronic meetings, e-mail, text message, and social media;
 - v. at Regional property and facilities; and
 - vi. at non-Regional properties, facilities or workplaces where Regional services and programs or events are provided.

Interpretation of this Procedure

This procedure is meant to complement, not replace, department-specific training, protocols, procedures, and guidelines applicable to staff interactions with the public. In their interactions with members of the public, staff shall engage in appropriate dialogue, communications, actions, de-escalation practices and resolutions in accordance with their applicable departmental training, protocols, procedures, guidelines and any applicable sector-specific legislation, regulations, directives and guidelines which require compliance. This may include the ability to end individual customer service interactions with the public or asking someone to leave the premises on an ad-hoc/ "one-off" basis where deemed appropriate in staff's discretion and in accordance with applicable departmental protocols and procedures and Management direction.

Where any conflict occurs between the Public Conduct Policy (including this procedure) and a departmental or divisional policy, the Public Conduct Policy and Procedure will take precedence, save and except departmental policies and procedures applicable to Region operated housing shelters or where there are applicable sector-specific legislation, regulations, directives and guidelines to the contrary.

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In addition to applicable department-specific training, protocols, procedures and guidelines, when inappropriate behaviour or Misconduct is first encountered, staff shall refer to and attempt to use the de-escalation practices outlined in **Appendix A** to resolve the situation.

This procedure shall be applied in conjunction with the Region’s Trespass By-law, Respectful Workplace Conduct Policy, Harassment in the Workplace Policy and Procedures, Workplace Violence & Workplace Harassment Prevention Program Procedure, the Code of Conduct for Members of Council, and the Procedural By-law.

If any situation poses a hazard to an employee or any time “workplace violence” or “workplace harassment”, as defined in the *Occupational Health and Safety Act*(OHSA), occurs against an employee, Human Resources must be contacted to assess the hazard and ensure workplace risk is adequately controlled in accordance with applicable legislation, and the corporate Health and Safety Policy, Workplace Violence and Workplace Harassment Prevention Program Procedure, and related policies, procedures and programs.

If an incident presents an immediate threat to persons or property, staff should immediately take every reasonable precaution to get to a safe place, contact 9-1-1 and then contact their supervisor and security staff if required. In addition, where applicable, staff shall follow all corporate and department specific emergency procedures. **Staff should not, under any circumstances, place themselves at risk or jeopardize the safety of others when addressing inappropriate behaviour and/or Misconduct.**

Identifying Misconduct

In identifying “**Misconduct**” as defined in the Public Conduct Policy, 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.

Depending on the particular circumstances, Misconduct may include:

- verbal or non-verbal conduct that is, in the view of a reasonable person, designed to, or reasonably likely to, harm, distress, intimidate, harass, threaten, abuse, coerce, disparage, embarrass, disrespect or humiliate the recipient, or is part of a pattern of conduct by an individual that amounts to an abuse of a Regional program, service or process;

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- behaviour that causes concern for the reasonable safety of staff, volunteers or other individuals attending or using Regional premises, facilities, workplaces, services, programs or events;
- any conduct, which because of its nature or frequency, has a disproportionate and unreasonable impact on the Region, Members of Council, employees, volunteers other members of the public, services, time and/or resources;
- behaviour that interferes with normal operation of the Region or which interferes with the ability of other persons to use and enjoy Regional services, programs and physical or digital spaces;
- repeated requests or complaints by an individual that are unsubstantiated, have no serious purpose or value, or about a matter so trivial or meritless on its face that investigation would be disproportionate in terms of time and cost, or;
- behaviour that is unacceptable in all circumstances – regardless of how stressed, angry, or frustrated an individual may be – because it unacceptably compromises the health, safety, and security of staff, volunteers, Members of Council, other members of the public or the individual themselves.

Misconduct may occur as a result of a repeated pattern of conduct when, on several occasions, a person engages in one or more behaviours or actions identified as Misconduct, or it may be a single significant incident that triggers the application of the Public Conduct Policy and this procedure and/or the Trespass By-law.

Examples of what might be considered Misconduct are listed below. This list is not exhaustive, nor does one single feature on its own necessarily imply that the conduct constitutes Misconduct when all of the facts and surrounding context are considered. Staff should not rigidly apply these examples. Not all unreasonable or difficult behaviour constitutes Misconduct. Whether an individual’s conduct constitutes Misconduct requires consideration of all relevant facts and circumstances of each case. Examples of possible Misconduct include:

- engaging in or inciting violence or making threats of violence;
- engaging in violent, aggressive, harassing, hostile, intimidating or disrespectful behaviour;
- engaging in a physical altercation with any other individual while attending Regional premises, facilities, services, events or programs;
- possessing a Weapon, as defined in the *Criminal Code of Canada*, while attending Regional premises, facilities, services, events or programs;
- vandalizing or causing damage to Regional property or vandalizing or causing damage to the personal property of persons while attending Regional premises;

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- using coarse, profane or discriminatory language, or making racial or ethnic slurs, while accessing a Regional property, facility, service, program or event;
- loitering, causing a disturbance, or acting under the influence of drugs or alcohol while attending Regional premises, facilities, services or programs;
- accessing or attempting to access physical areas of Regional property that are used as private office space for staff, or for which the public is not otherwise permitted to enter, without written or express permission;
- causing significant distress to staff, volunteers, Members of Council, or members of the public which could include use of hostile, abusive, discriminatory or offensive language, or an unreasonable fixation on an individual member of staff, volunteer, Member of Council, or member of the public;
- making unjustified complaints about staff, a volunteer, or Member of Council, including seeking reprisal;
- making excessive demands on the time and resources of staff, including, without limitation, engaging in continuous or excessively lengthy phone calls, sending excessive correspondence to the same or numerous staff on the same topic, and expecting immediate responses;
- refusing to accept a decision or information provided by staff/repeatedly arguing points with no new evidence;
- persistently approaching the Region through different routes about the same issue;
- refusing to specify the grounds of a complaint or repeatedly changing the basis of a complaint/request as the matter proceeds, despite offers of assistance;
- submitting falsified documents from themselves or others;
- covertly recording meetings and conversations;
- unruly public protest that is disruptive to the common good administration and operation of Regional premises, facilities, services, programs, events and operations, including but not limited to disrupting, harassing, threatening, limiting access or intimidating other patrons, Regional staff, volunteers, Members of Council, or appointed members of a Regional Boards or Committees on Regional premises, facilities or workplaces;
- viewing, producing, sharing, or exhibiting illegal, pornographic, obscene, hateful, discriminatory or offensive materials, either hard copy or through all forms of virtual and electronic communications, including e-mail, text message, and social media;
- photographing, filming or recording staff, volunteers or patrons in a manner that interferes with Regional operations, premises, services, programs or events

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- and/or the public's use and enjoyment of Regional premises, services, programs or events;
- invading or attempting to invade another person's privacy;
- unauthorized access of computer technology or attempts thereof;
- sending or creating viruses and other invasive computer programs;
- contravening other Regional by-laws, policies, procedures, signage, rules or codes of conduct that establish rules for permitted or expected conduct at or while accessing Regional properties, facilities, programs and public meetings; and,
- engaging in any illegal activity.

Relevant Considerations in Addressing Misconduct

Each case will be considered on its own facts. In determining if an individual's behaviour qualifies as Misconduct and/or warrants the application of restriction(s), the Decision Maker will consider the specific circumstances of the matter, including, but not limited to the following:

- (i) the severity of the Misconduct;
- (ii) whether there is a repeated pattern or history of Misconduct;
- (iii) the likelihood of recurrence of the Misconduct by the individual;
- (iv) the personal circumstances of the individual, if known to staff;
- (v) whether the individual has been dealt with properly and in accordance with the relevant policies and procedures;
- (vi) whether staff have made reasonable efforts to address or resolve the issue;
- (vii) any relevant extenuating circumstances;
- (viii) the impact of restrictions or prohibitions on the individual;
- (ix) whether the individual is presenting new material or information about the situation or making a new request or complaint;
- (x) any other factor relevant to a consideration of the issues; and
- (xi) where prohibiting entry of an individual on or to one or more Regional premises and/or issuance of a Trespass Notice is being considered, compliance with the Trespass By-law and its procedures as well as this procedure.

Guiding Principle - Restrictions will be Measured and Proportional

Any restrictions imposed to address Misconduct shall be tailored to the individual circumstances of each case and proportionate to the harm, or potential harm, arising from the Misconduct. Generally, where appropriate, the Decision Maker shall employ a graduated system of warnings, suspensions, and prohibitions and attempt to impose

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the least onerous sanction that will achieve the objectives of the Public Conduct Policy, including considerations for staff and public safety, inclusiveness, and freedom from harassment. Depending on the severity of the Misconduct and the particular circumstances, there may be situations requiring immediate actions without warning.

Consultation with Legal Services

Prior to imposing any restriction(s) that will: (i) limit an individual’s use or access of a Regional premises, service or program for a duration **exceeding 30 days**; or (ii) prohibit an individual’s entry on or to one or more Regional premises pursuant to this Procedure, the Decision Maker shall consult with the Director of Legal and Court Services.

Employees

If an employee (including students and volunteers) experiences, witnesses, or receives a report regarding any incident or behaviour that may constitute Misconduct, that employee will report the matter to their Supervisor, Manager, Associate Director or Director, as applicable, providing any supporting material.

Employees are responsible for advising their Supervisor, Manager, Associate Director or Director, as applicable, of all relevant facts regarding any alleged Misconduct, which may include the following:

- nature of the behaviour;
- length of time that staff have been in contact with the individual and the history and details of interactions;
- any steps that have been taken to resolve or address the behaviour; and
- the impact of the behaviour.

In addition, and without limiting the foregoing:

- In their interactions with members of the public, employees shall engage in appropriate dialogue, communications, actions, de-escalation practices and resolutions in accordance with their applicable departmental training, protocols, procedures, guidelines and any applicable sector-specific legislation, regulations, directives and related guidelines. This may include the ability to end individual customer service interactions with the public or asking someone to leave the premises on an ad-hoc/“one-off” basis where deemed appropriate in staff’s discretion and in accordance with applicable departmental protocols and procedures and Management direction.

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- When inappropriate behaviour or Misconduct is first encountered, employees shall refer to and attempt to use the de-escalation practices outlined in **Appendix A** to resolve the situation.
- Any employee who feels they are the target of harassment, inappropriate behaviour or potential Misconduct may determine that the most effective way to end the harassment or Misconduct is to deal with the matter promptly and directly with the person committing the offensive behaviour in the manner outlined in the Region’s Workplace Violence and Workplace Harassment Prevention Procedure (Informal Early Resolution). As the offending person may not be aware that their behaviour is inappropriate and unwelcome, they may need to be advised clearly, politely and firmly to stop the identified offensive behaviour to ensure it does not continue. It may be beneficial to have a witness present, if possible, in the event the behaviour does not stop following the request to stop. It is important that a written record of the incident(s) is made by staff directly after, including dates, times, the nature of the behaviour, and witnesses, if any, for future reference if the behaviour is not resolved following this conversation where the person is requested to stop the offensive behaviour and a formal report of potential Misconduct becomes necessary.
- All employees are required to document both the actions of any individual exhibiting potential Misconduct and their own actions in addressing the individual.

Supervisors, Managers and Associate Directors

Supervisors, Managers and Associate Directors are responsible for reviewing all information regarding any alleged Misconduct in a timely manner and making recommendations to the Director of the affected department, premises, facility, event, service or program. In reviewing the information provided, Supervisor(s), Manager(s) and/or Associate Director(s), as applicable, will:

- notify their Director of the alleged Misconduct so that the Director may, in consultation with the Supervisor, Manager and/or Associate Director, determine whether interim or temporary restrictions are warranted pending the completion of a review and determination of any investigation required;
- determine if additional investigation, including obtaining additional witness statements, is required, and complete any such additional investigation;
- determine if the alleged Misconduct triggers the application of other relevant corporate policies and programs, including, without limitation, the Region’s Health and Safety Policy, Workplace Violence and Workplace Harassment Prevention

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Program Procedure and Employee and Family Assistance Program, and take appropriate steps to engage the employee with the appropriate support, resources and assistance provided by those policies and programs; and

- once the investigation is complete, review all available information and make recommendations to the Director, including:
 - a. whether the individual’s conduct constitutes Misconduct;
 - b. whether the Misconduct warrants the application of any restriction(s) or the issuance of a letter warning the individual that their behaviour contravenes the Public Conduct Policy; and
- a proposed review date for removing, modifying or continuing restriction(s), if any.

Directors

Directors are responsible for ensuring that all direct reports are aware of and trained on this procedure, the Public Conduct Policy, the Trespass By-Law, and any related policies or procedures. Further, although all individuals are required to contact 9-1-1 where an incident presents an immediate threat to persons or property, Directors will ensure that the appropriate authorities, including, but not limited to, the police, are notified when the alleged Misconduct warrants such notification.

Directors will further ensure that all direct reports are provided with appropriate support, assistance, resources and resolution mechanisms provided under other applicable corporate policies and programs, including, without limitation, the Region’s Health and Safety Policy, Workplace Violence and Workplace Harassment Prevention Program Procedure and Employee and Family Assistance Program.

In addressing alleged or potential Misconduct, Directors are responsible for:

- referring the matter to their Commissioner to investigate and make a determination, where the Director deems appropriate as a result of the circumstances surrounding the alleged Misconduct, including, without limitation, where the Director has any actual or potential conflicts of interest, situations where the alleged Misconduct concerns more than one Regional department, service or program, or where the Director believes the alleged Misconduct is of such severity that it warrants prohibiting the individual from entering on or to Regional property for a duration **not exceeding 7 days**;
- making the determination of whether to classify an individual’s conduct as Misconduct, unless the matter is referred to the Commissioner or other Director or Decision Maker under this procedure;

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- determining the restriction(s) to be imposed on the individual, including any temporary or interim restrictions, and communicating those restrictions to the individual, unless the matter is referred to the Commissioner or other Director or Decision Maker under this procedure;
- where any proposed restrictions, other than a Trespass Notice issued pursuant to the Trespass By-law, include limiting access to Regional property, services or programs, the Director may, using their discretion:
 - provide the individual with information regarding the allegations; and
 - provide the individual an opportunity to respond to the allegations before a final decision is made regarding any restriction(s), where appropriate;
- maintaining all documentation related to the investigation and any determination regarding restriction(s);
- advising the Regional Clerk in writing when restriction(s) are placed on an individual, providing a copy of the notice given to the individual as well as any additional information requested by the Regional Clerk;
- ensuring that relevant Regional staff are notified of the decision to impose restrictions; and
- if a Trespass Notice has been issued, or is being considered by the Director, ensuring compliance with the requirements of the Trespass By-law.

Before making a determination to classify an individual's conduct as Misconduct, the Director must be satisfied that:

- the facts and circumstances have been properly investigated. If the Director is not so satisfied, the Director must first direct any additional investigations before making a decision to impose any restrictions;
- all communications with the affected individual have been appropriate; and
- any information provided by the individual has been considered.

Without limiting the foregoing, if the Director determines at any time that, as a result of the circumstances surrounding the alleged Misconduct, including any actual or potential conflicts of interest, the investigation should be carried out by either a different Regional department or division, the Commissioner or an independent third party investigator, then the Director may refer the matter to be dealt with by a different Regional department or division, the Commissioner, or, in consultation with the Director of Legal and Court Services and the Director of Human Resources, to an independent third party investigator. In all cases, the final decision letter will be issued to the individual by either the responsible or assigned Director or Commissioner where applicable.

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Potential Restrictions available to Directors

Actions available to the Director in response to Misconduct may include, but are not limited to, any one or a combination of the following:

- (i) limiting the individual's correspondence with staff to a particular format, time or duration;
- (ii) limiting the individual to a particular point of contact;
- (iii) requiring any face-to-face interactions between the individual and staff to take place in the presence of another staff member;
- (iv) requiring the individual to make contact with the Region only through a third party, such as a family member, colleague or professional advisor;
- (v) limiting or regulating the individual's use of Regional premises, facilities, services, programs or participation in events;
- (vi) instructing staff not to respond to further correspondence from the individual regarding the complaint or a substantially similar issue or engaging the services of IT to block a specific email address;
- (vii) informing the individual that further contact on the matter will not be acknowledged or replied to;
- (viii) closing the complaint or request for service; instructing staff to reduce or completely cease responses to further complaints or request and correspondence from the individual; and
- (ix) prohibiting entry of the individual on or to one or more Regional premises for a duration **not exceeding 7 days** by issuance of a Trespass Notice in accordance with the Trespass By-law; or, and only after consideration of all possible alternative measures.

Without limiting any of the foregoing, a Director may, where appropriate, issue interim or temporary restrictions pending the completion of any investigation of alleged misconduct.

Potential Restrictions available to Commissioners

Where alleged Misconduct has been referred to the Commissioner for investigation and determination under this procedure, the Commissioner may:

- (i) take any of the actions and impose any of the restrictions available to Directors outlined in this procedure;
- (ii) prohibit entry of the individual to or on one or more Regional premises for a duration **not exceeding 2 years**, by issuance of a Trespass Notice, in accordance with the Trespass By-law, and only after consideration and/or implementation of all possible alternative measures; and

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- (iii) refer investigation and determination of the potential Misconduct to another Commissioner, the Deputy CAO, or in consultation with the Director of Legal and Court Services and the Director of Human Resources, and independent third-party investigator, where deemed appropriate as a result of the circumstances surrounding the alleged Misconduct, including, without limitation, any actual or potential conflicts of interest or situations or where the Misconduct involves or has broad implications across multiple corporate departments.

Potential Restrictions available to the Deputy CAO

Where alleged Misconduct has been referred to the Deputy CAO for determination under this procedure, the Deputy CAO may:

- (i) take any of the actions and impose any of the restrictions available to Directors and Commissioners; and
- (ii) prohibit entry of the individual from one or more Regional premises for a duration **not exceeding 5 years**, by issuance of a Trespass Notice, in accordance with the Trespass By-law, and only after consideration and/or implementation of all possible alternative measures.

Notice of Decision

Upon determining that an individual has engaged in Misconduct, and depending on the severity of the Misconduct, the Decision Maker will:

- a. send a notice of decision letter of warning to the individual indicating that their behaviour contravenes the Public Conduct Policy and that restrictions may be imposed if the behaviour does not stop;

OR

- b. send a notice of decision letter to the individual indicating that their behaviour contravenes the Public Conduct Policy and that restrictions are being imposed in accordance with the Public Conduct Policy. This letter will include a summary of the findings of the Decision Maker's review and any other relevant information, including as follows:
 - (i) a summary of the matter which has led to the restrictions;
 - (ii) a summary of the interactions with the individual, if applicable;
 - (iii) a description of the restriction(s);
 - (iv) the rationale for applying the restriction(s);

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- (v) that the individual may, upon request, review the information and evidence relied upon by the Decision Maker in reaching their decision subject to restrictions to the disclosure of information and evidence as determined by the Decision Maker in accordance with applicable law;
- (vi) if the Decision Maker determines that scheduling a review date is appropriate, the date scheduled for the Decision Maker to review the restrictions and the individual's right to provide new information or submissions to the Decision Maker in advance of the review date; and
- (vii) information regarding the individual's right to appeal the restrictions under this policy, if applicable.

Any notice of decision given by the Decision Maker pursuant to this section will be given in one or more of the following ways:

- a. personally;
- b. by e-mail to the recipient's last known e-mail address; or
- c. by registered or regular mail or courier or hand delivery addressed to the recipient's last known address.

Notice of decision given in accordance with the preceding paragraph 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 the e-mail is sent; or
- c. on the fifth day after the date of mailing by registered or regular mail.

If a Trespass Notice is issued, the Decision Maker will comply with the notice provisions in the Region's Trespass By-law.

Restriction Review by the Decision Maker

The Decision Maker shall, using their discretion, determine, based on the nature of any restrictions imposed and the underlying Misconduct, whether a review date is required; that is, whether the restrictions should be in place for a limited period of time after which they should be revisited to consider whether a modification or continuation is appropriate. Generally, all cases where restrictions have been imposed should be reviewed **not more than 12 months** after any restrictions were initially imposed or continued/upheld.

If the Decision Maker determines that a review date is required, the Decision Maker will notify the individual of the review date in the notice of decision. In addition, the notice of decision letter may invite the individual to participate in the review process

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by providing written submissions to the Decision Maker, or by way of another method as appropriate in the circumstances. Specifically, the Decision Maker may, using their discretion and if the circumstances warrant, also choose to invite the individual to participate in the review in person, by phone, virtually, or other means.

On or before the review date, the Decision Maker and the relevant Supervisor(s), Manager(s), Associate Director(s), Director(s) or Commissioner(s), as applicable, will review the circumstances and determine if the restriction(s) imposed should continue. During this review, consideration will be given to factors such as:

- (i) whether the individual has had any contact with the Region during the restriction period;
- (ii) the individual's conduct during the restriction period;
- (iii) any information/arguments put forward by the individual for review;
- (iv) the effect that continuing the restriction may have on the individual; and
- (v) any other information that may be relevant in the circumstances

The individual will be informed of the outcome of the review by way of letter within 10 business days of completion of the review and be given another date for review if any restrictions remain.

Appeal of Restrictions

An individual who has been served with a notice of decision to impose or continue restriction(s) under this procedure and the Public Conduct Policy, which restrictions limit or prohibit the individual's physical access to Regional property or services for a duration of **more than 30 days**, may appeal the decision by serving a Notice of Appeal to the Regional Clerk in writing and paying the applicable appeal fee, if any, from time to time established by the Region's Fees and Charges By-law in relation to the Public Conduct Policy within 10 business days after being served with the notice of decision.

There is **no right of appeal** from a notice of decision to impose or continue restrictions that does not limit or prohibit the individual's physical access to Regional property or services or that limits or prohibits the individual's physical access to Regional property or services for a period of **30 days or less**.

Notice of Appeal shall be served by email to Clerk@niagararegion.ca or delivered to:
1815 Sir Isaac Brock Way, PO Box 1042, Thorold, Ontario
Attention: Office of the Regional Clerk

Service of the Notice of Appeal does not stay the operation of the restriction(s) imposed.

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The Appeal Officer will hear the appeal in a manner appropriate in the circumstances, including in consideration of the underlying Misconduct, as they determine in their sole discretion, which may be in writing, by phone, virtually or in person.

The appellant and the Decision Maker who imposed the restrictions will be given no fewer than 10 days' notice of:

- (i) the manner of the hearing, whether in person, by phone, virtually, or in writing;
- (ii) the date, time, and place of the appeal hearing; and
- (iii) the applicable appeal procedures, if any.

In the event that the Commissioner is the person who made the decision to impose or continue restrictions or has been involved in the decision of a Director to impose or continue restrictions, the Commissioner may appoint the Commissioner of a different Regional department or the Deputy CAO to conduct the appeal as the Appeal Officer. Where the restrictions subject to appeal have been imposed by the Deputy CAO, the CAO will conduct the appeal as the Appeal Officer. In the event that the CAO was involved in the decision to impose or continue restrictions, or has any actual or potential conflicts of interest, the CAO may appoint a Commissioner to conduct the appeal as the Appeal Officer, as deemed appropriate in the discretion of the CAO.

The following applies to the appeal hearing:

- (i) Before making their decision, the Appeal Officer shall give each of the Decision Maker and the appellant, an opportunity to be heard, orally or in writing, at the time and place scheduled for the appeal.
- (ii) If the appellant fails to participate in or attend the hearing of the appeal as notified pursuant to this procedure, the restriction(s) shall be affirmed and the appeal shall be dismissed.
- (iii) In conducting the appeal, the Appeal Officer may confirm, modify or rescind all or part of the restriction(s). The decision of the Appeal Officer is final.
- (iv) The decision on the appeal shall be communicated to the appellant and to the Decision Maker who imposed the restrictions within 10 business days of the completion of the appeal.

Appeals of decisions made under the Region's Trespass By-law shall be made in accordance with the review process set out in the Trespass By-law. Where the restrictions subject to the appeal include both a prohibition from entering Regional property (thereby engaging the Trespass By-law) and other restrictions limiting

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access to Regional premises or services beyond a duration of one month, the appeal will be conducted as a single appeal, by the CAO as the Appeal Officer.

Consultation for Input, Guidance and Investigative and Monitoring Purposes

In carrying out their responsibilities under this procedure, where appropriate, Decision Makers shall inform and consult with the Director of Legal and Court Services, their Commissioner, and/or relevant staff, Directors and Commissioners of other departments that may be affected by or involved with the alleged Misconduct, for input, guidance and/or investigative or contravention monitoring purposes.

2. Definitions

In this procedure, “Director” and “Commissioner” means the Director and Commissioner of the affected Regional department and to whom the relevant staff, Supervisors, Managers or Associate Directors report. Similarly, references to “staff”, “Supervisors”, “Managers” or “Associate Directors” generally means the staff, Supervisors, Managers or Associate Directors of the affected Regional department, premises, service or program. Notwithstanding the foregoing definitions, the circumstances of any given case may require action by the Commissioner(s), Director(s), Associate Director(s), Manager(s), Supervisor(s) or staff from more than one Regional department, premises, service or program.

“**Decision Maker**” means the Director, Commissioner or Deputy CAO, as applicable, that is responsible for investigating alleged Misconduct and making a determination and/or imposing restrictions in accordance with this procedure.

“**Appeal Officer**” means the Commissioner, Deputy CAO or CAO, as applicable, that is responsible for hearing and making a decision regarding appeals of restrictions imposed in accordance with this procedure. For clarity the Appeal Officer will typically be: the Commissioner where the restrictions were imposed by a Director; the Deputy CAO where the restrictions were imposed by a Commissioner; or the CAO, where the restrictions were imposed by the Deputy CAO, unless otherwise provided in this procedure.

3. Appendices

Appendix A - Guidelines for Recognizing Aggression, De-escalation Techniques and Managing Difficult or Disruptive Behaviour

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4. Document Control

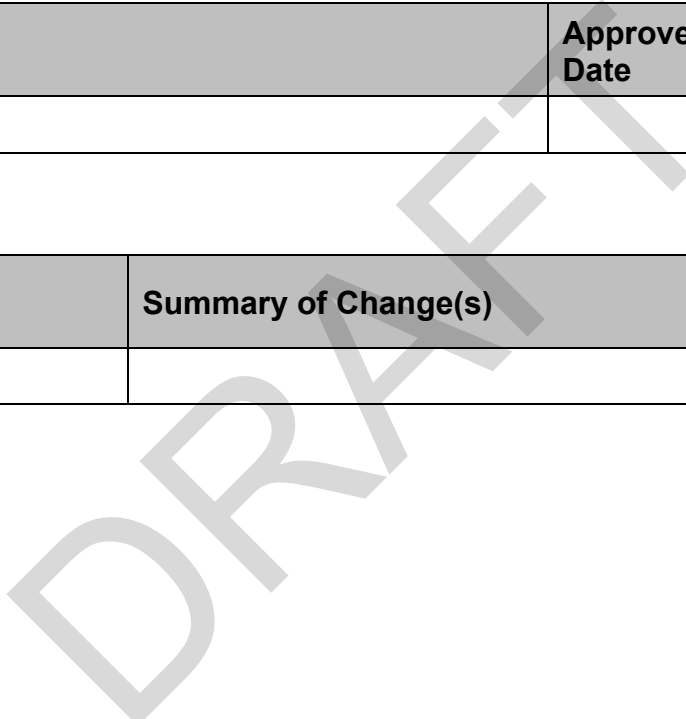
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Approval History

Approver(s)	Approved Date	Effective Date

Revision History

Revision No.	Date	Summary of Change(s)	Changed by



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APPENDIX A

GUIDELINES FOR RECOGNIZING AGGRESSION, DE-ESCALATION TECHNIQUES AND MANAGING DIFFICULT OR DISRUPTIVE BEHAVIOUR

RECOGNIZING AGGRESSION

There is a difference between a customer who is angry and upset and one that is abusive. It's important for employees to be able to recognize signs of aggression. Below is a list of physical and behavioral changes that can indicate if a person is becoming escalated:

PHYSICAL

Flushed or pale face
Sweating or perspiring
Clenched jaw or teeth
Shaking or trembling
Clenched fists
Rapid breathing
Fidgeting
Glaring eyes
Rise in pitch of voice/change of tone

BEHAVIORAL

Loud voice or yelling/shouting
Pointing or jabbing fingers
Swearing or verbal abuse
Standing too close
Aggressive posture
Throwing, hitting or kicking things
Pacing and restlessness
Violent or aggressive gestures

DE-ESCALATION TECHNIQUES

If employees start to notice any of the above behaviour when interacting with a customer or member of the public, apply these de-escalation techniques:

Maintain Composure

- Take a deep breath.
- Never argue with customers when they are angry, displeased, or complaining. If you become upset, it will only escalate the situation further.
- Use a lower tone of voice, and don't get defensive if insults or anger are directed at you. Remind the customer that you are there to help.

Become aware of your surroundings, if applicable

- Notice if there are others in the room, objects such as chairs, tables or items on a table; take note of exits and openings and whether you are blocking the customer.

Listen

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- Let the customer vent and avoid talking over them; maintain eye contact if applicable and be aware of your body language.
- Repeat or paraphrase what is heard to show you understand the situation. If unclear, ask open ended questions to get more clarification; also ask to take notes.

Show Interest & Empathy

- Maintain a concerned, sincere and interested facial expression and/or tone of voice; Show or express understanding without passing judgment, even if you do not agree with their position.

Acknowledge

- Acknowledging someone's feelings helps by validating their emotions; this confirms the legitimacy of the emotion but not the behavior.
- Example: "I can see how that could have been frustrating".

Agree

- Find some truth to what is being said and agree with it; when you agree with some truth, you take away some resistance.
- Example: "I agree Mr. Jones that would be difficult to deal with".

Apologize

- A sincere apology can build credibility and lets the customer know that you are empathetic to what they are going through
- Example: If there is a legitimate cause for anger - "I'm sorry we forgot to send your bill".
- Example: If there isn't anything to apologize for directly - "I'm sorry this situation has you so frustrated".

Try to solve the problem

- Ask the customer for their ideas on how they would like the situation resolved. If you are not able to help them, seek the assistance of someone who can.

Clarify next steps

- Summarize the next steps and let the customer know what to expect and when
- Do not make promises you cannot keep; if you say you will call back – make sure you call back even if you do not have an update.

If these de-escalation techniques do not work, subject to department-specific training, protocols or guidance regarding ending individual customer service interactions on a one-

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off basis (and where the customer conduct does not qualify as Misconduct as defined in the policy and procedure), employees may need to be prepared to either ask the customer to leave the premises (if in-person) or advise them that the communication will be terminated (if over the phone or by email) such as where the customer is not just being angry or difficult but engages in abusive or insulting comments. An example of how staff can approach these interactions is as follows:

“I’m sorry sir/madam, I am here to help you, but if you continue to use abusive/insulting language, I may need to end this call/terminate service. The Region does not condone or tolerate abusive/insulting language.”

DRAFT