



The Corporation of the District of North Cowichan

Respectful Spaces Bylaw, 2020

Bylaw 3796

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WHEREAS the District of North Cowichan wishes to provide an inclusive environment whether it be in municipal facilities or the delivery of municipal services in which all individuals have the right to be free of harassment, bullying, intimidation, violence, and discrimination, and where they are treated with mutual respect and dignity;

NOW THEREFORE the Council of The Corporation of the District of North Cowichan enacts as follows:

Citation

- 1 This Bylaw may be cited as "Respectful Spaces Bylaw No. 3796, 2020".

Severability

- 2 If any provision of this Bylaw is, for any reason, found invalid by a court of competent jurisdiction, the provision must be severed and the remainder of the Bylaw left valid and enforceable.

Definitions

3 In this Bylaw:

“Abusive Language” includes:

- profane, obscene, abusive, threatening, derogatory, or discriminatory language,
- language that may be perceived as inciting violence, or
- words that are intended to or may be perceived to abuse or do violence towards another party’s integrity;

“Charter of Rights and Freedoms” means the *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;

“Chief Administrative Officer” means the municipal officer appointed by Council under section 147 [Chief administrative officer] of the *Community Charter*, SBC 2003 c. 26;

“Code of Conduct” means a document posted in a Municipal Facility that outlines the roles, rights and responsibilities of Municipal Staff and patrons;

“Council” means the Council of The Corporation of the District of North Cowichan;

“Director” means the director of the department of the Municipality involved in the Incident;

“Harassment” means conduct, actions or behaviour that a person knew or reasonably ought to have known would cause another person to be humiliated or intimidated or would be objectionable and unwelcome;

“Human Rights Code” means the *Human Rights Code*, RSBC 1996 c. 210;

“Inappropriate Behaviour” means behaviour that obstructs or interferes with the lawful free use and enjoyment of Municipal Facilities or participation in Municipal Services, programs or events, or that compromises the safety and well-being of others, including Municipal Staff, volunteers and members of the public. For the purposes of this Bylaw, Inappropriate Behaviour includes:

- Abusive Language,
- Vandalism,
- Violence,
- Harassment,
- possession of weapons,
- theft of property, and
- contravention of Codes of Conduct or posted rules;

Inappropriate Behaviour does not include decisions made by Bylaw enforcement staff made in the course of their duties.

“Incident” means any occurrence involving one or more individuals engaging in Inappropriate Behaviour;

“Manager” means a person employed by the Municipality as the manager in the relevant department of the Municipality involved in the Incident;

“Municipality” means The Corporation of the District of North Cowichan;

“Municipal Facility” means facilities owned, leased, rented, allocated, programmed, operated or managed by the Municipality, intended for public or Municipal Staff use. This includes, but is not limited to, parks and trails, recreation facilities, staff offices and workspaces, meeting rooms, community meeting spaces, Municipal Hall, and spaces where Municipal Services are provided, but does not include facilities or portions thereof that are occupied by the RCMP or police department;

“Municipal Services” means all services provided by the Municipality. This includes but is not limited to, utility services, waste collection, bylaw enforcement, building inspections, front counter services, and volunteer events, but does not include the RCMP and other police services and Municipal Staff employed for the purpose of supporting the RCMP and other police services;

“Municipal Staff” means a person employed by the Municipality and includes volunteers and contractors authorized to act on behalf of the Municipality, appointed representatives (committees appointed by Council), and the Mayor and Council members;

“Supervisor” means the person employed by the Municipality as a supervisor in the relevant department of the Municipality involved in the Incident;

“Suspension” means the prohibition of an individual from entering all or specified Municipal Facilities for a specified duration of time;

“Vandalism” means the malicious, wilful or deliberate destruction, damaging or defacing of Municipal Facilities or other Municipal-owned property, including equipment, vehicles, materials and furniture; and,

“Violence” includes:

- throwing articles or objects in a deliberate or aggressive manner that may endanger or cause injury or damage to any persons or property,
- physically aggressive or threatening behaviour,
- threats or attempts to intimidate, and,
- attempts to goad or incite violence.

Interpretation

- 4** In this Bylaw, a reference to the Chief Administrative Officer, Director, Manager, and Supervisor includes a reference to the person appointed as deputy or appointed to act in the place of that person from time to time.

Scope

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- (1) This Bylaw applies to all persons, including members of the public and Municipal Staff. This Bylaw also applies within Municipal Facilities and any space in which Municipal Services are provided and where Municipal programs or events are being held. Allegations of Inappropriate Behaviour originating from Mayor and Council shall be dealt with in accordance with the Council Standards of Conduct Policy.
- (2) This Bylaw applies to Incidents that either originate from the public or from Municipal Staff in their dealings with the public.
- (3) This Bylaw does not apply to RCMP detachment or staff, including Municipal Staff employed for the purpose of supporting the RCMP and other police services.
- (4) This Bylaw does not apply to Incidents between Municipal Staff.

Respectful Behaviour

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- (1) All persons using Municipal Facilities have a duty to:
 - a. treat others with respect, courtesy, fairness, and equality;
 - b. use Municipal Facilities and equipment in a safe and respectful manner; and
 - c. comply with all posted policies and rules regarding the use of Municipal Facilities and equipment.
- (2) A person must not commit or engage in Inappropriate Behaviour in a Municipal Facility.
- (3) A person must not commit or engage in Inappropriate Behaviour in any space in which Municipal Services are provided.

Responding to Incidents

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- (1) When a member of the public witnesses an Incident and wishes to bring the Incident to the attention of the Municipality, they must follow the procedures set out in Appendix A of this Bylaw.
- (2) When Municipal Staff witness or receive a report regarding Inappropriate Behaviour originating from a member(s) of the public, they must follow the procedures set out in Appendix A of this Bylaw.
- (3) When a member of the public witnesses or is subject to Inappropriate Behaviour originating from Municipal Staff and wishes to make a complaint, they must follow the procedures set out in Appendix A.1 of this Bylaw.
- (4) The Manager of Fire and Bylaw Services is authorized to issue a Suspension to any person who is not in compliance with this Bylaw for a period of up to eighteen (18) months or issue a fine of up to \$1000 per Incident, or issue both a suspension and fine. In exercising their discretion under this section, the Manager of Fire and Bylaw

Services must consider the factors set out in Appendix B of this Bylaw.

- (5) A person that is subject to a Suspension under this Bylaw must not access, enter or use any Municipal Facility included in the Suspension, subject to the terms and conditions of the Suspension.
- (6) All Municipal Staff will exercise their power and authority under this Bylaw fairly and equitably and in accordance with the *Human Rights Code*, the *Charter of Rights and Freedoms*, and all other applicable enactments.
- (7) The Municipality is responsible for providing a safe work environment for Municipal Staff, in accordance with the General Safety Regulations of WorkSafeBC and the British Columbia Occupational Health and Safety Act. This includes providing a safe work environment within Council meetings. If the Chief Administrative Officer or the Corporate Officer believes the health or safety of Municipal Staff is at risk in a Council meeting due to Inappropriate Behaviour, either of those senior officials may direct Municipal Staff to leave a Council meeting.

Appeal Process

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- (1) A person subject to a Suspension under this Bylaw may request a review of the decision by the Chief Administrative Officer. Requests for review of a Suspension must be made in writing and must be delivered to the office of the Chief Administrative Officer within ten (10) business days of the date the notice of Suspension was issued.
- (2) In exercising their discretion under this section, the Chief Administrative Officer must consider the factors set out in Appendix B of this Bylaw.
- (3) Appeal hearings will be held by the Chief Administrative Officer in accordance with Appendix C of this Bylaw.
- (4) The decision of the Chief Administrative Officer with regards to a Suspension is final.

Probationary Period and Subsequent Suspensions

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- (1) Once a Suspension has been completed, regardless of the duration, the person subject to the Suspension will be subject to a six (6) month probationary period with the following conditions:
 - a. if an Incident occurs during the probationary period, the Manager of Fire and Bylaw Compliance will impose a subsequent Suspension of equal or greater duration than the initial Suspension;
 - b. a subsequent Suspension issued under this section may be for a duration of up to three (3) years;
 - c. a subsequent Suspension under this section must be issued by the Manager of Fire and Bylaw Services or the Municipality's Legal Counsel in writing; and,

- d. notwithstanding section 8 (1) of this Bylaw, a person subject to a subsequent Suspension under this section is not entitled to appeal that Suspension, regardless of whether the person requested an appeal of the initial Suspension.

Offence and Penalty

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(1) Every person who violates a provision of this Bylaw or who neglects to or refrains from doing anything required to be done by a provision of this Bylaw is guilty of an offence and is liable to the penalties imposed under this Bylaw, and is guilty of a separate offence each day that a violation continues to exist.

(2) Every person who commits an offence is liable on summary conviction to a fine or imprisonment, or to both a fine and imprisonment, not exceeding the maximum allowed by the *Offence Act*.

SCHEDULES

Appendix A – Incident Procedure – Incidents Originating from the Public

Appendix A.1 – Incident Procedure – Incidents Originating from Municipal Staff

Appendix B – Inappropriate Behaviour Enforcement Guidelines

Appendix C – Appeal Procedure

READ a first time on October 7, 2020

READ a second time on October 7, 2020

READ a third time on October 7, 2020

ADOPTED on October 21, 2020

CORPORATE OFFICER

PRESIDING MEMBER

Appendix A – Incident Procedures
Incidents Originating from the Public

1. This procedure is to be followed by members of the public who observe an Incident or by Municipal Staff when Municipal Staff observe an Incident, have reason to believe that an Incident has occurred in a Municipal Facility, or receive a complaint of an Incident by a member or members of the public.
2. The Municipality's primary concern is the safety of members of the public and Municipal Staff. If at any time Municipal Staff feel that the safety of any person is at risk, they will request police assistance. Municipal Staff are not expected to jeopardize their safety or that of others in responding to an Incident.
3. Municipal Staff are expected to act in accordance with this Bylaw fairly and equitably and in accordance with the *Human Rights Code*, the *Charter of Rights and Freedoms*, and all other applicable enactments.
4. Where possible, Municipal Staff will attempt to explain to the person or persons engaging in the Inappropriate Behaviour that their behaviour is unacceptable and ask that the behaviour cease. Municipal Staff may also attempt to de-escalate the situation, where appropriate.
5. If the Inappropriate Behaviour continues, and depending on the severity of the Inappropriate Behaviour, Municipal Staff may require the person to leave the Municipal Facility immediately and the Supervisor may issue the person a temporary suspension of up to ten (10) days. If the person refuses to leave the Municipal Facility, Municipal Staff may request police assistance.
6. If the Incident involves alleged Inappropriate Behaviour by a minor, Municipal Staff will make reasonable attempts to notify the parent(s) or guardian of the minor as soon as reasonably possible following the Incident.
7. As soon as is reasonably possible following the Incident, Municipal Staff will complete an Incident Report which will include the following:
 - a. details of the Incident;
 - b. the names and contact information of the person(s) who engaged in the Inappropriate Behaviour;
 - c. the names and contact information of any witnesses; and,
 - d. any written statement provided by any witnesses.Municipal Staff will submit the completed Incident Report to their Supervisor who will provide a copy to their Manager and to the Director of Human Resources.
8. If the complainant of Inappropriate Behaviour is a member of the public, the

complainant must contact a Manager and explain the Incident in as much detail as possible. The details should include, but are not limited to, the time and location of the Incident. The complainant must also provide as many details of the Inappropriate Behaviour as well as sufficient details for the Municipality to identify the individual(s) engaged in the Inappropriate Behaviour.

9. All Incidents will be reviewed and investigated. When a Manager receives an Incident Report, they will consult with the Director of Human Resources and Corporate Planning. If the Director of Human Resources and Corporate Planning is aware of previous Incidents involving the person, the Director of Human Resources and Corporate Planning may consult with the Municipal Staff who reported or were involved in the previous Incidents. After considering the Incident Report and other available information as well as the Guidelines set out in Appendix B of this Bylaw, the Director of Human Resources and Corporate Planning and Manager will jointly take such action as they consider appropriate in the circumstances, which may include:
 - a. determining that the Incident did not constitute a violation of this Bylaw and take no further action;
 - b. determining that the Incident constituted a violation of this Bylaw but decide that no further action is required in the circumstances;
 - c. determining that the Incident constituted a violation of this Bylaw and take further action, including:
 - i. issuing a written warning letter or letter of expectation;
 - ii. requiring that the person meet with the Manager or the Director, including that the person not enter or use any Municipal Facility until they meet with the Manager or Director; and
 - iii. recommending that the Manager of Fire and Bylaw Services impose a fine, Suspension, or both a fine and a Suspension.
10. If the Director of Human Resources and Corporate Planning and Manager believe that a fine and/or a Suspension is appropriate, they will compile and forward all information gathered during their investigation to the Manager of Fire and Bylaw Services. The Director of Human Resources and Corporate Planning will make recommendations to the Manager of Fire and Bylaw Services regarding the proposed scope and duration of the Suspension and any terms and conditions.
11. The Manager of Fire and Bylaw Services will review the information and take such action as they consider appropriate after considering the factors set out in Appendix B of this Bylaw. The Manager of Fire and Bylaw Services may refuse to impose a fine and/or a Suspension or, if a Suspension is imposed, establish the scope and duration of the Suspension and any terms and conditions.
12. If a Suspension is issued, the Manager of Fire and Bylaw Services or the Municipality's legal counsel must notify the person in writing of the terms and conditions of the Suspension and of their right to appeal under this Bylaw.

13. Once an investigation is completed, the complainant must be notified that a formal investigation has been carried out.
14. If a Suspension is issued, a confidential memorandum regarding the Suspension will also be sent from the Director of Human Resources and Corporate Planning to Municipal Staff for whom the information is necessary for the performance of their duties. Further confidential memoranda may be issued to notify Municipal Staff of changes to or extensions of the Suspension and upon completion of the Suspension.
15. Except where prohibited by law, the Director of Human Resources and Corporate Planning may, pursuant to any information sharing agreements between the Municipality and other local governments, public bodies, RCMP and police, share the confidential memorandum and any information involved in the investigation.
16. The Manager of Fire and Bylaw Services may extend the duration of a Suspension where the person breaches the terms and conditions of the Suspension or where there are further Incidents involving the person.

Appendix A.1 – Incident Procedures
Incidents Originating from Municipal Staff

1. For the purposes of this Appendix:
 “Committee” means the employer of the Respondent, the direct supervisor of the Respondent, and the Director of Human Resources and Corporate Planning or their designate;
 “Employer Decision Report” means a report prepared by the Committee outlining the complaint, the Committee’s findings and decision, and further actions to be taken; and,
 “Respondent” means the member of Municipal Staff who is the subject of the complaint.
2. Inappropriate Behaviour (as defined in this Bylaw) originating from Mayor or Council will be deemed to be a contravention of Section 2 of the Council Standards of Conduct Policy. Complaints that are raised by members of the public about Inappropriate Behaviour originating from Mayor or Council members must be brought forward by the Director of Human Resources and Corporate Planning and the complaint must be reviewed in accordance with section 10 of the Council Standards of Conduct Policy.
3. If a member of the public believes that they have been subject to Inappropriate Behaviour originating from Municipal Staff other than the Mayor or Council members, they will follow the process set out below.
4. A complaint must be made in writing and delivered to the Director of Human Resources and Corporate Planning. Once a formal written complaint of Inappropriate Behaviour is made, the Director of Human Resources and Corporate Planning must review the complaint and decide whether it is appropriate to commence an investigation. Formal Investigations may include the engagement of an external investigator.
5. If a member of the public makes a verbal complaint to a Supervisor or Manager, the Supervisor or Manager must inform the complainant that they must make a written complaint to be delivered to the Director of Human Resources and Corporate Planning. The Supervisor or Manager must advise the Department of Human Resources immediately of any verbal complaint.
6. All persons interviewed by the investigator may be accompanied by a representative (union representative or representative from the Municipality’s Human Resources Department) should they wish to be accompanied. At the conclusion of the investigation, the investigator must document their findings and any recommendations for the resolution of the Inappropriate Behaviour. Findings must be presented to the Committee. The Committee will review the findings and decide, based on the factors

set out in Appendix B of this Bylaw, whether the findings indicate that the Respondent engaged in Inappropriate Behaviour. The Committee must then prepare an Employer Decision Report. The severity and duration of the Inappropriate Behaviour will be considered in determining appropriate corrective action, up to and including dismissal for just cause.

7. A copy of the Employer Decision Report must be provided to the Respondent on a confidential basis. Information collected and retained during the course of the investigation process is confidential and must not be disclosed to a complainant or witnesses except as otherwise may be required by law.
8. Once an investigation is completed, the complainant must be notified that a formal investigation has been carried out.
9. Unionized employees may dispute the Employer Decision Report under the provisions of the appropriate collective agreement under the grievance process.
10. Non-unionized employees may appeal the Employer Decision Report within fifteen (15) days of the Decision to the Chief Administrative Officer. The Chief Administrative Officer (or designate) must review the appeal, determine whether the decision of the Committee to make a finding of Inappropriate Behaviour was reasonable (taking into consideration the factors in Appendix B of this Bylaw), and issue a decision. The Decision of the Chief Administrative Officer (or designate) on the appeal is final.
11. If a complaint is found to be filed for malicious or vexatious purposes, the Director of Human Resources and Corporate Planning may determine that the person making the complaint has engaged in Inappropriate Behaviour under this Bylaw. Complaints filed for malicious or vexatious purposes may include, but are not limited to, complaints regarding decisions of Bylaw enforcement staff which the complainant seeks to overturn.

Appendix B – Inappropriate Behaviours Enforcement Guidelines

In determining the appropriate measures to deal with a contravention of this Bylaw, Municipal Staff will consider the following factors:

1. the nature and severity of the Inappropriate Behaviour;
2. whether the Inappropriate Behaviour was a single or repeated act;
3. whether the person was told that the behaviour was inappropriate and nonetheless continued the behaviour;
4. the impact of the Inappropriate Behaviour on members of the public and Municipal Staff;
5. the person's acknowledgement of wrongdoing; and
6. the person's history of other contraventions.

Appendix C – Appeal Procedure

1. Requests for review of a Suspension under this Bylaw must be made in writing and must be delivered to the office of the Chief Administrative Officer within ten (10) business days.
2. Within ten (10) business days of receiving a request for review under section 8(1) of this Bylaw, the Chief Administrative Officer will notify the person subject to the Suspension of the date for their hearing.
3. The person appointed as the District of North Cowichan's Privacy Officer will provide the person subject to the Suspension with copies of all materials that will be considered by the Chief Administrative Officer a minimum of ten (10) business days prior to the hearing. The materials will be redacted as necessary to comply with the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 and any other applicable enactments.
4. The person subject to the Suspension may attend the hearing and may be accompanied by a representative of their choice, including legal counsel.
5. The Director of Human Resources and Corporate Planning will attend the hearing on behalf of Municipal Staff.
6. The Chief Administrative Officer may request the attendance of any other person at the hearing, including a member of Municipal Staff or Municipal legal counsel.
7. At the hearing, the person subject to the Suspension will have ten (10) minutes to address the Chief Administrative Officer. This time may be extended if deemed necessary by the Chief Administrative Officer due to the complexity of the issues or the severity of the allegations.
8. The Chief Administrative Officer will notify the person subject to the Suspension of their decision in writing within ten (10) business days of the hearing.
9. The decision of the Chief Administrative Officer with regards to a Suspension is final.
10. The Chief Administrative Officer will notify the Mayor and Council of appealed Suspensions.