



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: November 3, 2009
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Meeting Date: January 21, 2010

TO: Standing Committee on City Services and Budgets
FROM: Director, Equal Employment Opportunity Program
SUBJECT: Harassment-Free Workplace Policy

RECOMMENDATION

- A. THAT Council rescind the four existing Sexual Harassment Policies dated 1989/10/05, and adopt in their place, in principle, the Harassment-Free Workplace Policy attached to this report dated November 3, 2009.
- B. THAT Council refer the proposed Harassment-Free Workplace Policy to the Britannia Community Services Society and Ray-Cam Cooperative Association and encourage them to adopt it as policy and inform Council within a period of six months.

CITY MANAGER'S COMMENTS

The City Manager RECOMMENDS approval of the foregoing.

COUNCIL POLICY

That Council rescind the following Policies:

- AE-002-01 Sexual Harassment - General, dated 1989/10/05
- AE-002-02 Sexual Harassment - Prevention, dated 1989/10/05
- AE-002-03 Sexual Harassment - Complaints, dated 1989/10/05
- AE-002-04 Sexual Harassment - Remedies, dated 1989/10/05

and adopt in their place the attached, proposed Harassment-Free Workplace Policy, dated November 3, 2009.

PURPOSE

This Report is submitted to Council to obtain approval of the attached, proposed Harassment-Free Workplace Policy.

BACKGROUND

On October 5, 1989 the City Council approved the "Policy on Sexual Harassment" which was committed to the eradication of sexual harassment from the workplace, and to the maintenance of a work environment free of sexual harassment. The policy was contained in four documents, as described above, and laid out general information, prevention, complaint procedure and the remedies to prevent sexual harassment in the workplace.

A memorandum was subsequently added to the 1989 Policy, in recognition of the City's legal obligation to provide employees with a harassment-free work environment consistent with the provisions of the BC Human Rights Code. The memorandum specified that the same protections and procedures outlined in the Policy on sexual harassment, would be applied to complaints of behaviour related to all protected grounds specified in the B.C. Human Rights Code.

It is timely to reflect developments in human rights law in an updated policy that includes all protected grounds specified in the B.C. Human Rights Code. The proposed Harassment-Free Workplace Policy covers all such protected grounds, being: race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or because that person has been convicted of a criminal or summary conviction offence that is unrelated to the employment or to the intended employment of that person.

The Harassment-Free Workplace Policy also clarifies important principles related to confidentiality, retaliation, false or malicious complaints, and the consequences of harassment. It outlines options available for appropriate complaint resolution and document retention following investigation.

The City of Vancouver is committed to providing a work environment in which all individuals are treated with mutual respect and dignity, and ensure a respectful workplace for all. In addition to the proposed Harassment-Free Workplace Policy, conduct in the workplace is addressed by the City's Code of Conduct, Whistleblowing Policy, and Supplier Code of Conduct. These codes and policies together provide protection for all employees from a variety of forms of harassment and similar misconduct.

DISCUSSION

The Equal Employment Opportunity Program has developed the proposed Harassment-Free Workplace Policy with assistance and support from Human Resources, Legal Services and City Clerk's Departments. All civic unions and associations have been provided a copy of the draft policy and given the opportunity to provide feedback.

The proposed "Harassment-Free Workplace Policy" is attached for Council's review as Appendix A.

As noted above, the policy addresses harassment based on all of the protected grounds specified under BC Human Rights Code, in contrast to the current City policy on Sexual Harassment.

Specifically, the proposed policy includes the following key components:

- Commitment to a workplace culture that reflects the mission and values of the City of Vancouver by fostering a respectful workplace based on mutual respect and dignity;
- Clearly defines and describes harassment under the policy, as well as the scope and application of the policy;
- Ensures that complaints of harassment are appropriately investigated and remedied, as is required by the Human Rights Code and human rights law;
- Establishes a flexible reporting and resolution process for harassment complaints, to facilitate achieving the most appropriate response in a given situation;
- Describes confidentiality standards for those involved in complaint resolution processes, including the employee reporting harassment, witnesses and respondents;
- Protects those reporting harassment in good faith, and witnesses, from retaliation; and
- Discourages abuse of the policy through false or malicious complaints.

In addition to the proposed Harassment-Free Workplace Policy, conduct in the workplace is addressed by the City's Code of Conduct, Whistleblowing Policy, and Supplier Code of Conduct. The City's Code of Conduct covers behaviours that may be unrelated to the 'protected grounds' identified in the Harassment-Free Workplace Policy, and provides that Council officials, City staff, and advisory body members must avoid conduct that is an abuse of power, intimidation, harassment, verbal abuse or adverse treatment. The Whistleblower Policy provides protection from retaliation to those who report serious misconduct in good faith. The Supplier Code of Conduct provides that City suppliers and their sub-contractors will treat City workers with respect and dignity, and ensure City workers are not subjected to any form of physical, sexual, psychological, or verbal harassment or abuse.

Together, the Harassment-Free Workplace Policy, Code of Conduct, Whistleblower Policy and Supplier Code of Conduct provide protection for all employees from a variety of forms of harassment and misconduct, and set out employee rights and responsibilities.

The proposed Harassment-Free Workplace Policy will be made available to all employees and communicated in EEO's staff training and printed materials, in a number of languages.

FINANCIAL IMPLICATIONS

There are no immediate financial implications.

CONCLUSION

In October, 1989, City Council approved the Policy on Sexual Harassment. The policy has been revised and updated to reflect current human rights law and specifically to include all protected grounds in the BC Human Rights Code. It is submitted to Council for approval.

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CITY OF VANCOUVER CORPORATE POLICY

SUBJECT: Harassment-Free Workplace Policy	
CATEGORY: Employment	POLICY NUMBER: AE-002-05

PURPOSE

The City of Vancouver is committed to providing a work environment in which all individuals are treated with mutual respect and dignity.

The City also recognizes that employees have the right to work in an environment that is free from harassment as prohibited by the BC Human Rights Code.

This Policy sets out guidelines for the reporting, investigating and resolving of Complaints of harassment in an effort to ensure a respectful workplace for everyone.

SCOPE

This policy applies to all City employees.

This Policy applies to the workplace itself, and to work-related events. It includes harassment involving City employees that happens away from the workplace or after regular working hours, where the harassment has a negative impact on the workplace.

Harassment of employees by volunteers, members of the public, contractors, Council Officials, advisory body members, and those doing business with the City is also prohibited, and is covered by related City policies and procedures.

DEFINITIONS

Harassment is a form of discrimination, and is prohibited by the BC Human Rights Code. It is defined as behaviour that a reasonable person would find unwelcome, has a negative impact on the workplace, and is related to any of the characteristics which are listed as prohibited grounds of discrimination in the BC Human Rights Code, namely:

- Age
- Ancestry
- Colour
- Criminal or summary conviction offence that is unrelated to employment
- Family Status
- Marital Status
- Physical or Mental Disability
- Place of Origin
- Political belief
- Race
- Religion
- Sex
- Sexual Orientation

(the "Prohibited Grounds").

Harassment can, depending on the seriousness of the behaviour, consist of a single incident or a number of incidents. It can be directed at one person, or it can involve a number of individuals.

Behaviour does not need to be intentional in order to be considered harassment, although intention may be relevant in assessing the severity of the behaviour. Some examples of harassment include, but are not limited to:

- Unwelcome, offensive remarks, jokes slurs, or innuendo related to any of the Prohibited Grounds;
- Displaying or distributing derogatory or offensive pictures, graffiti or other materials related to any of the Prohibited Grounds, including but not limited to racist, sexist, or homophobic materials;
- Refusing to interact or communicate with persons because of any of the Prohibited Grounds;
- Unwelcome, offensive communications related to a Prohibited Ground sent by any means, including email or other electronic transmission;
- Unwelcome, offensive behaviour related to a Prohibited Ground, where tolerance of the behaviour is explicitly or implicitly made a term of employment or a consideration in job-related decisions;
- Unwelcome, offensive behaviour related to a Prohibited Ground that creates an intimidating, hostile, offensive or poisoned workplace environment;
- Unwelcome, offensive comments that are sexual in nature;
- Unwelcome, physical contact, such as touching, patting or pinching.

Harassment under this Policy does not include conduct that a reasonable person would find welcome or neutral. This Policy is not intended to curtail welcome, appropriate workplace interaction. Some examples of conduct that is not harassment include, but are not limited to:

- Welcome, mutually consensual relationships or social invitations that do not involve inappropriate or offensive behaviours, intimidation, explicit or implicit threat of retaliation, or misuse of power;
- The exercise of the City's right to direct the workforce, including supervising, managing and giving appropriate and legitimate performance feedback, coaching, and discipline;
- Bona fide occupational requirements established by the City as contemplated in section 13 subsections 3 and 4 of the BC Human Rights Code.

POLICY STATEMENTS

1 General

City employees shall not be subjected to, and shall not subject another individual to, harassment as it is defined in this policy.

2 Roles and Responsibilities

2.1 The City of Vancouver

The City has the primary responsibility to establish and maintain a work environment free of harassment as defined in this Policy.

2.2 The Equal Employment Opportunity Program (“EEO”)

EEO is mandated by Council to oversee the City’s Harassment-Free Workplace Policy, and provides:

- Informal and formal processes to address concerns of harassment;
- An accessible, impartial resource for all staff;
- Education and support to all staff, including employees, supervisors, and managers, on preventing and addressing harassment.

2.3 Supervisory Staff and Managers

Supervisors, Managers and Department Heads have an essential role in preventing and resolving harassment issues. Their primary responsibilities with respect to harassment are to:

- ensure staff is provided with information about and access to policies and procedures related to harassment;
- model appropriate behaviour;
- monitor the workplace for incidents of harassment; and
- intervene promptly and appropriately when they know, or ought reasonably to know, that harassment is occurring.

2.4 Employees

All employees have a responsibility to refrain from harassment as defined in this Policy.

3 Harassment Complaint Procedures

3.1 General

The City’s procedures for addressing harassment Complaints are designed to be flexible, timely and accessible. The City provides both an informal and formal process to resolve harassment Complaints.

An individual who believes he or she is being harassed (the “Complainant”) may consult an EEO Advisor, who can assess whether the Complaint falls under this Policy and discuss possible courses of action.

Concerns about harassment should be raised as soon as reasonably possible. The time limit for filing a Complaint under this Policy is 6 (six) months from the time of the last alleged incident of discrimination or harassment. Exceptions may be made in extenuating circumstances.

Some of the options available may include:

- the Complainant discussing her or his concerns directly with those involved;
- having an appropriate party assist the Complainant in discussing concerns with those involved. An appropriate party could include a supervisor, manager, department head, human resource consultant, EEO advisor or union representative;

- initiating an “informal” or “formal” resolution process through EEO as outlined below.

EEO may suggest interim measures to be taken during either the informal or formal processes.

3.2 Informal Complaint Resolution

The City strives to provide a wide range of options to resolve Complaints. Informal Complaint resolution may include, but is not limited to: mediation, behavioural guidelines or agreements, apologies or other measures agreed to between the parties and the City Manager or her/his delegate.

3.3 Formal Complaint Resolution

If a Complaint is not resolved informally, or if an individual who believes he or she is experiencing harassment chooses, he or she may make a formal Complaint through EEO. Formal Complaints shall be made in writing to management or EEO. EEO will ensure that assistance in completing a written Complaint is provided, as required.

Formal Complaint investigations are conducted by EEO staff. A formal Complaint investigation is an impartial, fact-finding process. The investigators do not advocate on behalf of, or represent, any party involved in a Complaint.

Formal Complaint investigations cannot be carried out anonymously. The identity of the Complainant and the allegations contained in the Complaint shall be made known to the individual(s) alleged to have engaged in harassment (the “Respondent”). The Respondent shall be provided a full and fair opportunity to respond to the allegations contained in the Complaint. Likewise, the Complainant shall be provided with the response and shall have an opportunity to reply.

At any time during the course of the investigation, the matter may be resolved, so long as the resolution is agreed to by each of the parties and the City Manager or her/his delegate.

Once the formal Complaint investigation is complete, the Complainant, Respondent and the City Manager or her/his delegate shall be notified of the findings of the investigation.

3.4 Other Remedies

None of the procedures described in this Policy prevent a person from pursuing other remedies, such as pursuing a grievance, where applicable, or filing a Complaint with the BC Human Rights Tribunal.

The investigation procedures outlined under this Policy may be suspended at the discretion of EEO until any other remedial processes have been concluded.

3.5 False or Malicious Complaints

If a Complaint is found to be false or brought for malicious purposes, the City may take disciplinary measures against the Complainant, up to and including termination of employment. However, a Complaint that is found to be unsubstantiated or based on mistake may not be considered false or malicious.

4 Retaliation

4.1 General

Retaliation also constitutes a form of discrimination under this Policy, and may form the basis of a separate Complaint.

4.2 Forms of Retaliation

Any form of retaliation or discrimination against an employee because that person initiated a Complaint of harassment, or because that person acted as a witness or otherwise participated in an investigation, may be considered a violation of this Policy. Such action may result in discipline up to and including termination of employment.

4.3 Reporting Retaliation

If an employee believes that he or she has been subjected to retaliation as set out above, that person may report it as outlined under Section 3 of this Policy.

5 Consequences of Harassment

Engaging in harassment or retaliation is serious misconduct and may result in disciplinary action up to and including termination of employment.

It is understood that unionized employees may grieve any disciplinary action under the applicable collective agreement.

6 Confidentiality and Document Retention

Information collected and retained by EEO during the course of an informal or formal harassment resolution process is treated as confidential. During the investigation process, EEO shall limit disclosure of Complaint-related information to that which is necessary to resolve the Complaint.

If, after investigation, a Complaint is not established, no documentation of the Complaint shall be placed on either of the parties' personnel files. However, documentation of the investigation shall be kept in a confidential file separate from the employee's personnel file and maintained by EEO in order to evidence the City's proper investigation of formal Complaints of harassment. Documentation which outlines disciplinary action arising from an investigation shall be placed on an employee's personnel file.

Confidentiality extends to all records relating to Complaints, including but not limited to meetings, interviews and investigation results. Individuals making a Complaint, witnesses and individuals against whom a Complaint has been made are expected to maintain confidentiality. Personal information, including the identities of the Complainant(s) and Respondent(s), shall be protected in accordance with the Freedom of Information and Protection of Privacy Act.

Information collected and retained by EEO may be required to be released by law including release required in court proceedings, arbitration or other legal proceedings.

7 Collective Agreements and Legislation

In the event that any portion of this Policy is inconsistent with a binding City collective agreement or federal or provincial legislation, that portion and only that portion of the Policy shall have no application to the extent of that inconsistency. All other portions of the Policy shall continue in full force and effect.

APPROVAL HISTORY

ISSUED BY: City Manager's Office	APPROVED BY: Council	DATE: 2009/11/03
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