



SUBJECT: Public Conduct Policy and Trespass By-law

TO: Corporate Services, Strategy, Risk & Accountability Cttee.

FROM: Office of the City Clerk

Report Number: CL-08-23

Wards Affected: All

File Numbers: 110-04-1

Date to Committee: June 26, 2023

Date to Council: July 11, 2023

Recommendation:

Rescind Zero Tolerance Policy PR-43-03 attached as Appendix A to office of the city clerk report CL-08-23; and

Approve the Public Conduct Policy substantially in the form attached as Appendix B to office of the city clerk report CL-08-23 and in a form satisfactory to the Director of Recreation, Community and Culture and the City Clerk; and

Approve By-law XXX-2023 substantially in the form attached as Appendix C to office of the city clerk report CL-08-23 and in a form satisfactory to the Executive Director of Legal Services and Corporation Counsel; and

Approve amendments to the 2023 Corporate Customer Experiences – Service Burlington fees as outlined in office of the city clerk report CL-08-23, effective July 11, 2023; and

Approve By-Law XXX-2023 substantially in the form attached as Appendix D to amend the Rates & Fees By-law 83-2022 to include the appeal fees as detailed in the financial matters section of office of the city clerk report CL-08-23 and in a form satisfactory to the Executive Director of Legal Services and Corporation Counsel; and

Fund any Public Conduct Policy and Trespass By-law investigations through the Contingency Reserve (#111460).

PURPOSE:

Vision to Focus Alignment:

- Building more citizen engagement, community health and culture
 - Deliver customer centric services with a focus on efficiency and technology transformation
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Background and Discussion:

Various departments at the City of Burlington are, from time to time, required to manage difficult or inappropriate behaviour exhibited by members of the public. Such behaviour can occur in a variety of settings (in-person, electronically, by phone, etc.) and can be directed towards City staff, other members of the public, or City property (e.g. vandalism and trespassing). When difficult or inappropriate behaviour is observed or reported, staff may be required to impose consequences upon the offending individual. Consequences can include issuing warnings, restricting access to City property or services, or banning individuals from entering onto City property and notifying the individual that if they do enter onto City property they may be prosecuted under the *Trespass to Property Act*.

However, at present, the only department at the City with a policy in place that guides its decision-making process and provides members of the public with a right of appeal when consequences are imposed is Recreation, Community and Culture.

The current policy in place within Recreation, Community and Culture is called the Zero Tolerance Policy, which policy was originally implemented in 2003 and was last updated in 2007 (prior to many of the court decisions and ombudsman reports that inform these types of policies across municipalities today). As a department-level policy, the Zero Tolerance Policy applies only to recreational facilities and programs at the City.

Rescinding the Zero Tolerance Policy and implementing a City wide Trespass By-law and Public Conduct Policy would provide the following benefits:

- Establish clear expectations for staff and members of the public across all departments, facilities and programs
- Clearly delegate authority to make decisions and issue restrictions in response to inappropriate behaviour
- Reduce uncertainty and guard against arbitrary action
- Allow the City to respond to improper behaviour in an appropriate, proportionate and fair manner

- Infuse principles of natural justice into decision-making and appeal processes
- Reduce/mitigate risk (risk of infringing a person's rights, risk of arbitrary action, risk of court challenges)

Strategy/process

In preparing the Public Conduct Policy, staff reviewed current court decisions, ombudsman reports, and similar policies and by-laws from other Ontario municipalities. In addition, internal consultations were conducted across a variety of City departments, including Human Resources, Customer Experience Recreation, Community and Culture, Transportation, Legal, and the Clerks office.

Current sources of authority

As stated, Recreation, Community and Culture does currently have a policy in place with respect to managing inappropriate behaviour of members of the public, but that policy is limited to one department and has not been updated to address issues or concerns that have been raised in current court and ombudsman proceedings. For example, the Zero Tolerance Policy does not provide for a range of possible restrictions short of a ban or suspension, it does not identify staff roles and responsibilities for investigating and documenting inappropriate behaviour, and it does not include a requirement that consequences imposed under the policy be reviewed by staff on a periodic basis.

Although the City can also rely upon its rights as a property owner to prohibit access to its property or to regulate behaviour on its property, the courts and ombudsman reports have found that doing so in the absence of clear policies and/or by-laws increases the risk of arbitrary or unfair action.

In summary, at present, the City has some existing sources of authority upon which it can rely when issuing restrictions or consequences to members of the public. However, implementing the recommended City-wide framework will increase consistency and fairness when staff address inappropriate by, among other things, establishing investigatory and decision-making guidelines and clearly delegating decision-making authorities.

Content of the Public Conduct Policy and Trespass By-law

Public Conduct Policy

The proposed Public Conduct Policy (the “Policy”) will apply to all persons in attendance at any City property and also applies to interactions with staff or others by phone, email, or other form of communication.

Unacceptable behaviour under the Policy has been termed “misconduct”. The Policy defines misconduct as behaviour that “is likely to cause, or has caused, an unjustified disruption or distress to staff, volunteers, Members of Council, or members of the public”.

In addition to that definition, the Policy provides guidance as to what might constitute misconduct through the use of examples of potential types of misconduct. Examples would include using hostile, abusive or offensive language, causing property damage, or engaging in or inciting violence.

However, as stated in the draft Policy, the list of examples of misconduct should not be rigidly applied – users of the Policy would be required to consider all of the relevant facts and circumstances of each case. Going through such an analysis 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 behaviour as “misconduct”.

Once potential misconduct has been identified or reported, the Policy describes the role that various staff are to take in addressing the misconduct. The Policy makes it clear that, under no circumstances are staff to put themselves at risk or jeopardize their safety or the safety of others; where there is an immediate threat, staff are to contact the police and, if applicable, follow all emergency procedures.

When a report of misconduct is received or when a staff member experiences or observes misconduct, their role is to document the matter and report it to their Supervisor, Manager or Director, together with any supporting material (incident reports, witness statements, etc.).

The Supervisor or Manager are to review the initial information and report it to their Director. A decision can then be made whether to issue any interim or temporary restrictions while the investigation is completed.

Following that report, the Manager or Supervisor is to conduct any further investigation. That could include speaking with witnesses, speaking with the individual involved, or obtaining police reports, for example. They are to document the investigation,

determine whether misconduct has occurred, and then report their findings to their Director with recommended restrictions, if any.

Directors will then ensure the investigation is complete, make a decision on any consequences, and send notice to the affected individual informing them of the results of the investigation and the basis for any restrictions. The letter from the Director would also inform the person of any review of the restrictions and their right to appeal the restrictions (if applicable).

Directors also have the option of determining that because of the circumstances of a given case, such as a conflict of interest, the matter should be investigated by a different City department or sent to an independent third-party investigator.

The Policy also provides:

- guidance on relevant factors to consider when deciding upon any restrictions, including the nature of the conduct, any history with the individual, steps already taken to address the behaviour, and other relevant circumstances and context, and
- examples of the types of restrictions that can be considered, from limiting an individual's contact with staff to regulating or restricting the individual's use of City facilities, services or programs.

As stated in the Policy, if a trespass notice will be issued, then the Trespass By-law must be followed.

The Policy limits the right of appeal to cases where a person is restricted from physically accessing any City property for more than 1 month – this could be a suspension from a specific facility or other property, for example. Any appeals would be heard by the Executive Director of the affected City department or, where the Executive Director of the affected department was involved in the original decision to impose restrictions, the Executive Director of a different City department, as appointed by the City Manager.

Trespass By-law

The Trespass By-law (the “By-law”) is more narrow in scope and application than the Policy. The By-law would be followed only when issuing a trespass notice to an individual stating that, as a result of their conduct, not only can they not attend on all or some City properties, but if they do so, they will be trespassing and could be subject to charges under the *Trespass to Property Act*. This is the most severe form of restriction that the City would impose.

The draft By-law defines what conduct is prohibited and which may attract a trespass notice:

- damage to or vandalism of a City Facility
- unreasonable interference with the operation of City Premises
- unreasonable interference with others' use of City Premises
- contravention of a law of Canada, a law of the Province of Ontario or a municipal by-law on City premises
- contravention of a City policy governing the conduct of persons on City Premises

Authority to issue trespass notices would be limited to certain individuals and there are specific limits on the length of any trespass notices. Specifically, an “authorized person”, which includes certain staff and the police, may issue a notice for up to 7 days – this is for rapid response to a situation.

Longer trespass notices of up to 2 years may only be issued by a “senior staff person”, which means a Director, Executive Director, or the Manager of Court Administration.

Under the By-law, only trespass notices of an aggregate length of more than 1 month may be appealed.

Appeals under the By-law will be to the Executive Director of the affected City department or, where the Executive Director of the affected department was involved in the original decision to impose restrictions, the Executive Director of a different City department, as appointed by the City Manager. Given the increased severity of a trespass notice, the By-law allows a person to seek temporary exceptions from a trespass notice, for example to attend a lawful protest or to attend at the Halton Court if they need to respond to a ticket or a court matter. Allowing individuals to seek temporary exemptions from a trespass notice is intended to help guard against infringing on an individuals' rights. At the same time, the City can, if it determines it is appropriate in the circumstances, refuse such an exemption.

Impact on existing City Policies

The Public Conduct Policy is meant to replace City's current Zero Tolerance Policy.

The City currently also has in place a Respect in the Workplace Policy, which addresses the City's obligations under the *Occupational Health and Safety Act*. In addition, the City has a procedure entitled the Corporate Health and Safety Standard for

Lockdown/Hold and Secure/Shelter-in-Place, and Customer Service Standards and Customer Service Guidelines. The proposed Public Conduct Policy and Trespass By-law will not impede upon or replace any of those existing policies/procedures/guidelines and instead is intended to work together those documents. As stated at page 2 of the Public Conduct Policy:

This policy works in conjunction with and does not replace the Respect in the Workplace Policy (Workplace Violence and Harassment Policy as required by the *Occupational Health and Safety Act*), the Corporate Health and Safety Standard for Lockdown/Hold and Secure/Shelter-in-Place, or the Customer Service Standards and Customer Service Guidelines.

If any situation poses a hazard to a worker or any time “workplace violence” or “workplace harassment”, as defined in the *Occupational Health and Safety Act (OHSA)*, occurs against a worker, a Human Resources Consultant – Employee Health and Wellness (or delegate) must be contacted to assess the hazard and ensure workplace risk is adequately controlled. In addition, the supervisor must enter the incident into the Online Incident Reporting Portal for tracking and recordkeeping. In addition, incidents that fall under level 2 of the Customer Service Guidelines must also be reported using the Online Incident Reporting Portal.

Options Considered

Additional options that have been considered include:

- 1) Updating the Zero Tolerance Policy to align with current guidance. Such an approach would, however, be limited to one department and policies and/or by-laws would still be required for other departments.
- 2) Incorporating the contents of the proposed Trespass By-law and Public Conduct Policy into a single document. This option was determined to be problematic as it is important that the issuance of trespass notices be considered a last resort and that efforts be made to address inappropriate behaviour through lesser restrictions or consequences following the procedures set out in the Public Conduct Policy.

Financial Matters:

Appeals under both the Trespass By-law and the Public Conduct Policy will be conducted by an Executive Director. Conducting appeals under the Trespass By-law and the Public Conduct Policy will require a commitment of staff time to process, review, conduct, and consider the appeal. As such, it is recommended that an appeal fee in the amount of \$200.00 be implemented for appeals under both the Trespass By-law and the

Public Conduct Policy. The \$200.00 fee is in line with similar appeal fees charged by other municipalities in Ontario, which range from \$100 to \$250, and is also the fee that is currently charged for appeals under the Zero Tolerance Policy.

The proposed right of appeal under the Public Conduct Policy is limited to restrictions that prohibit access to City property for a period of one month or more. Similarly, the proposed right of appeal under the Trespass By-law is limited to trespass notices of an aggregate length of more than one month. It is not anticipated that many individuals will be subject to restrictions or trespass notices that will give rise to a right of appeal and those who are subject to such consequences will not always appeal.

In 2020, 2021 and 2022, for example, where a right of appeal was available (under the current Zero Tolerance Policy), no appeals were commenced.

The \$200.00 appeal fee is not intended or expected to produce revenue for the City and is strictly intended as a cost recovery measure to compensate the City for staff time in conducting any appeals.

Staff recommend that funding for any Public Conduct and Trespass By-law investigations stem through the Contingency Reserve (#111460). At present, where external investigators are retained to conduct or assist in investigations of improper conduct by members of the public, those investigations are funded from the budgets of individual departments. In centralizing funding draws to the Contingency Reserve, any external investigators will be paid through that funding instead of through the budgets of individual departments. This change will help the city to better understand the total picture and may inform future program budget forecasting. This change does not represent any significant, or new expenditures.

Total Financial Impact

The total financial impact is limited. Although it is recommended that any investigations be funded through the Contingency Reserve, it is not expected that there will be significant new spending towards such investigations. Instead, the source of funding of such investigations is being centralized.

Climate Implications

Not applicable.

Engagement Matters:

Various staff, supervisors, managers, and directors were consulted in the preparation of the Public Conduct Policy and Trespass By-law. In addition, the Policy and By-law were reviewed by the Burlington Leadership Team at three separate meetings held in June 2022, August 2022, and February 2023.

Conclusion:

The implementation of the Public Conduct Policy and Trespass By-law will provide needed guidance to staff when addressing inappropriate conduct by members of the public on City property or when interacting with City staff.

Respectfully submitted,

Kevin Arjoon
City Clerk

Emilie Cote
Director, Recreation, Community and Culture

Appendices:

- A. Zero Tolerance Policy PR-43-03
- B. Draft Public Conduct Policy
- C. Draft Trespass By-law
- D. Draft By-law to amend Rates and Fees By-law 83-2022

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.