



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division

PUBLIC WORKS DEPARTMENT
Energy, Fleet and Facilities Management Division

CITY MANAGER'S OFFICE
Strategic Partnerships & Communications Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	October 16, 2019
SUBJECT/REPORT NO:	Hate Related Activities on City of Hamilton Properties (LS19031/PW19068(a)/CM19006(a)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Nicole Auty, City Solicitor Legal and Risk Management Services Corporate Services Department Rom D'Angelo, Director Energy, Fleet & Facilities Public Works Department John Hertel, Director Strategic Partnerships & Communications City Manager's Office

RECOMMENDATION(S)

- (a) That the Trespass By-law attached as Appendix "D" to LS19031/PW19068(a)/CM19006(a), which has been prepared in a form satisfactory to the City Solicitor, be approved;

- (b) That the updates provided within Report LS19031/PW19068(a)/CM19006(a) be received.

EXECUTIVE SUMMARY

This report provides an update to items arising from Report LS19031/PW19068 – Hate Related Activities on City of Hamilton Properties and Report CM19006 – Policies and Procedures for Hate Mitigation.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: No change to financial implications.

Staffing: No change to staffing implications.

Legal: No change to legal implications.

HISTORICAL BACKGROUND

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.

This report provides an update on the numerous Council directions resulting from Report LS19031/PW19068 Hate Related Activities on City of Hamilton Properties on July 12, 2019 (Item 14 of GIC Report 19-013 dated July 8, 2019, as amended by Council).

This report also responds to the request for information and direction to retain an external consultant to lead the public consultation process, arising from Information Report "Policies and Procedures for Hate Mitigation (CM19006)" presented at the General Issues Community on August 12, 2019.

Appendix "A" to Report LS19031(a)/PW19068(a)/CM19006(a) outlines the key projects, initiatives and policies that have contributed to and/or guided the City's past and current work on hate mitigation.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Appendix “B” to Report LS19031(a)/PW19068(a)/CM19006(a) highlights some hate-mitigation policies, procedures and by-laws from other municipalities. Every municipality must also adhere to the Canadian Charter of Rights and Freedom that guarantees freedom of speech and expression. The City of Hamilton’s current, draft and future hate-mitigation policies will regularly be reviewed for continued alignment with the City’s values, best practices and the Charter.

RELEVANT CONSULTATION

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

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

Update on Items Arising from Item 14 of GIC Report 19-013 (Report LS19031/PW19068 – Hate Related Activities on City of Hamilton Properties)

Other Municipal Responses to Hate-motivated Incidents

Staff have reached out to other municipalities to inquire about approaches to confronting hate-related incidents and rallies on municipal properties. Consistent among municipalities that have developed policies or procedures to respond to such issues is that; municipalities are bound to respect the right to freedom of expression as protected by the Charter; and the investigation of hate-motivated activities or other human rights issues are referred to police and other agencies such as the Human Rights Commission. Similarly, many municipalities indicated that the responsibility for maintaining peaceful assembly, public safety and enforcement falls to the police.

The City of Toronto has developed the most robust set of policies and procedures to respond to these issues, which formed the basis for the City of Hamilton draft Hate Related Incident Policy and Prevention Procedure.

Additionally, the City of London recently amended its Nuisance By-law to address the issue of hateful “street preachers” by prohibiting interference with another person’s use and enjoyment of a public place by using “abusive or insulting language as a personal invective”. Although charges have been laid under the new provision, they have not yet been tested in court. Legal Services staff will monitor developments on these charges and consider whether similar language should be incorporated into the City of Hamilton’s policies or by-laws as another tool to address potentially hate-motivated incidents.

Included in Appendix “B” is a chart summarizing and linking to the relevant policies or by-laws of comparison municipalities.

City Manager’s Office Update: Community Consultation on Hate Mitigation Policies and Procedures

On Wednesday, September 25th, staff issued an Expression of Interest to retain a public engagement consultant. The successful “consultant” could be a single consulting agency or a consulting collaboration that involves more than one agency. The key details of the community consultation process include:

a) Key project requirements and deliverables:

1. Advice on City’s hate-mitigation policies and procedures:

The consultant will review and provide advice on existing and draft City’s policies and procedures aimed at mitigating hate incidents on City properties and broadly across Hamilton. The consultant will also conduct a review of similar policies and processes from other jurisdictions and use feedback and public input to provide advice. The consultant will further review public input received from related initiatives that can inform key directions, such as the Hamilton Anti-Racism Resource Centre (HARRC).

2. Public engagement and community consultation:

The consultant will apply proven engagement tactics and inclusive processes to engage and obtain feedback from residents, diverse stakeholders, community advocates, equity-seeking groups, key community partners, Council members and City staff. The consultant will also obtain public input on current and existing City of Hamilton’s hate-mitigation policies, and procedures. The consultant will further garner broader public input on the causes of hate and how to best address them in Hamilton.

3. Recommendations Report:

The final deliverable of the consultant is to produce a recommendations report on key findings from public engagement, research and best practices. The report will be targeted specifically for the use of the City of Hamilton to improve existing and support new hate-mitigation policies, and procedures. The recommendations report will also contain other broader advice that can inform the City’s overall approaches and strategies aimed at making Hamilton a more welcoming and inclusive community.

b) Key public engagement success criteria:

Staff will provide necessary support to the successful consultant to ensure the public engagement criteria are well understood and carried out successfully. Some of the key success criteria of the engagement include:

1. Creating opportunities for active and respectful participation of racialized, equity-seeking and community individuals that are mostly the target of hate incidents. They include the LGBTQ2S+, Black community, Indigenous residents, Jewish community, Muslim community and other ethno-cultural and religious groups.
2. Providing meaningful opportunity for participation of urban, sub-urban and rural residents across different geography of the city, through opportunities such as direct locational engagement, focus groups and online platform.
3. Ensuring the successful consultant or consulting partnership has a robust knowledge of the Hamilton community, understands key social determinants of health and other useful community trends relevant to the work assignment, typically obtained through current or recent work experience in Hamilton.

c) Timelines:

The specific breakdown of the procurement process, public engagement and final project deliverables includes:

- Procurement opens: Wednesday, September 25th, 2019
- Procurement closes: Wednesday, October 16th, 2019
- Bids Review / Retain Consultant / Interview: October 16th – 25th, 2019
- Successful Proponent Start Date: Monday, November 11th, 2019
- Consultant produces a public engagement plan for Council approval: December 2019 – January 2020
- Hate-mitigation Policies and Procedures review: November 2019 – January 2020
- Community Engagement and Consultation: November 2019 – April 2020
- Preliminary public engagement findings: May 2020
- Consultant obtains final stakeholders/public input on findings: May-July 2020
- Final recommendations report: September 2020

Update Regarding Restorative Practice Training

- The Mayor, Members of Council, and the Senior Leadership Team attended a Special General Issues Committee meeting on Friday September 27, 2019 related to a Council approved motion “That the City Manager be directed to

organize a one-day Restorative Practices Council and Senior Leadership Team Workshop with two facilitators from the John Howard Society, Garth Bell and Ruth Greenspan.”

Human Resources Update re Item 14 (a) of GIC Report 19-013

- Human Resources has received feedback on the Hate Related Incident Prevention Policy and Procedure, from Hamilton Police Services Hate Crime Unit. This feedback will be provided to the consultant to be incorporated with the rest of the feedback collected during the consultation process.

Legal Services Update and Recommendation re Item 14 (b) of GIC Report 19-013:

- In *Bracken v. Fort Erie (Town)*,¹ the Court of Appeal noted that municipalities have long used the *Trespass to Property Act* to exercise the right as property owner to exclude others from municipally-owned property and confirmed that such right must be exercised by municipalities in accordance with the *Charter*. The Court comments that a municipal government is at a greater risk of arbitrary and unconstitutional action where it does not have a trespass policy or by-law.
- The City of Hamilton has a “Zero Tolerance for Violence in Recreational Properties and Facilities Policy” applicable to parks and recreation facilities which permits supervisory staff to ban members of the public from parks and recreation facilities for violent or otherwise inappropriate behaviours.
- Ontario Works also has a policy and procedure applicable to its staff and facilities to restrict contact with staff and access to facilities for clients who are abusive towards Ontario Works staff.
- A working group of representatives of Human Resources, Corporate Security, Access & Privacy Officer, Ontario Works, Recreation and Legal Services has been working to address frontline staff concerns about inappropriate behaviour from members of the public which negatively impact a positive respectful workplace. This work involves expanding the “Zero Tolerance” concepts to apply City-wide by an update to the City’s Harassment and Discrimination Prevention Policy. The scope of the revised Harassment and Discrimination Prevention Policy is intended to be expanded to apply to members of the public, as well as City staff and contractor (to whom the policy is currently applicable).
- Legal Services has prepared a Trespass By-law intended to unify and clarify the underlying authority, policy and procedure to ban members of the public from entering City premises (i.e. issue a Trespass Notice) where they have engaged inappropriate behaviour on City premises. A summary of the key features of the Trespass By-law is attached as Appendix “C”. The by-law was prepared after review of policies, procedures and by-laws of numerous Ontario municipalities.

¹ 2017 ONCA 668

Corporate Security and Energy, Fleet & Facilities Update:

Information Update re Item 14 (e)(i-vi) of GIC Report 19-013

- 14(e)(i) – The Corporate Security Office has updated the design of the signage for the City Hall property, to include additional contact information for residents to report incidents of hate. The production of these signs is in progress.
- 14(e)(ii) – The Corporate Security Office has a draft procedure for Corporate Security Investigations. This document will be included in the City's public consultation process.
- 14(e)(iii) – The Corporate Security Office has procured safety mitigating tools, specifically portable safety barriers that are available for use to support the City and Hamilton Police in the preservation of public safety on City properties.
- 14(e)(iv) – The Corporate Security Office is currently in the procurement phase of enhancing the City Hall video surveillance technology.
- 14(e)(v) – The Corporate Security Office through Facilities Management has engaged a Landscape Architect who will specialize in heritage preservation and physical security applications in providing physical environment enhancement design options for the City Hall forecourt space. As an interim step, additional planters have been added at the City Hall Forecourt to prevent vehicular access.
- 14(e)(vi) – The Corporate Security Office through Human Resources, has received applications from candidates related to the closed posting of the Corporate Security Investigator. Interviews with potential candidates is the next phase for this item.

Information Update re Items 14 (j) and 14 (k) of GIC Report 19-013 (Amended)

- As requested by Council, the City has requested advice from the Information and Privacy Commissioner of Ontario related to the City's proposed "Corporate CCTV Systems Policy" and its related procedures prior to public consultation. Any advice that is received by the Privacy Commissioner will be documented and incorporated in the proposal for consideration during the public consultation process.
- The Corporate Security Office's draft Policy regarding Corporate Security Investigations and its related procedures and protocols where video camera surveillance applications are considered / applied, will also be included in the City's public consultation process.

**SUBJECT: Hate Related Activities on City of Hamilton Properties (LS19031/
PW19068(a)/CM19006(a)) (City Wide) - Page 8 of 9**

Information Update re Motion 10(a) from GIC Report 19-014 Amended by Council on August 16, 2019 and further Amended by Council on September 11, 2019:

- The Corporate Security Specialist has communicated with staff and Hamilton Police Services regarding access for residents on Saturdays, to provide advice on how and to whom residents should report incidents of hate on City property.
- In these discussions, the importance of delivering a consistent approach for residents to report incidents of hate on City properties was addressed. Equally important is for residents to understand the role that law enforcement has in the criminal investigation of reported of hate in the community, both on and off City properties.
- The Corporate Security Office will be providing updated signage for the exterior of the City Hall forecourt that will identify both the emergency and non-emergency ways to contact Police for residents to report incidents of hate. Additionally, the signage will also include contact information for residents to report matters of concern to the Corporate Security Office.
- Information that is received by the Corporate Security Office will be responded to accordingly and or redirected where appropriate and obligated by policy (Human Rights Specialist, through the Hate Motivated Incident Prevention Policy / Procedure) and by law.
- The Corporate Security Office will continue to assess and review all public gatherings and rallies that take place in the City Hall forecourt. This process includes the analysis of information leading up to an event, the assessment of potential impacts to public safety in the forecourt and collection of evidence where applicable to support internal and law enforcement investigations.
- Through the Corporate Security Investigator, events that are assessed to have the potential of large numbers in attendance, messaging that may impact the public safety and reasonable enjoyment of the public space by all residents especially members of the marginalized community, will be shared with law enforcement and will include attendance by a member of the Corporate Security Office during the event.
- The Corporate Security Office will continue the collection of factual evidence through witnessed activities, documentation and the use of available technology (i.e. CCTV cameras) to provide both internal (i.e. Human Rights Specialist, Legal Services) and external authorities with the tools to enable the application of law in the preservation of a safe and supporting community for its residents.

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” to Report LS19031/PW19068(a)/CM19006(a): Historical Background

Appendix “B” to Report LS19031/PW19068(a)/CM19006(a): Hate Mitigation Policies Procedures, and By-laws of Comparison Municipalities

Appendix “C” to Report LS19031/PW19068(a)/CM19006(a): Summary of Trespass By-law

Appendix “D” to Report LS19031/PW19068(a)/CM19006(a): Trespass By-law