



THE CORPORATION OF THE TOWNSHIP OF MCGARRY

BY-LAW NO. 2021-05

Being a By-law to adopt an Expected Conduct Policy

WHEREAS section 5(3) of the *Municipal Act, 2001*, as amended, provides that the powers of the Council shall be exercised by By-law;

AND WHEREAS the Council of the Corporation of the Township of McGarry wishes to adopt an Expected Conduct Policy.


NOW THEREFORE the Council of the Corporation of the Township of McGarry hereby enacts as follows:

1. That the Expected Conduct Policy attached hereto as Schedule "A" be adopted.
2. And that this By-law shall come into effect on the date of passing.

That this By-law shall come into force and take effect January 12, 2021.

Read a First and Second Time this 12th day of January, 2021.

Read a Third Time and Passed this 12th day of January, 2021.



Mayor Matt Reimer



Clerk-Treasurer Karine Pelletier

SCHEDULE A



Expected Conduct Policy

Township of McGarry

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1. Policy Statement

The Township of McGarry (the "Township") aims to provide exemplary services to all members of the public and to address service requests and complaints equitably, comprehensively and in a timely manner, while promoting a respectful, tolerant and harassment-free workplace between Members of Council, officers and employees of the Township, and the public. To achieve these objectives, unreasonable behaviour and/or frivolous and vexatious complaints or requests from some members of the public who require services or access Township premises may need to be limited in a manner that is clear, consistent, reasonable, and proportional to the individual's action(s).

2. Purpose

(1) This policy contributes to the Township's objective of dealing with all residents in ways that are consistent and fair while acknowledging that there may be a need to protect staff, Members of Council and residents of the Township from unreasonable behaviour and frivolous and/or vexatious actions.

(2) Some situations arising from unreasonable behaviour may cause concern for the reasonable safety of other individuals on Township premises. Other situations may compromise the enjoyment of Township facilities for all users. Vexatious, frivolous and/or unreasonably persistent requests may consume a disproportionate amount of Member and/or staff time and resources and can compromise their ability to provide assistance or deliver good customer service efficiently and effectively. Such requests may also impede staff from attending to other essential issues. These situations and requests may require the Township to put restrictions on the contact that some individuals have with the Township.

(3) This policy is not intended to deal with generally difficult clients and individuals. It applies to members of the public whose behaviours and actions are unreasonable, frivolous and/or vexatious. Determining whether particular behaviours or actions are unreasonable, frivolous or vexatious can be a flexible balancing exercise that requires all circumstances of a particular case to be taken into account. In many cases, the key question is whether the behaviours or actions are likely to cause distress, disruption or irritation, without proper or justified cause.

(4) The decision to classify someone's behaviour as unreasonable, or to classify a request as vexatious or frivolous, could have serious consequences for the individual, including restricting their access to Members of Council, Township staff, services and/or property. As such, this policy provides clear examples of behaviours and actions, as well as clear steps for staff to follow. Any restrictions made under this policy and the related trespass to property are dependent on particular circumstances, and there is an opportunity for the affected individual to have any restrictions reviewed and/or appealed.

3. Application

This policy, and the related trespass to property procedures, are to be implemented if behaviours or requests from an individual are determined to be unreasonable, frivolous and/or vexatious as defined herein. The following behaviours or requests may take place in circumstances including, but not limited to, one or more of the following:

- (a) Public meetings;
- (b) Written communication;
- (c) Telephone communication;
- (d) In-person communication
- (e) Electronic communication, including email and social media; and/or
- (f) Interactions at Township property, parks or facilities.

Examples of Unreasonable Behaviour

Examples of what might be considered unreasonable behaviour are shown below. The list is not exhaustive, nor does one single feature on its own necessarily imply that the person will be considered as being in this category:

- (a) Refusing to specify the grounds of a complaint, despite offers of assistance;
- (b) Changing the basis of the complaint/request as the matter proceeds;
- (c) Denying or changing statements made at an earlier stage;
- (d) Covertly recording meetings and conversations;
- (e) Submitting falsified documents from themselves or others;
- (f) 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;
- (g) Refusing to accept the decision/repeatedly arguing points with no new evidence;
- (h) Persistently approaching the Township through different routes about the same issue;
- (i) Causing distress to staff, which could include use of hostile, abusive or offensive language, or an unreasonable fixation on an individual member of staff;
- (j) Making unjustified complaints about staff who are trying to deal with the issues, and seeking to have them replaced;

- (k) Engaging in aggressive, disrespectful or intimidating behaviour, bullying, harassment or using coarse language while accessing a Township program, service, program, event or facility; and/or
- (l) Loitering, causing a disturbance or acting under the influence of drugs and alcohol while attending Township premises.

Examples of Vexatious or Frivolous Requests

Examples of what might be considered to be vexatious or frivolous are provided below. The list is not exhaustive, and for a request to be considered as vexatious or frivolous it is likely that more than one of the examples is relevant:

- (a) Submission of obsessive requests with very high volume and frequency of correspondence;
- (b) Requests for information the requester has already seen, or clear intention to reopen issues that have already been considered;
- (c) Where complying with the request would impose significant burden on the Corporation in terms of expense, and negatively impact the ability to provide service to others;
- (d) Where the requester states that the request is meant to cause maximum inconvenience, disruption or annoyance;
- (e) Where the request lacks any serious purpose or value. An apparent lack of value would not usually be enough on its own to make a request vexatious, but may when considered with other examples; and/or
- (f) Harassing the Township, which could include very high volume and frequency of correspondence, or mingling requests with accusations and complaints.

Furthermore, a pattern of conduct occurs when on several occasions an individual engages in one or more of the following:

- (a) Brings complaints concerning an issue that staff have already investigated and concluded;
- (b) Brings complaints concerning an issue that is substantially similar to an issue that staff have previously investigated and concluded and no new information is being introduced; and/or
- (c) Engages in unreasonable conduct which is abusive of the request for services or complaints process, including but not limited to the examples set out under the Application section of this policy.

Note: this policy is meant to complement, not replace, the Violence and Harassment in the Workplace Policy or Program, the Client Experience Policy, and the Code of Conduct for Members of Council.

4. Policy Requirements

(1) The decision to classify someone's behaviour as unreasonable, or to classify a request or complaint as frivolous and vexatious, could have serious consequences for the individual, including restricting his or her access to Township services and staff.

(2) The decision may be 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 unreasonable, frivolous and/or vexatious, or it may be a single significant incident that requires invocation of this policy.

If an incident presents an immediate threat, police and/or emergency services shall be contacted.

5. Responsibilities

(1) All users of this policy are required to **document** the actions of the individual, and their own actions, in as much detail as possible.

(2) Certain situations involving unreasonable behaviour on Township property, parks or facilities may require **immediate action** by way of a trespass notice, after all possible alternative measures are considered and/or implemented.

(3) For situations involving unreasonable behaviour that does not require such immediate action, as well as those circumstances that involve frivolous and vexatious requests, specific responsibilities include as follows:

Employees

- (a) If a staff member experiences or witnesses any incident or behaviour that makes the staff member uncomfortable or unsafe, the staff member should report the matter to their supervisor, providing any supporting material;
- (b) If a staff member believes that a request or a complaint is unreasonable, frivolous or vexatious, the staff member should consult with their supervisor, providing any supporting material.
- (c) Staff are responsible for advising their supervisor of the steps that have been taken to resolve the issue, which may include the following:
 - (i) Length of time that staff have been in contact with the individual and the history of interactions;
 - (ii) Amount of correspondence that has been exchanged with the individual;
 - (iii) Number of requests that the individual has brought and the status of each;

- (iv) Nature of the individual's behaviour and the amount of time that has been consumed; and
 - (v) Maintaining detailed records of staff interactions with individuals in order to justify any actions taken to restrict the individual's access to staff or services.
- (d) If applicable, ensure compliance with any relevant duties and procedures pertaining to trespass to property.

Supervisors

- (a) Review the information provided by staff and determine if the individual's behaviour warrants the application of restriction(s);
- (b) Work with staff to determine appropriate restriction(s), including how to inform the individual of the restriction(s);
- (c) Determine a proposed review date for removing, modifying or continuing the restriction(s);
- (d) Meet with the Clerk-Treasurer and outline the situation, including the proposed restriction(s) and review date; and
- (e) If applicable, ensure compliance with any relevant duties and procedures pertaining to trespass to property.

Clerk-Treasurer

- (a) Except as otherwise provided for hereunder, to make the determination to classify an individual's behaviour as unreasonable or to classify a request as frivolous and/or vexatious;
- (b) Determine the restriction(s) to be imposed on the individual and communicate these restrictions to the individual;
- (c) Maintain all documentation related to the review and determination of restriction(s);
- (d) Conduct reviews of any restriction(s) and communicate the outcome to the individual; and
- (e) If applicable, ensure compliance with any relevant duties and procedures pertaining to trespass to property.

Members of Council

- (a) Consult with the Clerk-Treasurer and the Integrity Commissioner regarding cases of unreasonable behaviour and/or frivolous and vexatious action that the Member wishes to address, as described in this policy. 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.

- (b) The appeal mechanism for any restriction(s) placed on an individual through the procedure for Members of Council is the Integrity Commissioner.

Communications Committee

- (a) Undertake all responsibilities of the Clerk-Treasurer hereunder where the behaviour at issue is substantially directed towards the Clerk-Treasurer.
- (b) The appeal mechanism for any restriction(s) placed on an individual by the communications committee is the Integrity Commissioner

6. Monitoring/Contraventions Course of Action

(1) Information Review: Based on the information provided by staff and supervisors, a review shall be conducted by the Clerk-Treasurer to determine if an individual's behaviour warrants the application of restriction. Each case should be considered on an individual basis. This determination, or any restrictions, shall consider the specific circumstances of the matter as well as the following:

- (a) The individual's personal circumstances, level of competency, literary skills, etc. that may be known to staff;
- (b) If applicable, whether the request or complaint has been dealt with properly and in line with the relevant procedures and statutory guidelines;
- (c) If applicable, whether staff have made reasonable efforts to satisfy or resolve the request or complaint;
- (d) If applicable, whether the individual is presenting new material or information about the situation or making a new request or complaint.

(2) Notice: Upon determination that an individual's behaviour is unreasonable or to classify a request or complaint as frivolous or vexatious, and depending on the severity of the incident, the Clerk-Treasurer shall:

- (a) Send a letter of warning to the individual indicating that the behaviour/requests are a violation of this policy and that restrictions may be imposed should they continue; or
- (b) Send a letter of notification to the individual indicating that the matter has been reviewed and that restrictions are to be imposed. This letter shall include a summary of the findings of the Clerk-Treasurer's review, including as follows:
 - (i) a summary of the matter which has led to the restrictions;
 - (ii) a summary of the interactions with the individual;
 - (iii) a description of the restrictions that are to be applied; and
 - (iv) the rationale for applying the restrictions.

(3) Potential Restrictions: Restrictions should be tailored to deal with the individual circumstances. Actions available to the Clerk-Treasurer (or the communications committee as applicable) to restrict the individual may include, but are not limited, to any one or combination of the following:

- (a) Limiting the individual's correspondence with staff to a particular format, time or duration;
- (b) Limiting the individual to a particular point of contact;
- (c) Requiring any face-to-face interactions between the individual and staff to take place in the presence of another staff member;
- (d) Requiring the individual to make contact with the Township only through a third party, such as a solicitor or counsellor;
- (e) Limiting or regulating the individual's use of Township services;
- (f) Refusing the individual access to a Township facility except by appointment or specific permission;
- (g) Requiring that the individual produce full disclosure of documentation or information before staff will further investigate a complaint;
- (h) Instructing staff not to respond to further correspondence from the individual regarding the complaint or a substantially similar issue;
- (i) Informing the individual that further contact on the matter will not be acknowledged or replied to;
- (j) Closing the complaint or request for service;
- (k) Instructing staff not to investigate any complaints regarding an issue that has already been investigated or which is substantially similar to an issue that has already been investigated;
- (l) Instructing staff to severely reduce or completely cease responses to further complaints or request and correspondence from the individual;
- (m) Directing that communications are forwarded to a communications committee whose terms of reference shall be to receive and vet communications from certain individuals or groups and make recommendations to Council about how such communications should be responded to;
- (m) Pursuing legal action including issuance of a notice of trespass. All staff who have the authority to issue notices are required to consider and/or implement **all possible alternative measures** before issuing a notice.

(4) Restriction Review: The letter of notification shall advise of a review date for the matter, depending on the severity of the incident and the nature of the matter and restriction/service provided. Generally, all cases where this policy is applied should be

reviewed every three months or six months and not more than 12 months after the service change or restriction was initially imposed or continued/upheld.

(5) The affected individual will be invited to participate in the review process by providing a written submission or by way of another method as appropriate in the circumstances, unless it is determined that this invitation will provoke a negative response from the individual.

(6) Before the review date, staff and the Clerk-Treasurer (or the communications committee as applicable) shall meet and review the situation and determine if the restrictions should continue. During this review, consideration shall be given to factors such as:

- (a) Whether the individual has had any contact with the Township during the restriction period;
- (b) The individual's conduct during the restriction period;
- (c) Any information/arguments put forward by the individual for review;
- (d) The effect that continuing the restriction may have on the individual; and
- (e) Any other information that may be relevant in the circumstances.

(7) The individual shall 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.

Appeals

(1) The individual shall have the ability to appeal any decision to impose restrictions by contacting the Chair or Co-Chair of the communications committee in writing within 10 business days from the date the restriction was issued. The communications committee shall review all relevant information along with the appeal within 10 business days from the date the appeal was received and may confirm, rescind or amend the restrictions. The communication committee's decision is final.

(2) As noted above, if the communications committee is responsible for imposing restrictions hereunder the individual's appeal must be directed to the Integrity Commissioner.

(3) If the issue cannot be resolved through this policy, the individual may submit a complaint to the Office of the Ontario Ombudsman.

Monitoring

This policy shall be reviewed as often as necessary and at least annually.

7. Definitions

(1) "Vexatious" means that the complaint or request for service is initiated with the intent to embarrass or annoy the receipt, or is part of a pattern of conduct by the complaint of requestor that amounts to an abuse of the complaint process or request for service.

(2) A "frivolous" complaint is one that has no serious purpose or value, about a matter so trivial or one so meritless on its face that investigation would be disproportionate in terms of time and cost.

(3) "Unreasonable" behaviour involves conduct that is unacceptable in all circumstances – regardless of how stressed, angry or frustrated an individual is, because it unacceptably comprises the health, safety and security of staff, other service users or the individual themselves. Further, requests or complaints that are incomprehensible, inflammatory or based on conspiracy theories are also considered unreasonable.