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Policy Title:	Public Conduct Policy
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Division:	Legal and Legislative Services
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1. Introduction

The Town regularly interacts with members of the Public, and in doing so aims to provide services in a prompt, professional, and respectful manner, and attempts at all times to address service requests and complaints from the Public equitably, comprehensively and in a timely manner. The Town also promotes a respectful, tolerant and harassment-free workplace between members of the Public and Town Council and Staff. In order to achieve these objectives, Unreasonable behaviour or Frivolous and Vexatious complaints or requests from members of the Public who require services or who access Town Facilities may need to be limited in a manner that is clear, consistent, reasonable, and proportional to the individual's actions, to ensure the safety of members of Town Council and Staff and other members of the Public, and to ensure that services can continue to be provided to members of the Public in a timely and efficient manner.

2. Scope

This Public Conduct Policy pertains to all interactions between the Public and members of Town Council and Staff, including, but not limited to verbally via telephone, through written communication, or by attendance in person at all Town Facilities, including Town Hall.

3. Definitions

For the purposes of this Policy,

"Affected Member of the Public" has the definition set out in Section 7(a) of this Policy.

"CAO" has the definition set out in Section 5.2 of this Policy.

"Conduct Determined to be Unacceptable" has the meaning set out in Section 5.4 of this Policy.

"Frivolous" means a complaint that has no serious purpose or value or is about a matter so trivial or one so meritless on its face that investigation would be disproportionate in terms of time and cost.

"Public" means residents of the Town, Town Facility users, those who receive services from the Town and other members of the general public.

"Town" means The Corporation of the Town of Essex.

"Town Council and Staff" means members of Town Council, Town Committee Members or Town Administration (including employees and independent contractors of the Town).

"Town Facility" or **"Town Facilities"** means property owned by the Town.

"Unreasonable" means behaviour that involves conduct that is unacceptable in the circumstances, because it unacceptably comprises the health, safety and security of staff, other service users or the individual themselves. Requests or complaints that are incomprehensible or inflammatory are considered Unreasonable.

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

4. Purpose

This Public Conduct Policy contributes to the balancing by the Town of its requirement to deal with all members of the Public in ways that are open, transparent, consistent, and fair, with its requirement to protect members of Town Council and Staff and members of the Public from Unreasonable behaviour and Frivolous or Vexatious actions.

This Public Conduct Policy is further intended to address some situations arising from Unreasonable behaviour that:

- May cause concern for the reasonable safety of other individuals at Town Facilities;
- May compromise the enjoyment of Town Facilities for other users; and
- May be considered Vexatious, Frivolous or unreasonably persistent interactions or requests that may consume a disproportionate amount of time of members of Town Council and Staff, that compromises their ability to provide assistance or deliver good customer service efficiently and effectively to other members of the Public.

The situations described above, may require the Town to put restrictions on the contact that some members of the Public have with the Town.

The overall intention of this Public Conduct Policy is to limit very specific and problematic behaviours in very targeted ways, but is not intended to, and will not be used to, limit the interactions of members of the Public who may simply be perceived to be generally difficult in the demands imposed for service or requests for information. Rather, it applies only to behaviours and actions which rise to the level that are deemed to be Unreasonable, Frivolous, or Vexatious, or actions which provide a reasonable basis to fear for the safety of members of Town Council and Staff or members of the Public at Town Facilities. 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 considered, with the key consideration often being whether the behaviours or actions are likely to cause distress, disruption, or fear of harm, without proper or justified cause.

The decision to classify the behaviour or actions as Unreasonable, or to classify a request as Vexatious or Frivolous, could have serious consequences for the member of the Public, including restricting their access to members of Town Council and Staff or Town Facilities. As such, this Public Conduct Policy provides that any restrictions made under this Public Conduct Policy, and the related Trespass to Property Policy are dependent on the particular circumstances and are subject to appeal.

5. Policy

5.1. Application of Policy

This Public Conduct Policy applies to all members of the Public who:

1. Deal with Town Council and Staff;
2. Receive or request services from the Town; or
3. Attend a Town Facility.

This Public Conduct Policy and the related Trespass to Property Policy, are to be implemented if behaviours or requests from a member of the Public are determined to be Unreasonable, Frivolous or Vexatious as defined herein, or are deemed to pose a risk to the safety of a member of Town Council and Staff or members of the Public that use Town Facilities. The following behaviours or requests may take place in circumstances including, but not limited to, one or more of the following:

- Public meetings held by the Town;
- Written communication to, or about, members of Town Council and Staff, which may also include email communication and posts on social media;

- Telephone communication with members of Town Council and Staff;
- In-person communication with members of Town Council and Staff; and
- Interactions at Town Facilities.

This Public Conduct Policy is meant to complement, not replace or supersede, any other Town policy related to behaviour by members of the Public at Town Facilities.

5.2. **Example of Unreasonable Behaviour**

The list below provides examples of what might be considered Unreasonable behaviour. The list is not exhaustive, nor does one single example listed on its own necessarily imply that an individual member of the Public will be considered as exhibiting Unreasonable behaviour. The threshold for what constitutes these actions will be determined by the Town's Chief Administrative Officer or his or her designate (the **"CAO"**) in conjunction with the impacted department Director. Examples of what may constitute Unreasonable behaviour include, but are not limited to:

- Refusing to specify the grounds of a complaint or request for a service, despite offers of assistance;
- Changing the basis of the complaint or request for a service as the matter proceeds;
- Denying or changing statements made at an earlier stage of the matter;
- Submitting falsified documents;
- Submission of requests at unreasonable times;
- Making excessive demands on the time and resources of Town Council and Staff with repeated telephone calls and/ or written correspondence without allowing a reasonable time for response from Town Council and Staff;
- Persistently approaching the Town about the same issue once a decision has already been made regarding such issue;
- Covertly recording meetings and conversations;
- Causing distress to members of Town Council and Staff or members of the Public, which could include the use of threatening, hostile, abusive or offensive gestures or language, or an unreasonable fixation on individual member(s) of Town Council and Staff;

- Engaging in aggressive, disrespectful, dangerous, harmful or intimidating behaviour, bullying, or harassment towards, or using threatening language when interacting with or speaking about a member of Town Council and Staff or another member of the Public;
- Conduct constituting harassment of a member of Town Council and Staff including by email or on social media;
- Incompliance with any rules or regulations posted at a Town Facility; or
- Loitering, causing a disturbance, or being under the influence of drugs or alcohol while attending Town Facilities.

5.3. **Examples of Vexatious or Frivolous Behaviour**

The list below provides examples of what might be considered Vexatious or Frivolous. The list is not exhaustive, nor does one single example listed on its own necessarily imply that an individual will be considered as making requests that are Vexatious or Frivolous.

Examples of what may constitute a Vexatious or Frivolous request, include, but are not limited to:

- Submission of requests for information in high volume and frequency;
- Submission of requests for information that have already been responded to by the Town;
- Submission of requests in a way meant to cause unreasonable inconvenience and disruption to the Town;
- Submission of requests that lack any serious purpose or value (this factor cannot be considered on its own, but may be considered as a factor with other factors in determining whether conduct is Vexatious or Frivolous); or
- Submission of requests that are mingled with baseless accusations or complaints.

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

- Brings complaints concerning an issue that the Town has already addressed and concluded;
- Brings complaints concerning an issue that is substantially similar to an issue that the Town has previously addressed and concluded; or

- Engages in conduct which is deemed to be an abuse of the complaints, service or information processes of the Town.

5.4. **Dealing with Conduct Determined to be Unacceptable**

The decision to invoke this Public Conduct Policy may be as a result of a repeated pattern of conduct, or it may arise from a significant incident that requires the immediate application of this Public Conduct Policy.

However, any decision to classify the request or complaint of an individual as Frivolous or Vexatious, or to classify the behaviour of an individual as Unreasonable or a threat to the safety of members of Town Council and Staff or members of the Public (the "**Conduct Determined to be Unacceptable**"), could have serious consequences for the individual, including restricting his or her access to services, information, interaction with members of the Town Council and Staff, or access to Town Facilities. As such the process under this Public Conduct Policy is to be applied as follows:

1. **General** - All members of Town Council and Staff who receive requests or complaints from or witness actions of a member of the Public that are perceived to be Conduct Determined to be Unacceptable shall:

    a) Document the actions of the individual engaged in the Conduct Determined to be Unacceptable, and document their own response and interactions with the said individual, in writing immediately after the interaction, and in as much detail as possible;

    b) Follow the specific protocols, pertaining to the individual member of Town Council and Staff, detailed herein; and

    c) Report the Conduct Determined to be Unacceptable and provide the detailed notes to the CAO of the Town for further investigation and for the determination of what actions, if any, are required to address the Conduct Determined to be Unacceptable in consultation with such other members of the Town as are deemed necessary, and in their sole and absolute discretion, if any.

2. **Employees** - Any employee of the Town who perceives an interaction with a member of the Public to be Conduct Determined to be Unacceptable shall, after complying with Section 5.4(1)(a):

    a) Report the Conduct Determined to be Unacceptable to their

immediate supervisor, providing the detailed notes; and

i. any steps taken to resolve the issue;

ii. a summary of any previous known interactions with the relevant individual, along with any previous correspondence exchanged with the relevant individual;

iii. if applicable the number of requests that the relevant individual has made and the status of each; and

iv. the nature of the individual's behaviour and the amount of time that has been consumed addressing such behaviour.

3. **Contractors** - Any contractor of the Town who perceives an interaction with a member of the Public to be Conduct Determined to be Unacceptable shall, after complying with Section 5.4(1)(a):

   a) Report the Conduct Determined to be Unacceptable to their Town contact, providing the detailed notes; and

      i. any steps taken to resolve the issue;

      ii. a summary of any previous known interactions with the relevant individual, along with any previous correspondence exchanged with the relevant individual;

      iii. if applicable the number of requests that the relevant individual has made and the status of each; and

      iv. the nature of the individual's behaviour and the amount of time that has been consumed addressing such behaviour.

4. **Supervisors** - After being provided with the information and documents referenced in Section 5.4(2) or 5.4(3) above, as applicable, a supervisor (or in the case of a contractor, Town contact) shall:

   a) If the supervisor is not a Director, review the information provided with the Director, and determine whether the behaviour of the individual is (1) Conduct Determined to be Unacceptable and (2) whether actions are required to address the Conduct Determined to be Unacceptable;

b) If deemed appropriate by the Director, work with employee or contractor of the Town and the Director to determine what, if any, actions on the part of the Town or restrictions on the part of the Town could address the Conduct Determined to be Unacceptable; and

c) If deemed appropriate by the Director, determine what would have to occur on the part of the relevant member of the Public for the actions of the Town or the restrictions to be relaxed or discontinued if there are actions.

5. **Directors** – After completing the analysis required by Section 5.4(4) above, the Director shall provide all information and documents referred to above, as well as the joint recommendations of the affected individual, the supervisor and the Director referenced in Section 5.4(4)(b) above to the CAO.

6. **CAO** – The CAO, after receiving and reviewing all information and documents referred to above, and discussing the matter with the Director, shall:

a) Conduct such further and other investigation, if any, deemed necessary and appropriate, in their sole and absolute discretion;

b) If deemed appropriate by the CAO, in their sole and absolute discretion, retain an independent third party to conduct such further and other investigation as the CAO may deem appropriate;

c) Make the final determination as to whether the conduct complained of is a violation of this Public Conduct Policy, such that a reasonable person would agree that it constitutes Conduct Determined to be Unacceptable;

d) Determine the actions to be taken by the Town or restrictions to be imposed, if any to protect those affected by the Conduct Determined to be Unacceptable, and communicate same, or cause the Town Director, Legal and Legislative Services to communicate same;

e) Ensure that the actions to be taken by the Town are appropriate for the behaviour in question and are not excessive;

f) Determine, in consultation with the Town's Director, Legal and Legislative Services, whether the Trespass to Property Policy should

be applied, and, if so, instruct the Town Director, Legal and Legislative Services as to the trespassing terms to impose;

g) In communicating any action to be taken by the Town or restrictions to be imposed, the CAO or the Town Director, Legal and Legislative Services, shall communicate the right of the individual to seek a reconsideration or appeal the decision of the CAO in accordance with this Public Conduct Policy;

h) In the event of an appeal of any action to be taken by the Town or restrictions to be imposed, the CAO, in consultation with the Town Director, Legal and Legislative Services, shall determine whether such action or restriction should be upheld, reconsidered or withdrawn in accordance with this Public Conduct Policy; and

i) Maintain all documentation related to the review of the Conduct Determined to be Unacceptable and the determination of action(s) taken by the Town and restriction(s) imposed.

7. **Town Council** – Any member of Town Council (including a Committee of Council member) who perceives an interaction with a member of the Public to be Conduct Determined to be Unacceptable shall, after complying with Section 5.4(1)(a):

a) Report the Conduct Determined to be Unacceptable to the CAO, providing the detailed notes required in Section 5.4(1)(a);

b) Advise the CAO of:

i. any steps taken to resolve the issue;

ii. if applicable, the number of requests that the relevant member of the Public has made and the status of each; and

iii. the nature of the member of Public's behaviour and the amount of time that has been consumed addressing same; and

c) Provide the CAO with:

i. a summary of any previous known interactions with the individual; and

ii. any previous correspondence exchanged with the relevant

individual.

d) **CAO**–The CAO, after receiving and reviewing all information and documents referred to in Section 5.4(1) Section 5.7(c) above and discussing the matter with the member(s) of Council with knowledge of the Conduct Determined to be Unacceptable, shall follow the procedure outlined in Section 5.4(6) above.

6. Determination Process

Upon determining that reported conduct is Conduct Determined to be Unacceptable in accordance with Section 5.4 above:

1. **Information Review** – Based on the information provided by the relevant members of Town Council and Staff, and such further information as may be discovered during any subsequent investigation by the CAO, if any, a review of the information shall be conducted by the CAO to determine if the Conduct Determined to be Unacceptable warrants action by the Town or restrictions on the relevant member of the Public. Each case should be considered by the CAO, to the extent possible, on an individual basis, with the determination of actions to be taken by the Town or the restrictions to be imposed on a member of the Public considering the specific facts and circumstances related to the matter, as well as the following:

   a) The individual's personal circumstances, level of competency, literary skills, etc., that may be known to the Town;

   b) If applicable, whether the Conduct Determined to be Unacceptable can be dealt with in accordance with existing relevant procedures and guidelines;

   c) Whether Town Council and Staff have made reasonable efforts to resolve reasonable requests or complaints of the individual prior to the Conduct Determined to be Unacceptable arising;

   d) Whether the Conduct Determined to be Unacceptable can be addressed without any restriction(s) being imposed; and
   e) The likelihood that any action(s) taken by the Town or restriction(s) imposed are going to protect the members of Town Council and Staff, and members of the Public from the Conduct Determined to be Unacceptable.

2. **Notice**– The CAO or the Town Director, Legal and Legislative Services shall either:

   a) Send a letter of warning to the individual indicating that the Conduct

Determined to be Unacceptable is a violation of this Public Conduct Policy and that action(s) may be taken by the Town or restriction(s) imposed on the individual should the Conduct Determined to be Unacceptable continue; or

b) Send a letter of notification to the individual indicating that the Conduct Determined to be Unacceptable has been reviewed and that the Town is taking action or imposing restrictions on the individual. This letter shall include a summary of the findings of the CAO, including:

i. a summary of the Conduct Determined to be Unacceptable;

ii. a summary of the findings following the review of the information and documents provided or discovered during any investigation;

iii. a description of the action(s) being taken by the Town or the restriction(s) being imposed; and

iv. the rationale for taking such action(s) or imposing such restriction(s).

3. **Potential Restrictions**–Potential action(s) or restriction(s) should be tailored to address the individual circumstances. Action(s) and restriction(s) available to the CAO may include, but are not limited to, any one or combination of the following:

i. Limiting the correspondence with the Town to a particular format, time, or duration;

ii. Limiting the individual to a particular point of contact;

iii. Requiring that any in-person meetings be scheduled in advance and in the presence of at least two representatives of the Town;

iv. Requiring that the individual only make contact with the Town through a third party, such as their lawyer or such other third party as the Town may agree;

v. Limiting or regulating the individual's use of Town services;

vi. Refusing access to Town Facilities entirely, or on such terms as are deemed appropriate;

vii. Instructing Town Council and Staff not to respond to further correspondence from the individual;

viii. Informing the individual that further contact on the matter will not be acknowledged or replied to;

ix. Closing the complaint or request for service without further action;

x. Pursuing legal action, including, but not limited to the issuance of a Notice of Trespass; and

xi. Such further and other action(s) or restriction(s) that the CAO deems to be appropriate in the circumstances.

7. Restriction Review

The letter of notification referred to in Section 5.5(2)(b) above, shall advise of a review date for the action(s) being taken or restriction(s) being imposed, which review date shall be as soon as reasonably determined by the CAO and shall be conducted within at least twelve months of the date of the letter of notification. The review process shall include the following:

a) The member of the Public determined to have committed Conduct Determined to be Unacceptable (the "**Affected Member of the Public**") will be invited to participate in the review process by providing written submissions, or by such other means as the CAO may, in CAO's sole and absolute discretion, deem appropriate in the circumstances;

b) Prior to the review date, the CAO shall, either alone, or with such other members of Town Council and Staff, in the CAO's sole and absolute discretion, determine if the action(s) taken or the restriction(s) imposed by the Town should continue. During this review, consideration shall be given to factors considered appropriate by the CAO including, but not limited to:

i. Whether the Affected Member of the Public has any contact with the Town while the action(s) or restriction(s) were in place;

ii. The conduct of the Affected Member of the Public during the period when the action(s) or restriction(s) were in place;

iii. The submissions of the Affected Member of the Public, if any;

iv. The effect that continuing the action(s) or restriction(s) will have on the Affected Member of the Public;

v. The effect that the discontinuing of the action(s) or restriction(s) will have on the safety of the members of Town Council and Staff, or other members of the Public accessing Town services or Town Facilities; and

vi. Any other factors and information the CAO deems relevant in the circumstances.

c) The Affected Member of the Public shall be informed of the outcome of the review in writing within ten business days of completion of the review, and, if action(s) or

restriction(s) remain in place, the Affected Member of the Public will be advised of the next date for review of the remaining action(s) or restriction(s).

8. Appeals

The Affected Member of the Public has the right to appeal any decision on the part of the Town to take action(s) or impose restriction(s) related to any Conduct Determined to be Unacceptable. The Affected Member of the Public must commence the appeal by advising the Town Clerk of the desire to appeal in writing, within ten business days of the Town providing notice of any action(s) taken or restriction(s) imposed by the Town in accordance with the provisions of this Public Conduct Policy. In the event of an appeal of any action to be taken by the Town or restrictions to be imposed, the CAO, in consultation with the Town Director, Legal and Legislative Services, shall determine and communicate to the Affected Member of the Public, within ten business days of such appeal, whether such action or restriction should be upheld, reconsidered or withdrawn in accordance with this Public Conduct Policy and provide the reasons for such determination.

9. Responsibilities

All members of Town Council and Staff are responsible for ensuring their compliance with their respective obligations under this Public Conduct Policy.

Notwithstanding the duties of the CAO under this Public Conduct Policy, the CAO may assign a designate to conduct his or her functions provided for in this Public Conduct Policy.

The Clerk is responsible for ensuring this Public Conduct Policy is reviewed every five years, or at such earlier date as may be required.

10. References and Related Documents

10.1. Trespass to Property Policy