

CITY OF
Burlington
Corporate Policy

General

Public Conduct Policy

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Note:

This Public Conduct Policy affirms that the City of Burlington is committed to delivering exceptional service to members of the public and to engaging with all residents in a consistent and fair manner, but recognizes that there may be circumstances that require action to protect staff, volunteers, Members of Council, and residents of the City from inappropriate behaviour.

Policy Statement:

The City of Burlington is committed to delivering exceptional service to members of the public and to engaging with all residents in a consistent and fair manner. There may, however, be circumstances that require action to protect staff, volunteers, Members of Council, and residents of the City from inappropriate behaviour, referred to in this policy as “misconduct”.

Misconduct may cause concern for the reasonable safety of all individuals on City premises and may interfere with the public’s enjoyment of City facilities. Further, inappropriate behaviour may consume a disproportionate amount of Council Member and/or staff time and resources and can compromise their ability to provide assistance or deliver effective and efficient customer service.

The purpose of this policy is to guide City staff in identifying and responding to behaviour that qualifies as misconduct. The decision to classify someone’s behaviour or actions as misconduct could have serious consequences for the individual. As such, this policy provides examples of behaviours and actions that could be described as misconduct, as well as the steps for staff to follow when

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misconduct has occurred.

This policy applies to members of the public whose behaviours and actions amount to misconduct; it is not intended to apply to generally difficult clients and individuals. Determining whether particular behaviours or actions qualify as misconduct requires a consideration of all of the circumstances of a particular case; the key question is whether the behaviour is likely to cause, or has caused, an unjustified disruption or distress to staff, volunteers, Members of Council, or members of the public.

Steps that may be taken to address offending behaviour may range from the issuance of a verbal or written warning to the issuance of a Trespass Notice in accordance with the City's Trespass By-law.

Any restrictions imposed under this policy are dependent on the relevant factual circumstances, and there is an opportunity for the affected individual to have any restrictions, including Trespass Notices, reviewed in accordance with the applicable procedures.

This policy is consistent with the City's commitment to serving members of the public and its commitment to provide and maintain a working environment that is based on respect for the dignity and rights of everyone in the organization.

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. Incidents that fall under level 2 of the Customer Service Guidelines must also be reported using the Online Incident Reporting Portal.

If an incident presents an immediate threat to persons or property, contact 911 and then contact your supervisor. For non-emergencies, contact the Halton Police at 905-825-4777 and your supervisor.

In addition, where applicable, follow all emergency procedures, including the Corporate Health and Safety Standard for Lockdown/Hold and Secure/Shelter-in-Place and/or the Suspicious Person policy.

Staff should not, under any circumstances, place themselves at risk or jeopardize the safety of others when addressing inappropriate behaviour.

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Scope:

General

This policy applies to:

- (a) all persons in attendance on or at any and all City of Burlington properties, facilities, or programs, including any City of Burlington transit vehicles; and
- (b) all persons interacting with City of Burlington staff, volunteers, Members of Council, or members of the public in any manner, including, but not limited to, one or more of the following:
 - (i) public meetings;
 - (ii) written communications;
 - (iii) telephone communications;
 - (iv) in-person communications;
 - (v) electronic communications, including e-mail, text message, and social media;
 - (vi) at City owned property, parks, and facilities; and/or
 - (vii) at non-City owned property, when interacting with City staff.

Implementation

This policy will be followed in determining whether behaviour constitutes misconduct. Once it has been determined that misconduct has occurred, this policy will be followed in the implementation of any restrictions.

Definition and Examples of Misconduct

The term “misconduct” as utilized in this policy applies to a range of inappropriate behaviour from disruptive conduct, such as frequent unreasonable demands or requests by a customer, to conduct such as vandalism, threats of violence, or actual violence. For further clarity, misconduct includes:

- Conduct that is designed to embarrass or annoy the recipient, or is part of a pattern of conduct by an individual that amounts to an abuse of a City process or service;
- Repeated complaints by an individual that 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,

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volunteers, other members of the public or the individual themselves.

The overriding question is whether the behaviour is likely to cause, or has caused, an unjustified disruption or distress 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 difficult behaviour as misconduct. As stated, the decision to identify an individual's behaviour as misconduct and to impose restrictions based upon that determination can have serious consequences for the individual.

Although examples of potential misconduct are included in this policy, staff should not rigidly apply the examples set out in this policy in deciding if an individual's conduct constitutes misconduct. Whether an individual's behaviour constitutes misconduct requires a consideration of all relevant facts and circumstances of each case.

Examples of what might be considered misconduct are shown below. The list is not exhaustive, nor does one single feature on its own necessarily imply that the behaviour constitutes misconduct when all of the facts and surrounding context are considered. Examples of possible misconduct include:

- refusing to specify the grounds of a complaint or changing the basis of a complaint/request as the matter proceeds, despite offers of assistance;
- submitting falsified documents from themselves or others;
- making excessive demands on the time and resources of staff with lengthy phone calls, emails to numerous staff, or detailed letters every few days, and expecting immediate responses;
- refusing to accept a decision or information provided by staff/repeatedly arguing points with no new evidence;
- persistently approaching the City through different routes about the same issue;
- covertly recording meetings and conversations;
- causing distress to staff, volunteers, Members of Council, or members of the public which could include use of hostile, abusive, 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 who are trying to deal with the issues;
- engaging in or inciting violence or making threats of violence;
- engaging in aggressive, harassing, hostile, intimidating or disrespectful behaviour;
- vandalizing or causing damage to City property or vandalizing or causing

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damage to the personal property of persons while attending City premises;

- using coarse language, or making racial or ethnic slurs, while accessing a City program, service, program, event or facility;
- loitering, causing a disturbance, or acting under the influence of drugs and alcohol while attending City premises;
- viewing, producing, sharing, or exhibiting illegal or offensive materials, either hard copy or using a wireless internet connection;
- photographing, filming or recording patrons, volunteers or staff without their express written consent or knowledge or without the permission of City staff;
- unauthorized access of computer technology or attempts thereof;
- sending or creating viruses, worms and other invasive computer programs;
- invading or attempting to invade another person's privacy; and
- engaging in any illegal activity.

Definitions:

For the purpose of this policy, unless otherwise stated, the following definitions shall apply:

Term	Definition
Director	means the Director or Executive Director of the affected City department and to whom the relevant staff, Supervisors or Managers report
Staff, Supervisors or Managers	means the staff, Supervisors or Managers of the affected City department

References:

City of Burlington Trespass By-law, By-law No.

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Roles:

Accountable:

The City Clerk will update, track and monitor the use of this policy and the Trespass By-law, and will:

- (i) develop and provide any templates, forms and communications to assist in implementing this policy; and,
- (ii) if applicable, ensure compliance with any relevant duties and procedures.

Responsible:

General

All users of this policy are required to **document** both the actions of any individual exhibiting potential misconduct and their own actions in addressing the individual.

Certain, limited situations involving misconduct on City property may require **immediate action** by issuing a Trespass Notice without following the reporting and decision-making processes in this policy. In such cases, reference should be made to the responsibilities set out in the Trespass By-law.

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

Employees

If a staff member experiences, witnesses, or receives a report regarding any incident or behaviour that may constitute misconduct, that staff member will report the matter to their Supervisor, Manager or Director, providing any supporting material.

Staff are responsible for advising their Supervisor, Manager or Director 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

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- the impact of the behaviour.

Staff are responsible for maintaining detailed records of interactions with individuals in order to document any actions taken to restrict the individual's access to staff, property or services.

Supervisors and Managers

Supervisors and Managers, or a Committee comprised of staff selected by the Director(s), are responsible for reviewing all information regarding any alleged misconduct in a timely manner and making recommendations to the Director. In reviewing the information provided, Supervisor(s) and/or Manager(s) and/or the Committee, as applicable, will:

- (i) notify the Director of the alleged incident so that the Director may, in consultation with the Supervisor and/or Manager and/or Committee, determine whether interim or temporary restrictions are warranted pending the completion of any investigation;
- (ii) determine if additional investigation, including obtaining additional witness statements, is required, and complete any such additional investigation;
- (iii) once the investigation is complete, review all available information and determine if the individual's behaviour constitutes misconduct and, if so, make recommendations to the Director:
 - a. respecting whether the misconduct warrants the application of any restriction(s) or the issuance of a letter warning the individual that their behaviour contravenes this policy;
 - b. respecting a proposed review date for removing, modifying or continuing restriction(s), if any; and,
- (iv) if a Trespass Notice has been issued prior to meeting with the Director, ensure compliance with the Trespass By-law.

Directors

Directors are responsible for ensuring that all relevant staff are aware of and trained on this policy, the City's Trespass By-Law and any related policies or procedures.

Further, although all users 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.

In addition, Directors are responsible for:

- (i) making the determination of whether to classify an individual's conduct as misconduct;

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- (ii) determining the restriction(s) to be imposed on the individual, including any temporary or interim restrictions, and communicating those restrictions to the individual;
- (iii) where any proposed restrictions, other than a Trespass Notice issued pursuant to the Trespass By-law, include limiting access to City property or services the Director may, using their discretion:
 - a. provide the individual with information regarding the allegations; and
 - b. provide the individual an opportunity to respond to the allegations before a final decision is made regarding any restriction(s), where appropriate;
- (iv) maintaining all documentation related to the investigation and any determination regarding restriction(s);
- (v) conducting reviews of any restriction(s) and communicating the outcome of any such review to the affected individual;
- (vi) advising the City 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 City Clerk;
- (vii) ensuring that relevant City staff are notified of the decision to impose restrictions; and
- (viii) 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 final determination to classify an individual's behaviour as misconduct, the Director must be satisfied that:

- (i) 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;
- (ii) All communications with the affected individual have been appropriate; and,
- (iii) 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 City department or an independent third party investigator, then the Director may assign the matter to a different City department or, in consultation with the Executive Director of Legal Services, to an independent third party investigator.

In all cases, the final decision letter will be issued to the individual by the Director.

The Determination and Monitoring of Contraventions

Relevant Considerations on the Course of Action by the Director

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Each case will be considered on its own facts. In determining if an individual's behaviour warrants the application of restriction(s), the Director 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 prohibited conduct 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 line 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) if a Trespass Notice is being considered by the Director, compliance with the Trespass By-law and its procedures as well as this policy.

Potential Restrictions

Restrictions should be tailored to the individual circumstances of each case. Actions available to the Directors 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 City only through a third party, such as a solicitor or counsellor;
- (v) limiting or regulating the individual's use of City facilities, services, or programs;
- (vi) instructing staff not to respond to further correspondence from the individual regarding the complaint or a substantially similar issue;
- (vii) informing the individual that further contact on the matter will not be acknowledged or replied to;

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- (viii) closing the complaint or request for service;
- (ix) instructing staff to reduce or completely cease responses to further complaints or request and correspondence from the individual; or
- (x) issuance of a Notice of Trespass in accordance with the Trespass By-law and this policy. All staff who have the authority to give notices in accordance with the Trespass By-law are required to consider and/or implement all possible alternative measures before issuing a Trespass Notice.

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.

Notice of Decision

Upon determining that an individual has engaged in misconduct, and depending on the severity of the incident, the Director will:

- (a) Send a notice of decision letter of warning to the individual indicating that their behaviour contravenes this policy and that restrictions may be imposed if the behaviour does not stop;

OR

- (b) Send a notice of decision letter the individual indicating that their behaviour contravenes this policy and that restrictions are being imposed in accordance with this policy. This letter will include a summary of the findings of the Director'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);
 - (v) that the individual may, upon request, review the information and evidence relied upon by the Director in reaching their decision subject to restrictions to the disclosure of information and evidence as determined by the Director in accordance with applicable law;
 - (vi) if the Director determines that scheduling a review date is appropriate, the date scheduled for the Director to review the restrictions and the individual's right to provide new information or submissions to the Director 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 Director pursuant to this section will be given in

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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 Director will comply with the notice provisions in the Trespass By-law.

Appeal

An individual who has been served with a notice of decision to impose or continue restriction(s) under this policy, which restrictions limit or prohibit the individual's physical access to City property or services for an aggregate term of more than one month, may appeal the decision by serving a Notice of Appeal to the City Clerk in writing and paying the applicable appeal fee as set out in the City's Rates and Fees By-law within ten 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 City property or services or that limits or prohibits the individual's physical access to City property or services for an aggregate period of one month or less.

Notice of Appeal shall be served by email to clerks@burlington.ca or in person to:

426 Brant Street, Burlington, Ontario
Attention: Office of the City Clerk [use drop box located on Locust Street]

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

An appeal under this section will be heard by the Executive Director of the affected City Department in a manner appropriate in the circumstances, including the underlying misconduct, as determined by the person hearing the appeal.

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The appellant and the Executive Director will be given no fewer than ten days' notice of:

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

In conducting an appeal, the Executive Director may confirm, modify, or rescind all or part of the restriction(s). The Executive Director's decision is final.

In the event that the Executive Director of the affected Department 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, or in the event the Director determined that the investigation should be carried out by a different City department, the City Manager may appoint the Executive Director of a different City department to conduct the appeal. In conducting the appeal the appointed Executive Director may confirm, modify or rescind all or part of the restriction(s). The appointed Executive Director's decision is final.

The decision on the appeal shall be communicated to the appellant and to the Director within ten business days of the completion of the appeal.

Appeals / Reviews of decisions made under the Trespass By-law shall be made in accordance with the review process set out in that By-law.

Restriction Review

The Director shall, using their discretion, determine, based on the nature of any restrictions imposed and the underlying misconduct, whether a review date is required. 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 Director determines that a review date is required, the Director 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 by providing written submissions to the Director, or by way of another method as appropriate in the circumstances. Specifically, the Director may, using their discretion and if the circumstances warrant, also choose to invite the individual to participate in the review in person, by phone or other means.

On or before the review date, the Supervisor and/or Manager and/or Committee, as

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applicable, and the Director 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 City 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 ten business days of completion of the review and be given another date for review if any restrictions remain.