

Municipality of West Elgin

Schedule “A” to By-Law #2023-108

Policy HR- 9.2

Unreasonable, Frivolous or Vexatious Complaints Policy

Effective Date: December 21, 2023

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1. Introduction

The Municipality of West Elgin is committed to providing exemplary service to all residents. The Municipality aims to address service requests and Complaints equitably, comprehensively, and in a timely manner.

Unreasonable Complaints have significant staff time and resource implications for the organization, which impact the Municipality’s ability to deliver excellent customer service for all residents and which may impede staff’s attention to other essential issues.

2. Purpose

This policy contributes to the Municipality’s commitment to service and good governance by addressing service requests and Complaints equitably and efficiently while protecting staff from Unreasonable behaviour. Addressing Complaints equitably and efficiently includes ensuring that municipal resources are not negatively impacted by Unreasonable Complaints. This policy is to be read in conjunction with the Municipality’s Complaint and Public Feedback Policy, By-Law 2018-42, which provides the public with an avenue for the submission and processing of Complaints that do not meet the criteria of this policy. This policy supports other West Elgin policies aimed at ensuring a healthy workplace for staff, which includes HR 9.1 – Harassment and Violence in the Workplace Policy. This policy serves as a guide for Municipality of West Elgin Employees to:

1. identify situations that meet the criteria of Frivolous, Vexatious and/or Unreasonable Complaints;
2. identify the associated actions that may be undertaken in such circumstances; and
3. ensure that the associated actions are applied as fairly and consistently as practicable across the organization.

3. Definitions

CAO means Chief Administrative Officer of the Municipality of West Elgin.

Customer means any person who uses or is affected by Municipal services or who submits a Complaint, and includes residents, visitors, businesses and community groups.

Complaint means an expression of dissatisfaction related to a Municipality of West Elgin program, service, facility, or staff member, where a member of the public believes that the Municipality has not provided a service experience to the Customer's satisfaction at the point of service delivery and a response or resolution is explicitly or implicitly expected. A Complaint can be spoken, written or submitted by another method of communication.

Employee means all full-time, part-time, temporary, seasonal and staff hired on a contract basis for a defined period of time (Planner, Engineers, etc.), of the Municipality, as well as students and volunteers. However, Employee does not mean third-party services engaged by the Municipality, nor any agent thereof.

Harassment or **Harass** means engaging in a course of behaviour, comment, or conduct, whether it occurs inside or outside the work environment, that is or ought reasonably to be known to be unwanted. It includes any definition in policy HR 9.3 – Workplace Harassment and Discrimination, and includes but is not limited to behaviour, conduct or comment that is directed at or is offensive to another person:

- a) on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status, as well as any other grounds under the provisions of the Human Rights Code; or
- b) which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate, or ridicule the recipient.

Request means the act of asking for something to be given or done, such as a request made to the Municipality on behalf of a member of the public for a specific service, or to notify the Municipality that a scheduled service was not provided on time. Examples include: requesting road repairs, missed garbage collection, non-functioning street light, no water service, a potential by-law infraction, etc.

4. Identifying the Conduct or Behaviour

The decision to classify someone's behaviour as Unreasonable or to classify a Request or Complaint as Frivolous or Vexatious could have serious consequences,

including restricting that person's access to Municipal services, facilities, and staff. If an incident presents an immediate threat, contact 9-1-1.

Each case must be determined in light of its own circumstances. In some instances, a decision to classify a Complaint or behaviour under this policy may be as a result of a pattern of conduct. In other circumstances, a single incident may warrant the application of this policy. The definitions and examples below are meant to help staff identify Frivolous, Vexatious, and Unreasonable conduct. These examples are not determinative, nor is the list exhaustive.

Unreasonable means a Complaint/Request that is likely to cause distress or disruption to the Municipality, its Employees, or other members of the public, without any proper or justified cause. This includes behaviour that, because of the nature or frequency of the Customer's contact with the Municipality, negatively affects the ability of staff to deliver equitable, excellent customer service for all residents or to attend to other essential issues. Unreasonable conduct may include:

- repeatedly submitting Complaints about an issue which staff have already investigated and resolved or determined to be baseless;
- repeatedly and baselessly challenging the adequacy of staff response(s) to Requests or Complaints;
- refusing to accept that an issue falls outside of the scope of the Municipality's jurisdiction;
- insisting that a Complaint be resolved while refusing to co-operate with the investigation process;
- deliberately providing false or misleading information or making unfounded allegations regarding a municipal service or staff;
- immediately demanding to speak with a supervisor without giving staff the opportunity to resolve their issue through regular channels and procedures; and,
- sending an excessive volume and frequency of correspondence, to one or more Municipal staff members, through one or more customer service channels without providing a reasonable opportunity for staff to investigate and respond to issues.

Vexatious means a Complaint/Request that is pursued in a manner that is intended to inconvenience, embarrass, or Harass any person. This could occur as an isolated event or as part of a pattern of conduct that amounts to the misuse of Municipal processes and procedures. Vexatious conduct may include:

- a stated intent to cause inconvenience, disruption or annoyance;

- sending a very high volume and frequency of correspondence with the intention of overwhelming Municipal staff;
- intentionally impeding the Municipality's ability to provide effective service or intentionally embarrassing or slandering Municipality staff, including by implication;
- failing to display due regard for any member of staff, including through hostile, abusive or offensive language; fixating on an individual member of staff; or exhibiting behaviours defined in the Municipality's Workplace Violence, Harassment and Discrimination Prevention Policy.
- making Requests containing baseless accusations or Complaints or making unjustified or falsified Complaints about staff who are trying to deal with issues;
- baseless Complaints that employ Municipal processes in an attempt to Harass third parties (for example, falsely reporting a neighbour for property standards violations as an act of retribution); and
- denying or changing prior statements as a matter proceeds.

Frivolous means a Complaint/Request that is trivial in nature or that does not have a proper or justified cause. Frivolous conduct may include:

- filing a Request or Complaint that lacks any serious purpose or value;
- filing a Request where complying with the request would impose a burden on the Municipality that is grossly disproportionate to the benefit conferred to the person and/or community; and
- requesting information that the requester has already seen, or requesting information with the clear intention to reopen issues that have already been considered and concluded.

5. Application and Scope

This policy applies to all Municipal departments. This policy does not apply to:

- Complaints covered by the Code of Conduct for Members of Council and Local Boards;
- Complaints about members of advisory and quasi-judicial committees and local and other boards;
- Any instance where there is a statutory or prescribed provision or process that conflicts with this policy, including processes prescribed by the by-laws and other policies of the Municipality;

- Complaints from Employees about other Employees or working conditions;
- Allegations of violations of Canada's Criminal Code; or
- Where legal action against the Municipality or a Municipal official has been threatened or commenced.

Additionally, this policy does not apply to typical Complaints, which are addressed through the Municipality's Complaint and Public Feedback Policy By-Law 2018-42, which provides the public with an avenue for submitting Complaints and provides a consistent practice for handling Complaints.

This policy only applies to conduct consistent with the behaviours defined in this policy. There is no rigid test or criteria to determine whether a Complaint is Unreasonable, Frivolous or Vexatious. When determining whether a Complaint falls under this policy, staff should consider whether the Request is likely to cause distress, disruption or irritation, and whether it is without proper or justified cause. The decision may be a result of a repeated pattern of conduct, where the Customer has engaged in one or more of the behaviours identified in this policy.

Staff should also consider the importance of the substance of any Request and of the importance of maintaining public access to local government before designating any conduct as Unreasonable, Frivolous or Vexatious under this policy. Decisions to designate should protect the well-being of staff or promote the greater public interest. Responses to designated conduct should be tailored to minimize the negative impacts upon staff, the public interest, and the Customer.

The Municipality may also refuse to address Complaints that fall within this policy, and this decision is at the Municipality's sole discretion.

6. Roles and Responsibilities

Except where conduct or behaviour presents a threat to the well-being of a person, which shall be understood to include Harassing and discriminatory behaviour, staff will not apply this policy until staff have ensured that:

- the Request has been dealt with properly and in line with the relevant internal procedures and statutory guidelines;
- staff have made reasonable efforts to satisfy or resolve the Request; and
- the Customer is not presenting a new Request or new material or information about the situation.

All staff are responsible for maintaining detailed records of their interactions, actions and decisions. These records must justify any action(s) being taken to restrict a person's access to Municipal staff. Records must be retained in accordance with the

Records Retention By-law.

The roles of staff in enforcing this policy are detailed below.

Employees

If an Employee believes that a behaviour, Request, Complaint or series thereof is Unreasonable, Frivolous or Vexatious, the Employee should consult their supervisor or the designate thereof. The Employee should provide supporting records and materials and advise of steps that have been taken to resolve the issue, including, as appropriate:

- the length of time that staff have been in contact with the Customer;
- the history of interactions with the Customer;
- the amount of correspondence that has been exchanged with the Customer;
- the number of Requests that the Customer has brought and the status of each;
- the nature of the Customer's behaviour;
- a list of other departments and staff the Customer may also have contacted;
- any behaviour or conduct that may contravene any law or policy, including Harassment and discrimination;
- the total amount of staff time, whether in detailed form or a reliable estimate, that has been consumed and the impact of the same upon the ability to provide Municipal services to all Customers; and
- the impact of the behaviour of the Customer upon the staff member's well-being.

Supervisors

The applicable Supervisor or their designate is responsible for reviewing the information provided by staff in a timely manner. The Supervisor must determine, considering the input and well-being of staff, the equitable provision of Municipal services, and the rights of the Customer, whether this policy could apply to the behaviour or conduct identified by staff. Before making a determination, Supervisors may conduct a reasonable investigation, including by reviewing documentation or by contacting other staff, if the Customer has contacted multiple departments. The Supervisor will contact the CAO to summarize the situation and propose the restrictions to be applied, if any, under this policy.

CAO

The CAO or their designate will consider Complaints from Supervisors on an individual basis. The final decision to classify a Complaint or a pattern of behaviour as Unreasonable, Frivolous or Vexatious will be made by the CAO or their

designate, in consultation with involved staff members. The CAO or their designate will, independently or jointly with applicable supervisors and/or staff:

- review the information provided by staff;
- review the course of action recommended by the Supervisor;
- as necessary, investigate or direct further investigation and consult with staff or supervisors;
- ensure that the restrictions proposed, the duration thereof, and the review date therefor are reasonable;
- as applicable, notify relevant supervisors and staff of the situation, the resulting restrictions, and the duration thereof;
- ensure that all relevant staff are aware of and trained on this policy; and
- ensure that the person(s) affected by restrictions, if any, are appropriately notified of the restrictions, their duration thereof, and the review date therefor.

7. Restrictions

Where behaviour, conduct, or a Complaint is designated as Unreasonable, Frivolous or Vexatious, restrictions will be tailored to deal with the individual circumstances. Restrictions will promote:

- excellent, efficient and equitable public service;
- staff health, safety, and well-being;
- compliance with applicable laws and policies; and
- access to Local Government services.

To this end, any restrictions applied should minimally impair a Customer's access to local government services while ensuring that such access does not impair the overall quality of services provided to the public and does not adversely impact the well-being of staff. Except where to do so would be counter to the purpose of this or any other policy of the Municipality, restrictions shall be time-limited or shall be subject to periodic review, to ensure that restrictions best balance the priorities of this policy.

Restrictions should be tailored to the circumstances, so the list of restrictions below is not exhaustive. Restrictions may include one or more of the following:

- placing limits on the number and/or duration of contacts with staff per period of time;
- offering a restricted time slot for telephone calls or to respond to emails;

- limiting the Customer to one method of contact (telephone, letter, email, etc.);
- limiting the Customer to a single point of contact designated by the Municipality;
- requiring any contact to take place in the presence of a witness and, if in person, in a suitable location;
- requiring the Customer to make contact only through a third party (e.g. solicitor, counsellor, friend);
- requiring that the Customer produce a fulsome disclosure of documentation or information before proceeding further with a process;
- limiting or regulating the Customer's use of the Municipality's services;
- refusing Customer access to Municipal buildings, except by appointment;
- closing a case or Request;
- informing the Customer that further contact on the matter of the Complaint/Request will not be acknowledged or replied to; or
- other actions, as appropriate.

8. Notice, Appeal, and Review

Except where to do so would be counter to the purpose of this or any other policy of the Municipality, a Customer shall be notified of restrictions impacting their access to Municipal Services and shall have the right to appeal those restrictions.

Notifying the Customer

When the decision has been made to classify conduct, behaviour, Requests or Complaints as Frivolous, Vexatious or Unreasonable in nature, the subject person, where possible and appropriate, will receive written notification from the Municipality. The notification will be delivered in a timely manner and will:

- detail the actions staff have taken under this policy and the basis therefor;
- explain the impact upon the Customer's contacts with the Municipality;
- advise the Customer of the right of appeal under this policy; and
- advise the Customer of the duration of the restrictions or when the restrictions will be reviewed.

Appeal

The Customer will have the ability to make one appeal to the Municipality regarding the decision to impose restrictions. An appeal shall put the basis for the appeal concisely in writing, shall:

1. be addressed to the CAO,
2. be received by the Municipality within 30 days of the date that the Customer was notified of the restrictions; and

3. not be longer than 1,000 words in length, unless otherwise permitted by the CAO.

The CAO will investigate and review the appeal. In doing so, the CAO may, but is not required to, take any reasonable steps, including consulting further with staff, supervisors, and the Customer.

On Appeal, the CAO may confirm, rescind or amend the restrictions. The CAO or their designate will communicate the appeal decision to the Customer in writing within 15 business days of the decision.

In the event that a Complaint cannot be resolved through the process outlined within this policy, the Municipality may direct the Complaint to the Provincial Ombudsman's Office, in which event the Municipality's file will be deemed closed.

Periodic Review of Restrictions

When any restriction is put in place under this policy, a review date will be set, except where to do so would be counter to the purposes of this or another policy. The review date will be set based on the circumstances of the case. The status of the subject person will be reviewed by the relevant supervisor or their designate on or before the review date. Upon review, the supervisor or designate will recommend to the CAO that the restrictions be lifted, amended or removed. The CAO may accept the recommendation of the supervisor or may take any other appropriate action, including investigating further or amending the recommendations.

The subject person shall be notified of the extension and be given another date for review. The Customer will be informed of the outcome of the review, where possible.