



Staff Report for Committee of the Whole Meeting

Date of Meeting: June 7, 2023
Report Number: SRCFS.23.028

Department: Corporate and Financial Services
Division: Office of the Clerk

Subject: **SRCFS.23.028 – Public Conduct and Complaints Policy**

Purpose:

To recommend that Council adopt a Public Conduct and Complaints Policy (Attachment "A").

Recommendation(s):

- a) That Staff Report SRCFS.23.028 be received;
- b) That the Public Conduct and Complaints Policy, Attachment "A to Staff Report SRCFS.23.028, be approved; and
- c) That the Accountability and Transparency Policy be amended to include the approved Public Conduct and Complaints Policy in the Section 4 list of Open Government and Public Participation policies.

Contact Person:

Stephen M.A. Huycke, Director, Legislative Services/City Clerk, extension 2529

Report Approval:

Submitted by: Sherry Adams, Commissioner of Corporate and Financial Services

Approved by: Darlene Joslin, City Manager

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), City Solicitor (as required), Commissioner, and City Manager. Details of the reports approval are attached.

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Background:

On January 1, 2016, provisions of Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*, came into force. These provisions included, among other things, amendments to the *Municipal Act, 2001* and the *Ombudsman Act* that expanded the Ontario Ombudsman's ("Ombudsman") jurisdiction to include municipalities.

Section 14 of the *Ombudsman Act* provides that "[t]he function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity." In his report titled "Press Pause: Investigation into a meeting of council for the Regional Municipality of Niagara on December 7, 2017" (July, 2018), the Ombudsman has described the role as follows [**emphasis added**]:

"My role with respect to municipalities **is to review and investigate complaints about municipal government administration**. Elected officials are generally responsible for setting broad public policy. I do not have the authority to direct municipal council decision-making or to require municipal councils to decide matters in a certain fashion. **Instead, when problems are identified, [the Ombudsman] may make recommendations to a municipality to improve its processes, as well as to strengthen local governance and accountability.**"

The Ombudsman may decide to investigate a matter with or without a complaint, and may make public reports and recommendations regarding any findings. In exercising its authority under the *Ombudsman Act*, the Ombudsman's Office has indicated that it will first refer complaints back to local municipalities and their own complaint mechanisms for resolution wherever possible.

The Ombudsman has recommended that all public sector bodies, including municipalities, adopt policies regarding how that body will address public complaints, as well as policies that address how public sector bodies will respond to unreasonable conduct by the public. In his report titled "'Counter Encounter': Investigation into a complaint about the Township of Red Rock" (May 2017), the Ombudsman stated the following [**emphasis added**]:

"93. [*municipalities are*] entitled to encourage respectful and courteous interactions with its staff. Other municipalities in Ontario, both large and small, have developed policies for responding to difficult or unreasonable behavior on the part of citizens. **These public conduct policies are distinct from the workplace violence and harassment policies required by the provincial legislation. They enable administrators to respond in a more appropriate, proportionate and fair manner when dealing with citizens...**"

"97. Having a well-publicized policy that establishes clear expectations for the conduct of members of the public and for responding to problematic behaviour, enhances the consistency and transparency of municipal

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administration. **It is a best practice that should be adopted...for the benefit of its staff and citizens alike.”**

In response to the Ombudsman’s recommendations, Staff recommend that Council approve the proposed Public Conduct and Complaints Policy (Attachment “A”) (the “proposed policy”). The proposed policy is based on review of similar policies in other municipalities (such as Ottawa and Vaughan), as well as reports of the Ombudsman. The proposed policy is further described below.

Purpose and Scope of the Proposed Policy

The proposed policy recognizes that the City is committed to providing exemplary services to the public. At the same time, the proposed policy acknowledges that the City aims to address service requests and complaints equitably, comprehensively and in a timely manner, while promoting a respectful, tolerant and harassment-free workplace. Consistent with the Ombudsman’s role of “reviewing complaints about municipal government administration” and “recommendations to a municipality to improve its processes, as well as to strengthen local governance and accountability” the proposed policy applies to both the conduct of the Public and complaints made by the Public in respect to the City, its service and Staff. In other words, the proposed policy:

- Sets expectations for public behaviour, and how to respond to unacceptable behaviour; and
- Establishes a framework to respond to formal complaints about City services and staff.

The proposed policy defines the scope of the policy (i.e. it applies to public conduct and public complaints), but also clearly identifies that other City policies, procedures and mechanisms governing behaviour and complaints also still apply. These other policies, procedures and mechanisms that still apply are discussed further under the heading “Relationships to other City Policies”.

Policy Overview and Application

The proposed policy is structured to provide a clear understanding of its intent and its general provisions, including:

- Recognizing that the City is committed to providing exemplary services, while also committing the City to providing a process to address formal complaints, as well as unreasonable, frivolous or vexatious behaviour, complaints or requests (see “Overview” section)
- Expressing that the City expects most interactions with the public to be respectful, while also recognizing that the City has a duty to protect staff and the Public from unreasonable behaviour (see “Public Conduct” section)
- Committing the City to continue to address most complaints informally through the normal course of business, while also establishing a formal complaints

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process to address concerns that cannot, or have not, been resolved informally (see “Public Complaints” section)

- Recognizing that placing any restrictions on the public for unreasonable, frivolous or vexatious behaviour, requests or complaints is a serious matter that must be taken with great care (see “Restrictions on the Public” section)
- That unreasonable behaviour, frivolous, vexatious, and/or unreasonably persistent requests (see below) can compromise the ability of the City and staff to respond to other members of the public, or impede the public enjoyment of City facilities and services

Recognizing that the matters set out in the proposed policy are very serious, the proposed policy clearly identifies that it is only to be applied and implemented:

- When the Public want to make a formal complaint about City Staff and/or services; and/or
- When the Public engage in unreasonable, frivolous or vexatious behaviour, requests or complaints

Public Conduct

As noted above, the Ombudsman has stated that City’s should adopt policies to address “difficult or unreasonable behavior on the part of citizens.” The proposed policy sets out what the City considers to be unacceptable public conduct. To do so, the proposed policy provides examples of unreasonable behaviour, and frivolous or vexatious requests, complaints or behaviour. An example of unreasonable behaviour in the proposed policy is “causing distress to Staff, which could include use of hostile, abusive, offensive or threatening language or an unreasonable fixation on an individual member of Staff”. An example of frivolous or vexatious behavior in the proposed policy is “where the requester states that the request is actually meant to cause maximum inconvenience, disruption or annoyance, or for retaliatory reasons.”

The examples of unacceptable behaviour are not exhaustive. Additionally, in many cases, unacceptable behaviour by members of the public could fall into more than one category. The proposed policy is also not primarily concerned, in most cases, with single incidents of unacceptable behaviour. Rather the proposed policy is concerned with responding to patterns of behaviour, or repeat and persistent behaviour, in determining unacceptable public conduct. The only exception to this general proposition regarding patterns of behaviour, are actions by members of the public that threaten the health, safety and security of the public and staff, and threats to the safety and security of City facilities. Individual threats to health, safety and security may rise to the level of unreasonable behaviour. Even a single incident threatening health and safety is unacceptable behaviour.

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Public Complaints

The proposed policy recognizes that most complaints about City services or staff are resolved informally in the normal course of business. This proposed policy does not seek to change that, or create any further administrative processes related to matters that are resolved in the normal course of business. The proposed policy provides a framework for formal complaints and/or complaints that cannot be or are not resolved informally.

The formal complaints framework:

- Provides that complaints be made in writing, providing enough detail to permit the matter to be reviewed and responded to;
- Prohibits anonymous complaints;
- Determines the Staff member responsible for reviewing and responding to a formal complaint (e.g. the Mayor handles complaints about the City Manager or can refer them to Council, the City Manager handles complaints about Commissioners, etc.); and
- Requires the Staff member responsible for reviewing and responding to a complaint to undertake a reasonable investigation, including reviewing the complaint with the complainant, and providing a written response to the complainant.

Providing a formal complaints framework ensures that the City and the Public are aware of the formal complaints process and the roles and responsibilities of all parties. It also aligns with the Ombudsman's recommendations to establish such a process.

Restrictions on the Public

As a last resort for unreasonable, frivolous or vexatious behaviour, requests or complaints, the proposed policy specifically allows City staff the ability to put in place restrictions on an individual member of the Public's interactions with the City and Staff. Restrictions are tools that the City can use to protect the City and staff from unreasonable, frivolous or vexatious behavior. The Ombudsman Office itself recognizes that restrictions may be required in its own interactions with the public. The Ombudsman's website specifically includes the following [**emphasis added**]:

“Respectful communication and behaviour

What we expect from you:

Our staff strive to communicate with everyone in a courteous and respectful manner, and we expect the same of those who communicate with us. As an employer, we are committed to ensuring that our staff work in an environment free from harassing, abusive, intimidating, discriminatory or threatening behaviour.

Response to abuse or threats:

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While we understand that some people who contact us are dealing with frustrating circumstances and emotional issues, the Ombudsman and staff will not tolerate behaviour that is harassing, abusive, intimidating, discriminatory or threatening. Threats of violence may be reported to police or appropriate authorities.

Service restrictions:

We reserve the right to restrict service to those whose communications and behaviour in dealing with our staff is harassing, abusive, intimidating, discriminatory or threatening. For example, the person may be restricted from visiting or calling our Office and required to communicate with us in writing only.”

The proposed policy requires that any restrictions placed on a member of the Public be situation specific, time-limited and proportional. Restrictions are to be specific in that they must respond to the specific unreasonable behaviour only, and only for mitigating the behaviours that specifically affect City staff and its operations. For example, unreasonable behaviour linked to telephone calls could result in a restriction that requires staff to respond to written requests only. Restrictions can only be related to the specific or substantially similar matter (e.g. if the unreasonable behaviour relates to City Service “A”, the restriction would not apply to City Service “B”). The proposed policy specifically requires that restrictions be in place for a limited period of time, generally between three (3) months to a maximum one (1) year. Terms greater than three (3) months are to be based on the seriousness of the specific situation (i.e. they are to be proportional). Restrictions of one (1) year are only for the most “**persistent repeat** unreasonable, vexatious or frivolous behaviour, requests or complaints”. In applying any restrictions, staff must consider the legal rights of the Public as it pertains to their engagement with the City. Staff are acutely aware that the Public has rights under the *Charter of Rights and Freedoms* and other laws, to engage and interact with the City. When weighing whether or not to apply restrictions, these rights must be protected to the greatest extent possible.

Prior to placing any restrictions on members of the Public, staff are required to exercise significant care and due diligence, and only after a reasonable investigation has taken place. The proposed policy specifically requires that proper notice be provided to a member of the Public, detailing what actions are being taken and why, and must clearly indicate the impact of any decision.

The proposed policy also recognizes that even after unreasonable, vexatious or frivolous behaviour, requests or complaints, have occurred, the Public should be given the opportunity to simply, but sincerely, apologize for the behaviour.

Reviews and Appeals

As noted in the Background of this report, since January 1, 2016, the Ombudsman has authority to investigate and make recommendations in respect to municipalities. This also applies to the actions of the City under the proposed policy. Any member of the

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Public who has filed a complaint that does not agree with the outcome is entitled to ask the Ombudsman to review the matter. Additionally, any member of the Public who is subject to restrictions by the City for unreasonable behaviour, or frivolous or vexatious complaints can also ask the Ombudsman to review the matter.

Relationship to other City Policies

Council has approved other policies governing conduct and complaints. These include, but are not limited to, the following Council approved policies:

- Respect in the Workplace Policy
- AMPS Policy 2 - Public Complaints Respecting the Administration of Administrative Monetary Penalty System (AMPS) – Approved by Council on September 12, 2016
- Responding to Incidents in City Recreation Facilities Policy – Approved by Council on February 21, 2005 (Revised October 2013)
- Responding to Incidents in City Recreation Facilities Procedure– Approved by Council on February 21, 2005 (Revised October 2013)
- Code of Conduct Chief Building Official and Inspectors Appointed Pursuant to the *Building Code Act* (Schedule “A” to By-law 9-20).

The proposed policy does not replace any other by-law, policy or procedure that is currently in-place. The proposed policy specifically states:

“This policy is meant to complement, not replace, the Respect in the Workplace Policy, the Employee Code of Conduct, the Council Code of Conduct for Members of Council, and the Code of Conduct for Local Boards. This Policy is also meant to complement, not replace, the Council approved Responding to Incidents in City Recreation Facilities Policy, and the Responding to Incidents in City Recreation Facilities Procedures.”

In other words, the proposed policy is an enhancement to the City’s overall framework to respond to matters related to public conduct and complaints, and part of the overall accountability and transparency framework of the City. That is also why staff are recommending that the proposed Public Conduct and Complaints Policy be included in the Council approved Accountability and Transparency Policy’s list of Open Government and Public Participation policies.

Applicability to Members of Council

The proposed policy, consistent with the Ombudsman’s role, applies to City administration (including employees) and not individual Members of Council (“Members”) other than the Mayor. With the exception of the Mayor, Members are not City employees or Officers, and are subject to a different accountability and transparency framework, including the Council Code of Conduct and investigations by the Integrity Commissioner. As a result, the proposed policy does not specifically apply to individual Members of Council. However, the proposed policy does specifically

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recognize that Members may be subject to unreasonable behaviour, or frivolous and vexatious behaviour by the Public. To that end, the policy includes the following provision:

“While this policy is not intended to specifically apply to the interactions of Members of Council, it may be used as a guide by the Member in responding to those scenarios. Members of Council are subject to the Council Code of Conduct, and should seek the advice of the Integrity Commissioner on such matters as considered appropriate.”

In other words, if a Member of Council is faced with unreasonable behaviour, or frivolous and vexatious behaviour, the proposed policy, subject to any advice from the Integrity Commissioner, may be used by that Member as a guide to responding to these difficult situations.

Next Steps

If Council adopts the proposed policy, staff will undertake to include information about the Policy on the City’s Website, including the possibility of establishing an online complaints form. If an online form is feasible, staff will endeavor to include options for the ability of the Public to submit compliments as well.

Financial/Staffing/Other Implications:

There are no financial, staffing or other implications associated with adopting the proposed Public Conduct and Complaints Policy.

Relationship to Council’s Strategic Priorities 2020-2022:

The approval of a Public Conduct and Complaints Policy helps to fulfill Council’s Strategic Priority of ‘A Strong Sense of Belonging’ by ensuring that the City has policies and procedures that provide clarity on expected behaviours by the public and a framework for addressing formal complaints made by the public.

Climate Change Considerations:

Climate change considerations are not applicable to this staff report

Conclusion:

The Ontario Ombudsman recommends that municipalities adopt policies regarding the conduct of members of the public, and how municipalities will address complaints from the public. Staff recommend that Council adopts the proposed Public Conduct and Complaints Policy in response to this recommendation.

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Attachments:

The following attached documents may include scanned images of appendixes, maps and photographs. All attachments have been reviewed and made accessible. If you require an alternative format please call the contact person listed in this document.

- Attachment A – Proposed Public Conduct and Complaints Policy

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Report Approval Details

Document Title:	SRCFS.23.028 - Public Conduct and Complaints Policy.docx
Attachments:	- SRCFS.23.028 - Attachment A - Draft Public Conduct and Complaints Policy.docx
Final Approval Date:	May 9, 2023

This report and all of its attachments were approved and signed as outlined below:

Sherry Adams - May 8, 2023 - 1:31 PM

Darlene Joslin - May 9, 2023 - 8:28 AM