



CITY OF HAMILTON

**CITY MANAGER'S OFFICE
Human Resources Division**

TO: Chair and Members Audit Finance & Administration Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: December 9, 2013	
SUBJECT/REPORT NO: Harassment & Discrimination Prevention Policies HUR13014 (City Wide)	
SUBMITTED BY: Chris Murray, City Manager	PREPARED BY: Helen Hale Tomasik, 905-546-2424 Ext. 4415
SIGNATURE:	

RECOMMENDATION

- (a) That the Personal Harassment Prevention Policy, attached as Appendix "A" to Report HUR13014 be approved;
- (b) That the Harassment and Discrimination Prevention Policy, attached as Appendix "B" to Report HUR13014 be approved; and
- (c) That the Procedure for Resolving Harassment and Discrimination Issues, attached as Appendix "C" to Report HUR13014 be approved.

EXECUTIVE SUMMARY

The City is required to be proactive in creating a workplace that is free of harassment, violence and discrimination. This includes establishing policies, educating all employees on their rights and responsibilities, and having mechanisms in place to handle complaints promptly and effectively.

The City has had a Personal Harassment Prevention Policy, a Harassment and Discrimination Prevention Policy and a Procedure for Resolving Harassment and Discrimination Issues since April 27, 2005 (Report HUR05005). When Bill 168, an Act to amend the *Occupational Health and Safety Act* with respect to violence and harassment in the workplace, came into effect on June 15, 2010 the employer was required to review such policies as often as necessary, but at least annually. In this regard, Senior Management Team reviewed these policies and the accompanying procedure in 2011, 2012 and 2013.

The Policies and the Procedure apply to all employees of the City as well as elected officials. As such, these policies require the review and approval of Council.

Alternatives for Consideration – Not Applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial:

Not applicable

Staffing:

There are two Human Rights Specialists who administer the Personal Harassment Prevention and the Harassment and Discrimination Prevention policies. Their role is to ensure that the employer has taken steps to prevent harassment and discrimination in the workplace and they do so through consultation and case management, education and training on the policies, complaint resolution and complaint investigations. They also manage all City of Hamilton employment-related Applications (complaints) that are submitted to the Human Rights Tribunal of Ontario.

The City is held accountable for any discrimination or harassment that it committed or condoned, and for which it failed to take active steps to prevent. Having trusted Human Rights professionals skilled in matters of harassment and discrimination creates a safe space for employees to resolve matters which they do not feel comfortable surfacing within their immediate work environment. Preventing cases from going directly to the Human Rights Tribunal of Ontario (HRTTO) mitigates the corporation's risk of financial damages awarded for injury to dignity, mental anguish and self-respect, resulting from acts of harassment and discrimination in the workplace. It also prevents negative public exposure, protects the City's image and affords our employees the opportunity to have resolution on discrimination and harassment matters through a confidential respectful workplace process.

Should a harassment or discrimination matter proceed to the HRTO, the City is well served from a due diligence perspective by the consultation, education and alternative dispute resolution mechanisms provided by the Human Rights Specialists. The Human Rights Specialists are also involved in preventing and mitigating cases of harassment and violence in the workplace under Bill 168 of the *Occupational Health & Safety Act* (the new Violence and Harassment sections came into effect on June 15, 2010).

Legal:

Under the *Ontario Human Rights Code*, an employer is required to educate all employees about their rights and responsibilities under the *Code*. Under the *Occupational Health and Safety Act*, an employer is required to create a policy with respect to workplace harassment, and to review policies, as often as necessary, but at least annually. In essence, the City is required to be proactive in creating a workplace that is free of harassment, violence and discrimination. This includes establishing policies, educating all employees on their rights and responsibilities, and having mechanisms in place to handle complaints promptly and effectively.

HISTORICAL BACKGROUND (Chronology of events)

The City has had a Personal Harassment Prevention Policy, a Harassment and Discrimination Prevention Policy and a Procedure for Resolving Harassment and Discrimination Issues since April 27, 2005 (Report HUR05005). When Bill 168, an Act to amend the *Occupational Health and Safety Act* with respect to violence and harassment in the workplace came into effect on June 15, 2010, the employer was required to review such policies as often as necessary, but at least annually.

In this regard, the City Manager and Senior Management Team reviews these policies and the accompanying procedure annually, and recently reviewed an analysis of trends and activities at the City over the last five years (2008-2012). The City is continuing efforts to raise employee awareness and implementing refresher management training on harassment and discrimination prevention to ensure that all management staff has taken the training by end of 2014.

In 2013, the Harassment Prevention Policies were re-formatted to be consistent with more recently written Human Resources policies. The Procedure was expanded to include a more detailed description of the phases of a complaint as well as the role of the Integrity Commissioner with respect to complaints against elected officials.

POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS

The *Integrity Commissioner By-law* should make reference to the Personal Harassment Prevention Policy, the Harassment and Discrimination Prevention Policy, and the Procedure for Resolving Harassment and Discrimination Issues.

The Harassment and Discrimination Prevention Policy and the associated Procedure ensure that individuals with a disability or perceived disability are entitled to work in an environment free from harassment and discrimination. Employees with disabilities are accommodated with the assistance of the Human Rights Specialists and Return to Work Services staff. In this regard, the Harassment and Discrimination Prevention Policy and the associated Procedure are in alignment with the *Accessibility for Ontarians with Disabilities Act*.

RELEVANT CONSULTATION

The policies and the accompanying procedure were reviewed by the Corporate Policy Review Group, Legal Services and an Employment Lawyer, specializing in Human Rights.

Senior Management Team reviewed and approved both Policies and the Procedure for resolving harassment and discrimination issues.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Council first approved the Personal Harassment Prevention Policy and the Harassment and Discrimination Prevention Policy on April 27, 2005, and the Corporate Management Team at the time, approved the Procedure for Resolving Harassment and Discrimination Issues. Since that time, there have been some changes to the *Ontario Human Rights Code* and the provincial adjudication process of human rights complaints, changes to administrative procedures at the City, and the introduction of an Integrity Commissioner. These changes as well as eight years of experience with the policies and procedures culminated in the need for a more comprehensive review of both Policies and the associated Procedures, a process which occurred during the spring and summer of 2013.

Key changes and additions to the Policies and associated Procedures include:

- Reformatting to current policy template used for all other policies
- Inclusion of a Complaint Assessment Phase under Complaint Procedures
- Aligning Procedure with the role of the Integrity Commissioner
- The revised Procedure enables the Executive Director of Human Resources to retain a third party Human Rights Investigator to informally resolve and/or investigate a complaint against an elected official or staff of an elected official. In the case of an investigation of a complaint against an elected official, the findings and recommendations of the third party Human Rights Investigator are presented to the Integrity Commissioner, and are deemed a complaint under the *Integrity Commissioner By-law*. The Integrity Commissioner determines the appropriate sanction and reports accordingly to the General Issues Committee. In the case of a complaint against staff of an elected official, the investigation findings and recommendations are made to the City Manager and Executive Director of Human Resources. If the staff of the elected official is found to have violated any City policy on harassment and discrimination, the City Manager shall report the findings and recommendations to the General Issues Committee. The General Issues Committee will determine the appropriate action, which will then be reported to City Council for ratification.
- Inclusion of a section under the Procedure that addresses harassment involving members of the public

The Policies and the associated Procedures apply to all employees of the City as well as elected officials. As such, these Policies and the Procedure require the review and approval of Council.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Not applicable

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:

Strategic Priority #3

Leadership & Governance

WE work together to ensure we are a government that is respectful towards each other and that the community has confidence and trust in.

Strategic Objective

- 3.2 Build organizational capacity to ensure the City has a skilled workforce that is capable and enabled to deliver its business objectives.
- 3.3 Improve employee engagement.

APPENDICES / SCHEDULES

Appendix “A” to Report HUR13014 – Personal Harassment Prevention Policy

Appendix “B” to Report HUR13014 – Harassment and Discrimination Prevention Policy

Appendix “C” to Report HUR13014 – Procedure for Resolving Harassment & Discrimination Issues

Corporate Human Resources Policy		Content Updated: 2013-10-18
Work Environment		Supersedes Policy: Personal Harassment Prevention Policy (April 27, 2005)
Policy No: HR-62-13		
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PERSONAL HARASSMENT PREVENTION POLICY

(In accordance with the Occupational Health & Safety Act)

POLICY STATEMENT

The City of Hamilton is committed to maintaining a Workplace climate that embodies mutual respect for the dignity and worth of each person. The City shall not condone Personal Harassment of or by any of its Employees, in the Workplace, and at any work-related functions, or in any other work-related circumstances.


In this diverse and equitable Workplace, all Employees will have the opportunity to contribute fully to the City of Hamilton's mission, vision and values and each Employee's unique contribution will be respected.

PURPOSE

Under the *Occupational Health and Safety Act*, the City of Hamilton is required to have a policy for dealing with harassment complaints and a process to handle and investigate harassment complaints. This policy and its associated procedures (Resolving Harassment and Discrimination Issues) are consistent with the City's obligations under the *Occupational Health and Safety Act*.


The intention of this policy and its procedures is to promote a healthy, respectful and supportive Workplace by preventing Personal Harassment from taking place, and where necessary to act upon complaints of such behaviour in the most prompt, fair, and timely manner with due regard to confidentiality for all parties concerned. The most effective element in preventing Personal Harassment is education. To this end, education programs and information sessions will be provided to promote awareness of the issues of Personal Harassment and to foster an environment free of Personal Harassment within the City of Hamilton.


The City of Hamilton has implemented a policy on harassment and discrimination based on the prohibited grounds under the *Ontario Human Rights Code* – see the *Harassment and Discrimination Prevention Policy*. It may provide means for addressing concerns which do not fall within the provisions of the Personal Harassment Prevention Policy. The City also has a *Violence in the Workplace Prevention Policy* that addresses concerns related to Workplace violence. Some Employees may also have rights under collective agreements.

Corporate Human Resources Policy Work Environment	 Hamilton	Content Updated: 2013-10-18 Supersedes Policy: Personal Harassment Prevention Policy (April 27, 2005)
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		This policy defines Personal Harassment and identifies the rights and responsibilities of all Employees including Management.
SCOPE	<p>This policy applies to all Employees of the City of Hamilton, including but not limited to regular, temporary, probationary and contract Employees, and to consultants, volunteers, students and interns. This policy also applies to elected officials.</p> <p>Members of the general public, visitors to City facilities, or individuals conducting business with the City of Hamilton are expected to refrain from Personal Harassment of Employees. If such Personal Harassment occurs, the City will take any reasonable and necessary steps to stop the Personal Harassment to the extent possible, which may include issuing trespass notices, contacting police, and involvement of internal Legal Services etc.</p>	
DEFINITIONS Personal Harassment	<p>The following definitions apply to this Policy:</p> <p>Personal Harassment results from a pattern of inappropriate behaviour or comments that a reasonable person would consider to be offensive or demeaning. Personal Harassment does not violate any of the prohibited grounds outlined in the Ontario <i>Human Rights Code</i>. Personal Harassment can make a person feel uncomfortable, distressed, offended or intimidated. Types of behaviour that may constitute Personal Harassment include, but are not limited to:</p> <ul style="list-style-type: none"> • Ongoing condescending comments or name calling • Repeated offensive gestures or comments • Practical jokes which result in insult or embarrassment • False accusations • Repeatedly excluding or ignoring the victim • Spreading malicious rumours or gossip • Abuse of power or authority which negatively disrupts or prevents the performance of Workplace duties or unduly influence Workplace decisions, or requests to perform duties outside the scope of job requirements such as requests for personal errands • Persistent, excessive or unjustified criticism and constant scrutiny beyond reasonable exercise of supervisory duties • Intimidation • Being coerced to engage in conduct that is not consistent with Workplace expectations of the City of Hamilton. 	

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	<ul style="list-style-type: none"> • Bullying • Actions which create a “Poisoned Work Environment” which is hostile, intimidating or offensive
Bullying	<p>An isolated insult or adverse comment typically does not constitute Personal Harassment.</p> <p>Supervisor or Manager conduct that is consistent with the responsibilities and accountabilities of their role, including: performance management, training, work assignment and discipline, does not constitute Personal Harassment.</p> <p>This is the misuse of power or position to persistently criticize, condemn or openly humiliate an individual, in a manner that undermines their ability. This involves the misuse of power or aggression to control or distress another. The power differential can take various forms, including the exercise of power in numbers, through one’s position etc. The behaviour is often repeated. Bullying can also take many different forms, including physical, verbal, non-verbal, unduly influencing a decision, social isolation or overt exclusion etc.</p>
Complainant	Any person who makes a complaint.
Employee	All Employees of the City of Hamilton, union and non-union including but not limited to, regular, temporary, probationary and contract Employees.
Employer	In accordance with the <i>Occupational Health & Safety Act</i> , means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services.
Frivolous	Characterized by a lack of seriousness or sense; of little or no weight, worth or importance, not worthy of serious notice.
Management	Any individual responsible for leading or directing the work of others, including but not limited to elected officials (when in a supervisory relationship with City Employees), the City Manager, General Managers, Executive Directors, Directors, Managers,

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<p>Poisoned Work Environment</p> <p>Respondent</p> <p>Trivial</p> <p>Vexatious</p> <p>Workplace</p>	<p>Supervisors and team leaders. These individuals are considered a part of the “directing mind” of the organization and the City of Hamilton could be held liable by a court or tribunal if these individuals do nothing to prevent and stop Personal Harassment in the Workplace.</p> <p>A work environment in which inappropriate comments, behavior, or the display of offensive material has an adverse impact on an individual or a group. The offending behaviour does not need to be directed towards an individual, but may have an adverse impact beyond the original incident. The adverse impact can include psychological suffering. A Poisoned Work Environment may result from a pattern of events or a single, serious remark or action.</p> <p>Any person who is the subject of a complaint (i.e. a complaint is made against them).</p> <p>Of very little importance or value, insignificant.</p> <p>Conduct that is inappropriate, unnecessary, and that a reasonable person would consider to be offensive, upsetting, distressing, demeaning or would make a person uncomfortable.</p> <p>Any building or part of a building in which one or more Employees work, including Employee eating, changing and lounge areas, and any vehicle or conveyance, or any area including outside worksites, where Employees perform their duties (construction site, open field, parking lot, road, park). A workplace also includes any work-related function or circumstances. In some instances, harassing or discriminatory behaviour which occurs outside of the physical Workplace and/or adversely affects relationships in the work environment may be covered under this policy (e.g., work-sanctioned social functions, conferences, <i>etcetera</i>).</p>	
<p>TERMS & CONDITIONS</p> <p>1. Complaints</p>	<p>The following terms and conditions apply to this Policy:</p> <p>Complainants and Respondents have the right to confidential, unbiased advice from the Human Rights Specialist for the City of Hamilton.</p> <p>The Procedures (<i>Resolving Harassment and Discrimination Issues</i>), outline the steps for handling of complaints, including the following options:</p> <ul style="list-style-type: none"> • Complaint to the City of Hamilton, through an Employee’s 	

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<p>2. Confidentiality</p> <p>3. Reprisal</p> <p>4. Trivial, Frivolous or Vexatious Complaints</p> <p>5. Procedural Fairness</p>	<p>supervisor</p> <ul style="list-style-type: none"> • Complaint directly to the Human Rights Specialist in the Human Resources Department • In consultation with the Human Rights Specialist and Labour Relations, filing of a grievance for those Employees covered under a collective agreement • Complaint to Police if a criminal act has occurred. <p>The City of Hamilton will make every reasonable effort to maintain confidentiality for Employees involved in Personal Harassment complaints or incidents. Confidentiality extends to all records relating to complaints, including but not limited to meetings, interviews and investigation results. Breaches of confidentiality may be subject to appropriate disciplinary action. Complainants, Respondents and witnesses will be advised to maintain confidentiality concerning complaints or incidents. Any record of discipline which occurs as a result of a complaint will be included in the disciplined Employee's file. However, all records are subject to the provisions of the <i>Municipal Freedom of Information and Protection of Privacy Act</i> and may be subject to disclosure under the Act or to a court of law.</p> <p>Any form of retaliation against a Complainant or a witness will be considered a serious violation of this policy and will not be tolerated. Such retaliatory actions may be subject to disciplinary action up to and including termination of employment.</p> <p>The City of Hamilton prohibits complaints that are Trivial, Frivolous, Vexatious or made in bad faith. Any Employee found to have lodged such a complaint may be subject to appropriate disciplinary action up to and including termination of employment.</p> <p>The rules of procedural fairness govern all activities occurring under this policy.</p>	
<p>RESPONSIBILITIES</p> <p>Shared Responsibility</p>	<p>All Employees have the right to work in a healthy, respectful and supportive work environment that is free from Personal Harassment, and all Employees share the responsibility to support a harassment-free Workplace. The particular responsibilities of the Employer (City of Hamilton), Management and non-Management</p>	

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Employer Responsibility

Employees are specified below.


- Promote a healthy, respectful, and supportive work environment.
- Ensure information and instruction on the content of a harassment prevention program is shared with all Employees.
- Create an environment that encourages the reporting of all incidents of Personal Harassment.
- Provide a process to handle and investigate Personal Harassment complaints in the most effective, fair and timely manner, given the circumstances.


Management Responsibility

Management is responsible for promoting a Workplace that is healthy, respectful and supportive and for intervening if harassment occurs. They must ensure that Personal Harassment is not tolerated, ignored or condoned.

Management is responsible for not only their own actions, but also for dealing with the actions of Employees under their supervision. The following are actions which Management must undertake to prevent Personal Harassment and to address perceived harassment or complaints by Employees that are being harassed.

- Set a good example by never engaging in, tolerating or condoning harassment.
- Make all reasonable efforts to protect Employees from harassment.
- Consult with the Human Rights Specialist on all matters that may pertain to this policy.
- If harassment is suspected, or if an Employee complains that he or she is being harassed, take action in accordance with this policy and the associated procedures (*Resolving Harassment and Discrimination Issues*).
- Consult with the Human Rights Specialist as soon as possible, upon learning or suspecting that harassment may be occurring. In consultation with the Human Rights Specialist, Management must approach an Employee if harassment is suspected because some Employees may be embarrassed and/or reluctant to complain.
- Respond immediately to any harassment complaints, by contacting the Human Rights Specialist. In most cases, only the Human Rights Specialist can formally investigate a Personal Harassment complaint (see the associated procedures – *Resolving Harassment and Discrimination Issues*). Management that are aware of Personal Harassment

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Employee Responsibility (including Management)	<p>and do not take corrective action, in consultation with the Human Rights Specialist, may be subject to disciplinary action up to and including termination of employment.</p> <ul style="list-style-type: none"> ○ Take remedial action with Employees who violate this policy, including disciplinary action, training, education, or other actions as deemed appropriate given the circumstances. <p>Employees share in the responsibility to maintain a work environment that is healthy, respectful and supportive.</p> <ul style="list-style-type: none"> ○ Do not engage in any behaviour that is or may be perceived as harassment. ○ Report incidents of harassment or retaliation (reprisal) to Supervisor or Manager, or to the Human Rights Specialist in Human Resources. ○ Co-operate fully in any attempts to resolve a complaint and co-operate fully in the investigation of any complaint. <p>Any Employee who refuses to participate in an investigation or the resolution of a complaint, or who knowingly or recklessly makes a false statement or gives false or misleading information, will be subject to disciplinary action, up to and including, termination.</p>	
COMPLIANCE	<p>Any Employee who is found to have violated this Personal Harassment Prevention Policy may be disciplined according to the severity of the actions, up to and including termination of employment.</p>	
RELATED DOCUMENTS	<p>The following related documents are referenced in this Policy:</p> <ul style="list-style-type: none"> • <i>Harassment and Discrimination Prevention Policy</i> • <i>Violence in the Workplace Prevention Policy</i> • <i>Resolving Harassment and Discrimination Issues Procedures</i> • <i>Occupational Health and Safety Act</i> • <i>Municipal Freedom of Information and Protection of Privacy Act</i> • <i>Ontario Human Rights Code</i> <p>Contact: For more information on this Policy, contact a Human Rights Specialist in Human Resources, City Manager's Office.</p>	
HISTORY	<p>This Policy replaces previous Personal Harassment Prevention Policy, approved by Council on April 27, 2005 (Report HUR05005).</p> <p>The Corporate Policy Review Group and an Employment Lawyer, specializing in Human Rights, were consulted in the revisions made</p>	

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	to this Policy. This Policy was reviewed by Senior Management Team 2013-06-28, updated 2013-10-18, and approved by SMT 2013-10-24. Approved by Council of the City of Hamilton 2013-MM-DD	

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HARASSMENT AND DISCRIMINATION PREVENTION POLICY

(in accordance with the Ontario Human Rights Code and Occupational Health & Safety Act)


POLICY STATEMENT

The City of Hamilton is committed to maintaining an inclusive Workplace climate that promotes mutual respect for the dignity and worth of each person. In this diverse and equitable Workplace, all Employees will have the opportunity to contribute fully to the City of Hamilton's mission, vision and values, and each Employee's unique contribution will be respected.

Employees of the City of Hamilton are entitled to work in an environment free from Harassment and Discrimination, including Sexual Harassment that is based on the **prohibited grounds** under the Ontario *Human Rights Code*, which includes:


- Race
- Sex or gender (including pregnancy)
- Colour
- Disability or perceived disability (including mental or physical illness or injuries, and some addictions)
- Ancestry
- Sexual orientation
- Place of origin (where one was born)
- Age
- Ethnic origin
- Marital status (includes same sex partnership status)
- Citizenship
- Family status
- Creed (religion)
- Gender Identity
- Gender Expression
- Record of offence, for which a pardon has been granted (in employment only)
- Receipt of public assistance (in housing/accommodation only)


The City prohibits Harassment or Discrimination of or by any of its Employees, in the Workplace, or at any work-related and/or staff social functions, or in any other work-related circumstances. The City of Hamilton will refrain from any actions that contribute to Harassment and/or Discrimination in its Workplace. Discrimination, Harassment and Sexual Harassment are violations of the Ontario *Human Rights Code*, upon which this policy is based.


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PURPOSE	<p>The intention of this policy and its procedures is to prevent Discrimination and Harassment from taking place, and where necessary, to act upon complaints of such behaviour promptly, fairly, judiciously and with due regard to confidentiality for everyone involved. The most effective element in preventing Harassment and Discrimination is education. To this end, education programs and information sessions are provided to promote awareness of human rights and to foster an environment free of Discrimination and Harassment within the City of Hamilton.</p> <p>The City of Hamilton has implemented a policy on Personal Harassment in addition to this policy on Harassment and Discrimination. The <i>Personal Harassment Prevention Policy</i> may provide means for addressing concerns which are not covered by the Harassment and Discrimination Prevention Policy. The City also has a <i>Workplace Violence Prevention Policy</i> that addresses concerns related to Workplace violence. Some Employees may also have rights under collective agreements. Any individual may approach the Human Rights Tribunal of Ontario, should he/she desire.</p> <p>This policy defines “Harassment”, “Sexual Harassment” and “Discrimination” and identifies the rights and responsibilities of all Employees, including Management.</p>	
SCOPE	<p>This policy applies to all Employees of the Employer (City of Hamilton), including but not limited to regular, temporary, contract and probationary Employees, and to contractors, consultants, volunteers, students, interns as well as applicants for employment. This policy also applies to elected officials.</p> <p>Members of the general public, visitors to City facilities, and individuals conducting business with the City of Hamilton, are expected to refrain from Harassment and Discrimination against Employees. If such Harassment or Discrimination occurs, the City will take any reasonable and necessary steps to ensure a Workplace free from Harassment and Discrimination to the extent possible, which may include issuing trespass notices, contacting police, and involvement of Legal Services etc.</p>	

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DEFINITIONS	
Abuse of Authority	An individual's improper use of power or authority to intimidate, threaten or coerce an individual in a manner that is not consistent with City policies. Abuse of Authority must be linked to prohibited grounds as identified in the Ontario <i>Human Rights Code</i> to fall under this policy.
Complainant	Any person who makes a complaint.
Discrimination	Discrimination means differential treatment of an individual or group of individuals which is based, in whole or in part, on one or more of the prohibited grounds of Discrimination and which thus has an adverse impact on the individual or group of individuals. Discrimination may be intentional or unintentional, direct or indirect.
Employee	All Employees of the City of Hamilton, union and non-union including but not limited to, regular, temporary, probationary and contract Employees.
Employer	In accordance with the <i>Occupational Health & Safety Act</i> , means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services.
Frivolous	Characterized by a lack of seriousness or sense; of little or no weight, worth or importance, not worthy of serious notice.
Harassment	One or a series of Vexatious comments or instances of conduct that is known or ought reasonably to be known to be unwelcome or unwanted. "Vexatious" comment or conduct is a comment or conduct that is inappropriate, unnecessary, and one that a reasonable person would consider to be offensive, upsetting, distressing, demeaning, or would make a person uncomfortable. This comment or conduct may be offensive, intimidating, hostile or inappropriate, based on the prohibited grounds set out in the Ontario <i>Human Rights Code</i> . Refer to the <i>Personal Harassment Prevention Policy</i> for Harassment that is not based on the prohibited grounds of the Ontario <i>Human Rights Code</i> .

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Management	<p>Any individual responsible for directing the work of others, including but not limited to elected officials (when in a supervisory relationship with City Employees), the City Manager, General Managers, Executive Directors, Directors, Managers, Supervisors, and team leaders. These individuals are considered a part of the “directing mind” of the organization and the City of Hamilton could be held liable by a court or tribunal if these individuals violate the Code themselves or do nothing to prevent and stop Harassment or Discrimination in the Workplace.</p>	
Poisoned Work Environment	<p>Is a work environment where inappropriate comments, behaviour or the display of offensive material has an adverse impact on an individual or a group. The offending behaviour does not need to be directed towards an individual, but may have an adverse impact in the Workplace that goes beyond the original incident. The adverse impact can include psychological suffering. A Poisoned Work Environment may result from a pattern of events or a single, serious remark or action.</p>	
Respondent	<p>Any person who is the subject of a complaint (ie. a complaint is made against them).</p>	
Sexual Harassment	<p>Unwanted or unwelcome actions or comments of a sexual or gender-related nature. Sexual Harassment does not have to be sexually related. Stereotypical comments or actions about one gender or the other can be a form of Sexual Harassment. Sexual Harassment happens most often to women, but does happen to men or between members of the same sex. Usually Sexual Harassment is a pattern of behaviour that occurs over a period of time. However a single incident can be serious enough to be considered Sexual Harassment.</p>	
Adverse Effect Harassment/ Discrimination	<p>Policies, practices, procedures, actions or inactions that appear neutral, but have an adverse impact on persons identifiable on a prohibited ground set out in the Ontario <i>Human Rights Code</i>.</p>	
Systemic Discrimination	<p>Is similar to adverse effect discrimination but arises out of long-standing stereotypes and value assumptions resulting in discriminatory effects which are more subtle in appearance. In some cases the action/decision may appear to be justified but in fact relies on stereotypes/value assumptions.</p>	
Trivial	<p>Of very little importance or value; insignificant.</p>	

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Vexatious Workplace	<p>Conduct that is inappropriate, unnecessary, and that a reasonable person would consider to be offensive, upsetting, distressing, demeaning or would make a person uncomfortable.</p> <p>Any building or part of a building in which one or more Employees work, including Employee eating, changing and lounge areas, and any vehicle or conveyance, or any area including outside worksites, where Employees perform their duties (construction site, open field, parking lot, road, park). A workplace also includes any work-related function or circumstances. In some instances, harassing or discriminatory behaviour which occurs outside of the physical Workplace and/or adversely affects relationships in the work environment may be covered under this policy (e.g., work-sanctioned social functions, conferences, <i>etcetera</i>).</p>	
TERMS & CONDITIONS 1. Discriminatory or Harassing Behaviours	<p>The following terms and conditions apply to this Policy:</p> <p>Discriminatory or harassing behaviour results from actions directed at specific individuals or groups, which are unwelcome or unwanted; or, may be actions which are not directed at a particular individual, but have created a “Poisoned Work Environment” which is hostile, intimidating or offensive. To be covered under this policy, the harassing or discriminatory behaviours must be linked to one or more of the prohibited grounds.</p> <p>Examples of discriminatory or harassing behaviours include, but are not limited to:</p> <ul style="list-style-type: none"> • Racial or ethnic slurs • Written or verbal abuse or threats based on a prohibited ground • Unwelcome remarks, jokes, nicknames, taunts, suggestions related to a person’s body, attire, age, marital status, sex or gender, ethnic or racial origin, religion, disabilities, sexual orientation, or any prohibited grounds • Practical jokes related to a prohibited ground which result in embarrassment or insult or negatively affect work performance • Abuse of Authority which undermines performance or threatens careers, based on a prohibited ground • Vandalism of personal property (if the employee is targeted because he/she is identifiable on a prohibited ground) 	

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- Displays of racist or other offensive or derogatory material
- Derogatory cartoons or graffiti based on a prohibited ground
- Patronizing or condescending behaviour or language which reinforces stereotypes and undermines self-respect
- Inappropriate references to racist organizations or individuals
- Accessing, displaying, transmitting or storing (including on the City's technology systems, including computer network etc.) material which violates any Canadian federal or provincial law or City by-law or directive, or is harassing, discriminatory, or obscene and conducive to a Poisoned Work Environment. (See City of Hamilton Computer Acceptable Use Policy).

Examples of **sexual harassing behaviours** include but are not limited to:


- Unwanted touching or patting
- Sexually suggestive or obscene remarks or gestures
- Leering (suggestive staring) at a person's body
- Display of sexually offensive material
- Making sexual requests or suggestions
- Unwelcome sexual flirtations, advances, propositions
- Sexual assault
- Sexist jokes causing embarrassment or offence, told or carried out after the joker has been advised that they are embarrassing or offensive, or that is by their nature, clearly embarrassing or offensive.
- Derogatory or degrading remarks directed toward members of one sex or sexual orientation
- Verbal abuse or threats of a sexual nature.

2. Complaints

Complainants and Respondents have the right to confidential, unbiased advice from the Human Rights Specialist for the City of Hamilton.

The Procedures (Resolving Harassment and Discrimination Issues) outline the steps for handling of complaints, including the following options:

- Complaint to the City of Hamilton, through an Employee's Supervisor
- Complaint directly to the Human Rights Specialist in Human Resources

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<p>3. Confidentiality</p> <p>4. Procedural Fairness</p> <p>5. Reprisal</p> <p>6. Trivial, Frivolous/ Vexatious Complaints</p>	<ul style="list-style-type: none"> • Complaint to the Human Rights Tribunal of Ontario • Filing of a grievance for those Employees covered under a collective agreement • Complaint to Police if a criminal act has occurred. <p>The City of Hamilton will make every reasonable effort to maintain confidentiality for Employees involved in Harassment and Discrimination complaints or incidents. Confidentiality extends to all records relating to complaints, including but not limited to meetings, interviews and investigation results. Breaches of confidentiality may be subject to appropriate disciplinary action. Complainants, Respondents and witnesses will be advised to maintain confidentiality concerning complaints or incidents. Any record of discipline which occurs as a result of a complaint will be included in the disciplined Employee's file. However, all records are subject to the provisions of the <i>Municipal Freedom of Information and Protection of Privacy Act</i> and may be subject to disclosure under the Act or to a court of law.</p> <p>The rules of procedural fairness govern all activities occurring under this policy.</p> <p>Any form of retaliation against a Complainant or a witness will be considered a serious violation of this policy and will not be tolerated. Such retaliatory actions may be subject to disciplinary action up to and including termination of employment.</p> <p>The City of Hamilton prohibits complaints that are trivial, frivolous, vexatious or made in bad faith. Any Employee found to have lodged such a complaint may be subject to appropriate disciplinary action, up to and including dismissal.</p>	
<p>RESPONSIBILITIES</p> <p>Shared Responsibility (All Employees)</p>	<p>All Employees have the right to work in an environment free from Harassment and Discrimination. All Employees share the responsibility to support human rights and equality. The particular responsibilities of the Employer, Management and non- Management Employees are specified below.</p> <p>Employees share in the responsibility to ensure that their work environment is free from Harassment and Discrimination.</p>	

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Employees must not engage in any behaviour or comments that are or may be perceived as Harassment or Discrimination. Employees are strongly encouraged to report incidents of Harassment, Discrimination, or Reprisal to their Supervisors or Managers or to the Human Rights Specialist in Human Resources.

It is the responsibility of every Employee to co-operate fully in any attempts to resolve a complaint and to co-operate fully in the investigation of any complaint. Any Employee who refuses to participate in an investigation or the resolution of a complaint, or who knowingly or recklessly makes a false statement or gives false or misleading information, will be subject to disciplinary action up to and including termination of employment.

Employer Responsibility

- Provide a Workplace free from Harassment and Discrimination (including Sexual Harassment), that is based on the prohibited grounds under the Ontario *Human Rights Code*.
- Ensure corporate policies and procedures comply with the Ontario *Human Rights Code*.
- Provide Human Rights awareness education to all Employees.
- Create an environment that encourages the reporting of all incidents of Harassment and Discrimination.
- Provide a process to handle and investigate Harassment and Discrimination complaints in the most effective, fair and timely manner, given the circumstances.


Management Responsibility


Management is responsible for providing a Workplace that is free of Harassment and Discrimination, and for intervening if Harassment or Discrimination occurs. They must ensure that Harassment and Discrimination are not tolerated, ignored or condoned.


Management is responsible for not only their own actions, but also for dealing with the actions of staff under their supervision. In order to prevent Harassment and Discrimination, address perceived Harassment and Discrimination, and to address Employee complaints with respect to Discrimination or Harassment on the basis of the prohibited grounds under the Ontario *Human Rights Code*,

Management will undertake the following actions:


- Set a good example by never engaging in, tolerating or

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	<p>condoning Harassment or Discrimination.</p> <ul style="list-style-type: none"> ○ Make all reasonable efforts possible to protect Employees from Harassment and Discrimination. ○ Consult with the Human Rights Specialist on all matters that may pertain to this policy. ○ If Harassment or Discrimination is suspected, or if an Employee complains that he or she is being harassed or discriminated against, action must be taken in accordance with this policy and the associated procedures (<i>Resolving Harassment & Discrimination Issues</i>). Accordingly, Management must consult with the Human Rights Specialist as soon as possible, upon learning or suspecting that Harassment or Discrimination may be occurring. In consultation with the Human Rights Specialist, Management must approach an Employee if Harassment or Discrimination is suspected because some Employees may be embarrassed and/or reluctant to complain. ○ Respond immediately to any Harassment or Discrimination complaints by contacting the Human Rights Specialist. Only the Human Rights Specialist may formally investigate a Harassment or Discrimination Complaint (see the associated procedures – <i>Resolving Harassment and Discrimination Issues</i>). Management that are aware of Harassment or Discrimination and do not take corrective action in consultation with the Human Rights Specialist, may be subject to disciplinary action, up to and including termination of employment. ○ In consultation with the Human Rights Specialist/Labour Relations, take remedial action with Employees who violate this policy, including disciplinary action, training, education or any other action deemed appropriate given the circumstances. 	
COMPLIANCE	Any Employee who is found to have violated this Harassment and Discrimination Prevention Policy may be disciplined according to the severity of the actions, up to and including termination of employment.	
RELATED DOCUMENTS	The following related documents are referenced in this Policy: <ul style="list-style-type: none"> • <i>Personal Harassment Prevention Policy</i> 	

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	<ul style="list-style-type: none"> • <i>Violence in the Workplace Prevention Policy</i> • <i>Resolving Harassment and Discrimination Issues Procedures</i> • <i>Occupational Health and Safety Act</i> • <i>Municipal Freedom of Information and Protection of Privacy Act</i> • <i>Ontario Human Rights Code</i> <p>Contact: For more information on this Policy, contact a Human Rights Specialist in Human Resources, City Manager's Office.</p>	
HISTORY	<p>This Policy replaces previous Harassment and Discrimination Policy, approved by Council on April 27 2005 (Report HUR05005).</p> <p>The Corporate Policy Review Group and an Employment Lawyer, specializing in Human Rights, were consulted in the revisions made to this Policy.</p> <p>This Policy was reviewed by Senior Management Team 2013-06-28, updated 2013-10-18, and approved by SMT 2013 -10-24</p> <p>Approved by Council of the City of Hamilton 2013-MM-DD</p>	


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<i>Procedure for Resolving Harassment & Discrimination Issues</i>	
PURPOSE	This Procedure outlines steps to be taken to address issues of harassment and/or discrimination by employees of the City of Hamilton. They are in accordance with the <i>Harassment and Discrimination Prevention Policy</i> and the <i>Personal Harassment Prevention Policy</i> . Please refer to these policies for further information.
SCOPE	This Procedure applies to all Employees of the City of Hamilton, including but not limited to regular, temporary, probationary and contract Employees, and to consultants, volunteers, students and interns. This Procedure also applies to elected officials.
ROLES & RESPONSIBILITIES Employee	<p>Any Employee who has a complaint alleging violation of either, the <i>Harassment and Discrimination Prevention Policy</i> or the <i>Personal Harassment Prevention Policy</i> is encouraged to attempt the following before a formal complaint is filed;</p> <ul style="list-style-type: none"> ○ if possible, make your disapproval known to the person who is causing the offence and ○ ask that all offensive behaviour stop (If an Employee approaches you in this regard it is expected that you will make all reasonable efforts to resolve the matter); and/or ○ discuss concerns with your immediate Supervisor or another member of management; and/or ○ seek advice from a union representative (where applicable); and/or ○ contact the Human Rights Specialist in Human Resources for advice/consultation even if there is no intent to file a complaint. ○ Do not discuss the alleged harassment or discrimination or intent to file a complaint with other co-workers, as this could be a potential breach of the Harassment Prevention Policies. <p>Where possible, Employees who feel that they have been subjected to Harassment or Discrimination should maintain a written record of the nature of the alleged Harassment, date(s), time(s), behaviour, impact and list of witness(es).</p>

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	<p>If the Harassment or Discrimination continues, or the Complainant is uncomfortable speaking to the person who is causing offence, or to his/her own Supervisor or another member of management, the Complainant may bring the matter to the attention of the Human Rights Specialist as a complaint (see Complaint Procedures for next steps).</p>
Human Rights Specialist	<p>The Human Rights Specialist works in Human Resources and acts as an impartial counsellor and advisor to any City Employee (including Management representatives). The Human Rights Specialist maintains a fair and unbiased attitude to all complaints, and to all those involved in complaints, at all times. The Human Rights Specialist is responsible for providing education and information concerning all forms of Harassment and Discrimination, initiating efforts to resolve complaints, and investigating complaints.</p>
Manager/Supervisor	<p>A Manager/Supervisor who receives a complaint, whether in writing or not, must immediately contact the Human Rights Specialist, preserving anonymity (as far as possible) for the Complainant if he/she so requests. The Human Rights Specialist may suggest any of the following steps be taken by management:</p> <ul style="list-style-type: none"> ○ take immediate action in the event of a real or potential threat to personal safety; and/or ○ provide a copy of the policy and procedures to the Complainant to ensure awareness of the options under the policy, including protection from reprisal; and/or ○ provide contact information (name, telephone number, office location) of the Human Rights Specialist to the Complainant.
COMPLAINT PROCEDURES	<p>The City’s complaint procedures are intended to be a timely forum to address harassment and discrimination complaints when no other avenues of recourse are being actively pursued to resolve the complaint. Any costs incurred by the parties during an investigation (legal, travel, etc.) are their own responsibility.</p>

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<p>1. Complaint Assessment Phase</p>	<p>If the Complainant is also a unionized Employee, it is incumbent on him/her to select either the grievance process or the complaint procedures outlined in this document. In certain circumstances, the Human Rights Specialist and the Labour Relations Officer or other appropriate Human Resources staff will work in coordination to resolve a matter.</p> <p>Once a complaint has been received, the Human Rights Specialist shall assess the complaint to determine appropriate next steps. This may involve a preliminary fact finding process to ascertain:</p> <ul style="list-style-type: none"> • Type of behaviour complained about and whether it is covered under the Harassment/Discrimination prevention policies or procedure • Severity of the situation • Identification of parties to make initial inquiries with (i.e. Complainant, Respondent, Management) • Whether other initial steps need to be taken (i.e. Police involvement, involvement of Health, Safety and Wellness Specialist, separation of parties to the complaint etc.) • Whether or not there is a need to intervene further on an informal basis or to investigate <p>At any point during the Assessment Phase it may be determined by the Human Rights Specialist that no intervention from Human Resources is required or that an investigation into the matter is not required. The Human Rights Specialist has discretion to decide not to intervene or investigate or may discontinue an intervention or investigation, or may refuse to take action on any complaint in situations where:</p> <ul style="list-style-type: none"> • the complaint is made more than one year after the date of the last incident of harassment or discrimination; • the complaint is determined to be trivial, frivolous, vexatious or made in bad faith; • the actions complained of have also been the subject of criminal charges; • the action(s) complained of do not fall within the definitions of Harassment and Discrimination or personal harassment as defined in the Harassment and Discrimination
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<p>2. Complaint Informal Resolution Phase</p>	<p>Prevention Policy and the Personal Harassment Prevention Policy;</p> <ul style="list-style-type: none"> • the individual making the complaint is not adversely affected; • an adequate remedy already exists; • the issue is most appropriately addressed by another area of the organization; • another complaint avenue has been pursued (such as grievance process or Human Rights Tribunal of Ontario); • having regard to all the circumstances, further investigation of the matter is deemed unnecessary <p>Wherever possible and appropriate, the Human Rights Specialist will attempt to facilitate an informal resolution of complaints under the Harassment and Discrimination Prevention Policy and the Personal Harassment Prevention Policy, before a formal investigation. Depending upon the circumstances or the Complainant’s desired outcome, the Human Rights Specialist may pursue informal resolution without receiving a written complaint and/or without informing the Respondent. The Human Rights Specialist may refuse to take action on any Personal Harassment complaint where the Complainant refuses to participate in informal resolution.</p> <p>The goal of many Employees who seek assistance is to stop the offending behaviour. Informal resolution facilitated by the Human Rights Specialist can often be effective in addressing unwanted comments or conduct. Each situation is unique and creativity may be necessary in devising options for informal resolution. If the matter is addressed through the informal resolution phase, there will be no formal findings of fact. In most circumstances, informal resolution efforts should be completed within 30 days.</p> <p>Some examples of informal resolution include:</p> <ul style="list-style-type: none"> • <u>Education/Training</u> - for a group of Employees, or one-on-one where appropriate. In some cases, education and training can be conducted without the Respondent being identified;
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<p>3. Complaint Investigation Phase</p>	<ul style="list-style-type: none"> • <u>Involving Manager/Supervisor</u> - informing a Supervisor of concerns and developing a management plan to ensure a respectful and supportive workplace; • <u>Changing work responsibilities</u> - to minimize contact between the Complainant and Respondent where operationally feasible; • <u>Alternative Dispute Resolution</u> – The Human Rights Specialist may determine that some form of Alternative Dispute Resolution (ADR) or Mediation may be tried in order to settle the complaint. Any discussions concerning settlement will take place on a “without prejudice” basis. (This means that the rights of the parties involved will not be lost or waived by entering into talks to resolve the complaint). A settlement may need to be approved by the General Manager(s) of the Department(s) involved, or his/her designate. A written record of any settlement agreed to by the parties will be retained by the Human Rights Specialist, and where deemed appropriate by the Human Rights Specialist and by the Supervisor(s) for both parties. ADR can address multiple complex issues but should generally conclude within 60 days. If the parties are not agreeable to ADR or a settlement is not successful, the Human Rights Specialist may decide to conduct an investigation. <p>If a resolution is not obtained in the Informal Resolution Phase, or if the nature of the complaint warrants, an investigation may begin, as determined by the Human Rights Specialist.</p> <p>The Human Rights Specialist has discretion to require a signed written complaint from the person making the complaint before an investigation may begin. The written complaint should be submitted to the Human Rights Specialist setting out in detail the nature of the complaint, any information in support of the complaint including the specific incidents of Harassment and the names of possible witnesses.</p> <p>In general, the Human Rights Specialist will conduct investigations. Supervisors or Managers may conduct an investigation only at the discretion of the Human Rights</p>
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Specialist, and must receive authorization from the Human Rights Specialist prior to doing so.

Investigations may also be undertaken by an external investigator engaged by the City. Any investigation of a complaint made against a member of Council, against staff reporting to a member of Council, or against Senior Management will be carried out by an external investigator.

A Complainant cannot be compelled to proceed with a complaint. Under some circumstances, the City of Hamilton may be obligated to proceed with an investigation in the absence of a formal written complaint if the allegation or allegations constitute a serious violation of the *Harassment and Discrimination Prevention Policy* or *Personal Harassment Prevention Policy*, or are criminal in nature. In these cases, the City of Hamilton will proceed with either informal resolution or an investigation, with the intent of stopping the alleged behaviour and/or preventing further incidents from occurring if there has been a violation of the policies.


The investigator will notify the Executive Director, Human Resources once a written complaint has been received. Complaints are investigated by interviewing the Complainant(s), the Respondent(s), any witnesses and reviewing any available documentation. An investigation report should normally be completed within 90 days after a written complaint has been filed. The length of an investigation depends on many variables including but not limited to, the number of witnesses, complexity of the investigation, workplace schedules etc. If a report cannot be completed within the established timelines of this procedure, the parties to a complaint will be advised of the delays and any reasons why.

In some circumstances, special arrangements may be advisable (where possible) to separate the Complainant and the Respondent in the workplace, temporarily re-locate either party to a complaint, or re-assign alternate duties to either party to a complaint (depending on the circumstances), pending the results of an investigation. The Human Rights Specialist may

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4. Complaint	<p>recommend and facilitate such arrangements.</p> <p>Alternative Dispute Resolution or mediation is to remain available (subject to mutual consent) to the parties prior to or during an investigation. As above, any settlement discussions will be held ‘without prejudice’ and separate from the investigation process.</p> <p>Any Employee (including Manager or Supervisor) interviewed by the investigator is entitled to be accompanied by one other person of his/her choice, as a support person. The investigator will make every effort to determine the identity of the support person prior to the meeting, to ensure that the presence of that particular support person would not present a conflict of interest in regards to the ongoing investigation. Unionized Employees may be represented by their respective unions. Employees are also encouraged to utilize the City’s Employee Assistance Program for additional support or Lifespeak resources available on the City’s e-Net.</p> <p>Respondent(s) to any complaint being investigated are entitled to know the allegations against them and have the opportunity to respond in full. A written notice of the complaint will be provided to the Respondent. If necessary, statements from the Respondent(s) are disclosed back to the Complainant(s).</p> <p>Interviews will be arranged and completed with witnesses and any other individuals who may have information pertinent to the investigation, as deemed necessary by the Human Rights Specialist. In certain circumstances the Human Rights Specialist may determine that a witness/witnesses will not be interviewed. At the end of each interview, Complainants, Respondents and witnesses will be asked to review the notes describing the interview and initial them to indicate accuracy. The investigator has the authority to access documents relevant to the complaint.</p> <p>The investigator will consider all the evidence gathered and decide whether or not there has been a violation of policy using the standard of proof called the “balance of probabilities”.</p> <p>Once the investigation is complete, the investigator will forward a</p>
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<p>Investigation Findings Phase</p>	<p>report of the findings to the Executive Director, Human Resources, who will make recommendations based on the findings to the General Manager or designate of the affected department.</p> <p>The General Manager of the affected department will forward to the Human Rights Specialist, within ten working days after receiving the recommendations, a letter stating the action taken or to be taken in response to the findings of the investigation.</p> <p>The Complainant(s) and Respondent(s) will be given a written summary of the findings resulting from the investigation. Any Employee who is found to have violated the City's policies prohibiting harassment and discrimination may be disciplined according to the severity of the actions, up to and including termination of employment. Such disciplinary action shall be determined in consultation with Employee and Labour Relations, Human Resources.</p>
<p>COMPLAINTS AGAINST ELECTED OFFICIALS</p>	<p>In addition to the steps under “Complaint Procedures” the following applies to complaints from Employees, Consultants, Volunteers, Students and Interns against elected officials of the City of Hamilton:</p> <ul style="list-style-type: none"> ○ The Employee may bring the matter to the attention of the Human Rights Specialist, the General Manager of his/her department or his/her Supervisor, Manager or Director. The Supervisor, Manager or Director shall immediately inform the General Manager of the department of the complaint. ⊖ The General Manager of the Employee’s department and the Human Rights Specialist shall consult with the Executive Director, Human Resources and the City Manager. ○ Employees of the City of Hamilton shall not conduct the investigation of any complaint against an elected official. The Executive Director of Human Resources shall refer

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	<p>the matter to the Integrity Commissioner and shall advise the Integrity Commissioner that, where an investigation is to be conducted, Human Resources will retain a third party Human Rights Investigator.</p> <ul style="list-style-type: none"> ○ The Human Rights Investigator shall follow the Procedures as outlined for the Human Rights Specialist under Complaint Procedures, including wherever possible and appropriate, pursuing informal resolution. ○ Should an investigation be warranted, the Human Rights Investigator will gather and examine the facts relating to the complaint and make the findings and recommendations to the Integrity Commissioner. A matter referred to the Integrity Commissioner pursuant to this Procedure shall be deemed a complaint to the Integrity Commissioner duly filed under the <i>Integrity Commissioner By-law</i>. ○ If the findings of the Investigation substantiate in whole or in part that the elected official violated any City policy on harassment and discrimination, the Integrity Commissioner shall determine an appropriate sanction and report accordingly to the General Issues Committee. ○ Where a Human Rights Investigation has been conducted, no further investigation may be conducted by the Integrity Commissioner. ○ Where the Executive Director of Human Resources, in consultation with the Human Rights Specialist, determines that no third party investigation is warranted, the Executive Director of Human Resources shall refer the complaint to the Integrity Commissioner to carry out a similar procedure used by the Human Rights Specialist in Human Resources for Assessment and Informal Resolution (by the Integrity Commissioner). ○ The Integrity Commissioner shall provide a written summary of the findings resulting from the complaint,
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<p>COMPLAINTS AGAINST STAFF OF ELECTED OFFICIALS</p>	<p>including a written summary of the findings of the third party investigation, if any, to the Complainant(s) and Respondent(s).</p> <p>In addition to the steps under “Complaint Procedures” the following applies to complaints from Employees, Consultants, Volunteers, Students and Interns against staff of elected officials of the City of Hamilton:</p> <ul style="list-style-type: none"> ○ The Employee may bring the matter to the attention of the Human Rights Specialist, the General Manager of his/her department or his/her Supervisor, Manager or Director. The Supervisor, Manager or Director shall immediately inform the General Manager of the department of the complaint. ○ The General Manager of the Employee’s department and the Human Rights Specialist shall consult with the Executive Director, Human Resources and the City Manager. ○ Employees of the City of Hamilton shall not conduct the investigation of any complaint against staff who report to an elected official. The Executive Director of Human Resources shall retain a third party Human Rights Investigator. ○ The Human Rights Investigator shall follow the Procedures as outlined for the Human Rights Specialist under Complaint Procedures, including wherever possible and appropriate, pursuing informal resolution. ○ Should an investigation be warranted, the Human Rights Investigator will gather and examine the facts relating to the complaint and make the findings and recommendations to the Executive Director, Human Resources and the City Manager. ○ If the findings of the Investigation substantiate in whole or in part that the staff of the elected official violated any City
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<p>COMPLAINTS AGAINST CITY MANAGER</p>	<p>policy on harassment and discrimination, the City Manager shall report the findings and recommendations to the General Issues Committee. The General Issues Committee will determine the appropriate action, up to and including termination of employment, which will then be reported to City Council for ratification.</p> <p>In addition to the steps outlined under “Complaint Procedures”, the following applies to complaints from employees against the City Manager:</p> <ul style="list-style-type: none"> ○ The employee may bring the matter to the attention of the Human Rights Specialist, the General Manager of his/her department or his/her supervisor, manager or director. The supervisor, manager or director shall immediately inform his/her General Manager of the complaint. ○ The General Manager of the employee’s department and the Human Rights Specialist shall consult with the Executive Director, Human Resources and they shall jointly provide a confidential report advising of the complaint to the Mayor and Members of the Audit, Finance and Administration Committee. ○ Employees of the City of Hamilton shall not conduct an investigation of any complaint against the City Manager. ○ The Mayor and Members of the Audit, Finance and Administration Committee shall retain an external human rights investigator to gather and examine the facts relating to the complaint and to make findings and recommendations. ○ The external investigator shall report his/her findings and recommendations for action to the Mayor and to the General Issues Committee. The Mayor and the General Issues Committee shall provide City Council with a report summarizing the findings and recommendations for appropriate action.
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COMPLAINTS AGAINST GENERAL MANAGERS	<ul style="list-style-type: none">○ If the investigation substantiates in whole or in part that the City Manager violated any City policy on harassment and discrimination, City Council shall determine an appropriate sanction.○ When City Council has determined what action, if any, will be taken against the City Manager, the Mayor shall provide a written summary of the findings resulting from the investigation to the complainant(s). <p>In addition to the steps outlined under "Complaint Procedures", the following applies to complaints from employees against a General Manager:</p> <ul style="list-style-type: none">○ The Employee may bring the matter to the attention of the Human Rights Specialist, or his or her Supervisor, Manager or Director, or to the City Manager. If the matter is brought to the attention of the Human Rights Specialist or supervisor, manager or director, it shall immediately be directed to the City Manager.○ Employees of the City of Hamilton shall not conduct an investigation of any complaint against the General Manager. The City Manager will retain an external human rights investigator to gather and examine the facts relating to the complaint and to make findings and recommendations.○ The external investigator shall report his/her findings and recommendations for action to the City Manager who will determine the appropriate action.○ When the City Manager has determined what action, if any, will be taken against the General Manager, the City Manager and Executive Director of Human Resources shall provide a written summary of the findings resulting from the investigation to the Complainant(s).
HARASSMENT	<p>If non-City persons are deemed to have violated the City's</p>


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ALLEGATIONS INVOLVING MEMBERS OF THE PUBLIC	Harassment Prevention Policies, all reasonable efforts will be made to stop the Harassment/Discrimination which may involve, banning a person(s) from City facilities, issuing trespass notices, refusal to continue to provide City services, involvement of internal legal services or police involvement.
External Investigator	In complaints where an external investigator is retained, the external investigator shall have regard for the City of Hamilton's Harassment and Discrimination Prevention Policy, the Personal Harassment Prevention Policy, the Complaint Procedures relating to those policies and any relevant law. The external investigator may, in his or her discretion, modify the investigation process as appropriate to the circumstances, subject to the review of any modifications with the Human Rights Specialist, and shall make determinations with regard to applicable policies, procedures and any relevant law.
Confidentiality	<p>All information about complaints is confidential. Employees who are involved in any way in complaints or incidents of Harassment or Discrimination must not disclose to anyone in the workplace the details of the complaint or incident, except as required by this procedure and the City's policies on Harassment and Discrimination. Confidentiality extends to all records relating to complaints, including but not limited to, records of meetings, interviews and investigation results. Breaches of confidentiality may be subject to appropriate disciplinary action up to and including termination of employment.</p> <p>The Human Rights Specialist will retain documentation related to complaints in a secure file for seven years from the date of the complaint. All records are subject to the provisions of the <i>Municipal Freedom of Information and Protection of Privacy Act</i> and may be subject to disclosure under the Act, or to a court of law.</p>
Requests for Review	Either the Complainant(s) and/or the Respondent(s) may make a Request for Review of the findings of the investigation if he or she has new and relevant information that was not previously available or has substantive reasons why the findings were not

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	<p>reasonable. The intent to file a Request for Review must be made known to the Human Rights Specialist in writing within ten calendar days of the date the parties were notified of the findings. Thereafter, there will be a discussion between the person(s) making the Request for Review, and the Human Rights Specialist as to when the request must be submitted (never to exceed more than 20 calendar days from the date of this discussion). The Request for Review must include a statement of the reasons why the findings of the investigation were not reasonable and should be re-considered. If the Request for Review does not include new and relevant information that was not previously available or does not provide substantive reasons why the investigation findings were not reasonable, the Executive Director, Human Resources shall deny the request.</p> <p>If it appears that there are substantive grounds to reconsider the findings of the investigation, Complainant(s) or Respondent(s) will be informed that a Request for Review has been made and will be given an opportunity to reply.</p> <p>The Executive Director, Human Resources will make a final decision on the final disposition of the review.</p>
COMPLIANCE	<p>Any Employee who is found to have violated this Procedure or any of its associated Policies may be disciplined according to the severity of the actions, up to and including termination of employment.</p>

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RELATED DOCUMENTS	<p>The following related documents are referenced in this Procedure:</p> <ul style="list-style-type: none"> • <i>Personal Harassment Prevention Policy</i> • <i>Harassment and Discrimination Prevention Policy</i> • <i>Violence in the Workplace Prevention Policy</i> • <i>Integrity Commissioner By-law</i> • <i>Occupational Health and Safety Act</i> • <i>Municipal Freedom of Information and Protection of Privacy Act</i> • <i>Ontario Human Rights Code</i> <p>Contact: For more information on this Procedure contact a Human Rights Specialist in Human Resources, City Manager's Office.</p>
HISTORY	<p>This Procedure replaces the Procedure approved by Corporate Management Team of the City of Hamilton on April 7, 2005. Procedure was last updated June 21, 2013.</p> <p>The Corporate Policy Review Group, Legal Services, and an Employment Lawyer specializing in Human Rights, were consulted in the revisions made to this Procedure.</p> <p>This Procedure was reviewed by Senior Management Team 2013-06-28, updated 2013-10-18, and approved by SMT 2013-10-24.</p> <p>Approved by Council of the City of Hamilton 2013-MM-DD.</p>