



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division
and
PUBLIC WORKS DEPARTMENT
Energy, Fleet and Facilities Management Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	July 8, 2019
SUBJECT/REPORT NO:	Hate Related Activities on City of Hamilton Properties (LS19031/PW19068) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY: SIGNATURE:	Nicole Auty, City Solicitor Legal and Risk Management Services Corporate Services Department
SUBMITTED BY: SIGNATURE:	Rom D'Angelo, Director Energy, Fleet & Facilities Public Works Department

RECOMMENDATION(S)

- (a) That subsequent to internal and external review, Human Resources staff be directed to report back to General Issues Committee with the Hate Incident Prevention Policy and Procedure attached in draft form as Appendix "A" and "B" to Report LS19031/PW19068 respecting Hate Related Activities on City of Hamilton Properties respectively by October 2019;

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- (b) That Legal Services staff be directed to prepare a by-law to address the issuance of trespass notices by City Staff for consideration by Council in October 2019;
- (c) That staff be directed to require facilities rental applicants and organizers of assemblies or demonstrations to abide by the Hate Related Incident Prevention Policy;
- (d) That the draft procedure for Notification of Assembly or Demonstration on City of Hamilton Public Spaces attached as Appendix “D” to Report LS19031/PW19068 respecting Hate Related Activities on City of Hamilton Properties, be approved in principle;
- (e) That the recommendations in Corporate Security Office Report CSOR 19-001 attached as Appendix “C” to Report LS19031/PW19068 respecting Hate Related Activities on City of Hamilton Properties, be approved as follows:
 - (i) That Corporate Security Office in coordination with Facility Management, Human Resources and Corporate Communications, produce and post signage to notify all persons entering the City Hall property of the expectations related to behaviour and conduct while on City property, and the City’s Zero Tolerance approach regarding harassment, discrimination, hate, violence and criminal behaviour, including the collection of evidence to support law enforcement investigations;
 - (ii) That Corporate Security Office create a procedure for all security staff on how to collect, document, analyze and report on surveillance, materials and messaging during public gatherings and distribute their findings and evidence when required to various City divisions (i.e. Human Resources, Legal Services) and external Law Enforcement partners for further follow-up and investigation related to potential harassment, discrimination, hate, violence and criminal behaviour taking place in the open public spaces on the City Hall property;
 - (iii) That Corporate Security Office to procure safety mitigating tools such as portable barriers to support Hamilton Police in the enforcement of safe and peaceful demonstrations that take place in the City Hall outdoor public space;
 - (iv) That Corporate Security Office to procure the enhancement of the City Hall property video surveillance technology to increase its current general surveillance capacity to an evidentiary purpose solution.

- (v) That Corporate Security Office to research, identify and report on physical environment enhancements to the City Hall exterior open space to promote the safety and security of all persons who are attending the property for peaceful use and enjoyment of the space;
- (vi) That Corporate Security Office hire and train a Security Investigator for the purpose of providing security related services at City owned properties as required including but not limited to Assemblies and Protests. Corporate Security Office to further identify and report on future security staffing resource enhancements for City Hall to ensure appropriate resource levels are responsive to the needs of Members of Council and its Committee's, City staff, contractors, residents and visitors in the delivery of good government;
- (f) That a capital expenditure not exceeding \$100,000 from the Facilities Security Program Capital Account #3541941631 to implement the recommendations in sub-section (e) above be approved;
- (g) That staff be directed to hire a Security Investigator for a temporary 24 month period using the Budget Complement Control Policy, to be trained and tasked with investigating and documenting Hate Related Activities on City owned properties across the city and that funding for this position be allocated from Operating Budget Dept ID #790017, and that an operating budget enhancement be referred to the 2020 Operating Budget process;
- (h) That the item respecting Means to Mitigate the Use of City Parks and Public Spaces by "Hate Groups" be removed from the General Issues Committee Outstanding Business List.

EXECUTIVE SUMMARY

Concern over demonstrations on City property by demonstrators who have at times breached the peace and may be engaged in "hate speech" led Council to direct staff to review existing policies and processes governing demonstrations on City property.

Through this report, staff from various divisions have collaborated to provide:

- 1) information about the existing permit/approval process for the use of City facilities,
- 2) a draft procedure to improve communication regarding assemblies and demonstrations on City property;
- 3) a draft policy and procedure to address hate-related activities on City property;

- 4) recommendations to improve safety and security in the Robert Morrow Forecourt;
- 5) a recommendation to prepare a by-law to address the issuance of trespass notices by City staff.

Council can expect a further report on this matter in October 2019.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Energy, Fleet & Facilities Division has an approved Capital Budget Account #3541941631 that will fund all the needed security enhancement at City Hall as well as procuring security equipment, signage and operating supplies. The required capital expenditure is estimated at \$75,000 and not to exceed \$100,000.

Staffing: There are immediate staffing needs to address the current security landscape at City Hall and across the city. In accordance to the Budget Complement Control Policy a request to recruit a Security Investigator in a contract position for a period of 24 month is being recommended as an in-year budget variance. Other corporate-wide security impacts will be monitored and staff will report back on the required enhancements through the 2020 Operating Budget process.

Legal: Legal Services will draft the recommended trespass by-law and review all policies and procedures.

HISTORICAL BACKGROUND

Council Motions

On December 11, 2013, Council passed a motion reinforcing the use of the City Hall Forecourt as a space for public demonstrations and protests, and that there should be no cost to do so. Council directed that the Special Events Advisory Team (SEAT) coordinate with protest organizers, where advanced notice of a protest is given.

On March 28, 2018, Council passed a motion directing staff to investigate and report on ways to mitigate the use of City park and public spaces by "hate groups" in consultation with various groups.

On June 26, 2019, Council directed that staff gather evidence and bring a court injunction preventing certain individuals from future protests on City-owned properties.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The following City policies are associated with the issue of the use of City facilities and demonstrations, but none of the recommendations directly affect such policies:

- Code of Conduct for Employees Policy and Procedure
- Harassment and Discrimination Prevention Policy
- Personal Harassment Prevention Policy
- Violence in the Workplace Prevention Policy and Procedure
- Zero Tolerance for Violence in Recreational Properties and Facilities Policy

RELEVANT CONSULTATION

This report was drafted in consultation with and with contributions from staff in the following City divisions: Communications, Recreation, Corporate Security, Facility Management and Human Resources.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Existing Permit and Approval Framework for Use of City Facilities

Recreational Facilities Rentals

The City issues permits for the use of recreational facilities (pools, gyms, meeting rooms), parks (including diamonds and fields) and arenas. Permit holders are responsible for the conduct of their guests and are required to comply with rental Terms and Conditions. The City maintains the right to cancel, order to close, and revoke permits. The Parks By-law No. 01-219 also addresses acceptable conduct in parks (including facilities on parks property), and which prohibits gatherings of more than 20 people without a permit.

The City does not have a specific policy regarding the use of City recreational facilities by “hate groups”. Recreation staff do not have any knowledge of any past permit applications for recreational facilities by such groups.

The City has a Zero Tolerance for Violence in Recreational Properties and Facilities Policy with respect to violence, abusive or harassing behaviours by users of recreation facilities, which applies to conduct between members of the public. Where City staff are involved, the City’s Harassment and Discrimination Policy applies. Organizations using City recreational properties and facilities take primary responsibility for the behaviour of players, officials and spectators.

City staff from various divisions are currently working on an update to the Zero Tolerance policy to improve communication of the policy to the public and to improve staff awareness

and training on the policy and enforcement procedures. This update will be modelled on the Town of Oakville's "R-Zone" policy and is targeted for report to Council in late 2019.

Special Event Applications

The City requires the organizers of large festivals and events that meet certain triggering requirements to submit a SEAT (Special Event Advisory Team) application to the Events Office. Staff use the information in the application to coordinate with affected City divisions and the Hamilton Police Service about and review the nature and requirements of the festival or event prior to approval. SEAT applications are submitted 60 days prior to an event in order to secure other necessary permits and approvals. The requirement for a SEAT application is triggered for events that have a significant impact on City services, are open to the community or take place on one of the below listed properties, and include one or more of the listed event elements:

City Property	Event Element
Robert Morrow Forecourt	Amplified sound
Parks and Parkettes	Food sold or given to the public
Roads and Road Allowances	Alcohol sale or service to the public
Tim Horton's Field plaza	Pyrotechnics or fireworks
Municipal parking lots	Open flame/flame-producing device
On-street metered parking spaces	Tents that require building permits
Alleyways	Stages that require building permits
Walkways, paths and trails	Amusement rides and inflatables

The SEAT application approval does not result in the City issuing a specific special events permit; depending on the nature and location of the event, the applicant would receive a recreation facility rental permit in accordance with the above description, or a road occupancy permit, etc. The rental terms and conditions of a facility rental permit would apply to SEAT approved events.

Hamilton City Hall, Robert Morrow Forecourt and Municipal Service Centres

The Energy, Fleet & Facilities Management Division of Public Works receives requests and provides approvals to internal and external groups for use of meeting room space within Corporate locations as well as activities in the Robert Morrow Forecourt when no SEAT event elements are met. Often a SEAT application is required for planned events in the Robert Morrow Forecourt because of the use of amplified sound, but the SEAT application does not result in a permit being issued as described above. Staff have generally been flexible with the usual 60-day requirement for SEAT applications when processing applications for demonstrations, due to the often-unplanned nature of such events.

Non-SEAT requests are screened against information collected such as organizer information, meeting/event purpose, and anticipated audience to determine suitability for use of the Robert Morrow Forecourt.

Section 2(b) Legal Framework

The following are the key legal principles applicable to the fundamental freedom of expression protected by section 2(b) of the *Charter* that are detailed in Supreme Court of Canada cases and cases from other appeal courts:

- The City must exercise control over City-owned and -operated spaces in a manner that is consistent with the Charter, and particularly section 2(b) in this case
- Section 2(b) protects all forms of expression and expressive content except physical violence and threats of physical violence, including “hate speech”
- However, the Courts have found that some restrictions on “hate speech” as prescribed by law are demonstrably justified in a free and democratic society under section 1 of the Charter
- The extent to which restrictions on expression in a particular government-controlled space will be found to be “demonstrably justified” depends on the historical and actual function and nature of the space, and whether free expression in that space would undermine the values underlying the right to free expression¹
- The definition of “hate speech” that has been found to be justifiably restricted is significantly narrower than colloquial usage of the term. Hate speech as defined by the Supreme Court of Canada is:²
 - Determined by an objective standard, rather than subjective experience of individual members of the target group – would a “reasonable person” aware of the context and circumstance view the expression as exposing the target group to “hatred”?
 - “Hatred” means more than mere discrediting, humiliation or offense to the target group, it means exposing the target group to detestation or vilification such as by:
 - Blaming the target group for the general ills of society

¹ *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] 3 SCR 141, 2005 SCC 62 at ¶74

² *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11, [2013] 1 S.C.R. 467 at ¶139-46

- Dehumanizing the target group
- Equating the target group with groups that are traditionally reviled
- Limits on freedom of expression must be proportional to the harmful effects, and minimally impairing of the right, thus a ban on expression is more likely to be found unconstitutional where regulation of expression would suffice
- A government is at a greater risk of arbitrary and unconstitutional action in excluding people by means of a trespass notice where the government does not have a trespass policy or by-law³

Recommendations and Rationale

Human Resources Recommendations

Human Resources staff have prepared a draft Hate Related Incident Prevention Policy attached as Appendix “A”, and draft Hate Related Incident Prevention Procedure attached as Appendix “B” to clarify and communicate to staff and the public the definitions of “Hate” and related terms, and the City’s role in ensuring hate-related activity does not take place on City property.

Human Resources recommends that the draft policy and procedure be circulated for approvals internally and externally as appropriate before being approved by Council by October 2019.

Legal Services Recommendations

The City is entitled to enforce its property rights over City-owned and -operated properties through trespass notices pursuant to the *Trespass to Property Act*. The City currently issues such notices on an *ad hoc* basis.

The Legal Services Division recommends that it be directed to develop a trespass by-law for Council’s approval in October 2019 to prescribe an internal process and guidelines for determining the terms of the notice (locations, length of time, etc.), communication of the notice amongst City staff, and a review or appeal process for a person receiving the notice. Developing such a policy or by-law would make the City’s trespass notices much less vulnerable to challenge on administrative or Charter grounds, and would clarify the authority of staff to issue such notices.

The trespass policy or by-law would become the enforcement end-point of the Zero Tolerance/R-Zone policy, the City’s Harassment and Discrimination Policy, the proposed

³ *Bracken v. Fort Erie (Town)*, 2017 ONCA 668 at ¶172

Hate Related Incident Prevention Policy and Procedure (and any other formal or informal policies governing public conduct on City property).

Corporate Security and Energy, Fleet & Facilities Recommendations

See the Corporate Security Office Report (CSOR) 19-001 re Hate Related Activities on City of Hamilton Properties attached as Appendix “C” for the analysis of the Corporate Security and Facilities-related recommendations.

Recreation and Facilities Recommendations

Recreation and Facilities staff have developed a draft Procedure for Notification of Assembly or Demonstration on City of Hamilton Public Spaces, attached as Appendix “D” to this report, to clarify the process and requirements for peaceful assemblies on City properties that appropriate for assemblies and demonstrations. This draft procedure includes updated language to define assemblies and demonstrations, as well as guidelines and restrictions using City-spaces for assemblies and demonstrations.

Recreation and Facilities staff have also developed a Notification of Assembly or Demonstration form, which would likely become an online form, to permit organizers to notify the City of an intended demonstration where a SEAT application is not required. The guidelines suggest that 72 hours advanced notice is preferred. If notice is not provided, persons attending the assembly or demonstration are still expected to abide by City policies.

Recreation and Facilities staff recommend that the draft procedure be approved in principle by Council and be circulated to impacted City divisions and Hamilton Police Service before being finalized.

It is important that permit holders (if required) and organizers are aware of, understand and comply with the City’s expectations for peaceful and respectful events and demonstrations on City property. Therefore, Recreation and Facilities staff also recommend that facilities rental applicants and organizers of assemblies or demonstrations be required to abide by Hate Related Incident Prevention Policy (once approved) as part of the permit/notification process. Staff intend to review customer facing communication on the City’s website to provide greater access to this information for organizers.

The SEAT Chairperson has been communicating with event organizers to whom the City has already issued a rental permit or SEAT approval for planned events that may be impacted by known or proposed demonstrations and will continue to do so during the transition period to the revised demonstration notification process, and as the clarified demonstration guidelines and requirements are communicated to the public.

The draft procedure would not apply to any demonstrations that have already provided notification to the City.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A” – Draft Hate Related Incident Prevention Policy
- Appendix “B” – Draft Hate Related Incident Prevention Procedure
- Appendix “C” – Corporate Security Office Report (CSOR) 19-001 re Hate Related Activities on City of Hamilton Properties
- Appendix “D” – Draft Procedure for Notification of Assembly or Demonstration on City of Hamilton Public Spaces