


INFORMATION REPORT

TO:	Mayor and Members of Council General Issues Committee
COMMITTEE DATE:	August 4, 2022
SUBJECT/REPORT NO:	City Hall Safety Plan (HUR22012) (City-Wide)
WARD(S) AFFECTED:	City-Wide
PREPARED BY:	David Lindeman (905) 546-2424 Ext. 5657 Martin Dambeau (905) 546-2424 Ext. 2855
SUBMITTED BY:	Lora Fontana Executive Director Human Resources
SIGNATURE:	 Acting for Lora Fontana

Discussion of this Confidential Appendix A in closed session is subject to the following requirement(s) of the City of Hamilton's Procedural By-law and the *Ontario Municipal Act, 2001*:

- (a) the security of the property of the municipality or local board;
- (b) personal matters about an identifiable individual, including municipal or local board employees;

COUNCIL DIRECTION

At the June 22, 2022 Council Meeting, the following motion was approved in response to the June 10, 2022 Integrity Commissioner's Report:

- (a) That the City of Hamilton Integrity Commissioner's Report Regarding Complaints Against Councillor Terry Whitehead, June 10, 2022, be received;
- (b) That the actions contained within the City of Hamilton Integrity Commissioner's Report Regarding Complaints Against Councillor Terry Whitehead, June 10, 2022, be supported;

- (c) That staff be directed to develop a plan of action to fulfil our obligations under occupational health and safety act of Ontario, as it relates to the work environment of City Hall with respect to the issues raised in this Integrity Commissioners Report; and
- (d) That Councillor Whitehead inform staff and members of Council when he plans to attend City Hall, until a report back from staff in recommendation (c) is presented to Council.

INFORMATION

Background

Ontario's *Occupational Health and Safety Act* (the *Act*) requires employers to have workplace harassment policies and programs in place that cover all employees. The programs must include:

- measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor, and to another person if the employer or supervisor is the alleged harasser; and
- how incidents or complaints of workplace harassment will be investigated and dealt with.

The City of Hamilton has three policies which align with the requirements under the *Act*:

1. Harassment and Discrimination Prevention Policy
2. Personal Harassment Prevention Policy
3. Workplace Violence Prevention Policy

The policies apply to all City of Hamilton employees and elected officials.

There are two accompanying procedures that apply to the above-mentioned policies: Procedure for Resolving Harassment and Discrimination Issues, and the Procedure for Workplace Violence Prevention.

Additionally, there is a Council Code of Conduct By-Law 16-290 which specifically outlines the expectations of Councillors.

A legislated Code of Conduct helps to ensure that the Members of Council share a common basis for acceptable conduct. The Council Code of Conduct By-Law 16-290 states as follows:

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- is designed to provide a reference guide and a supplement to the legislative parameters within which the Members must operate.
- serves to ensure public confidence that the City's elected representatives operate from a base of integrity, transparency, justice and courtesy.
- is administered by the City's Integrity Commissioner, appointed by Council by its By-law No. 16-288, who reports to Council and who is responsible for performing in an independent manner assigned functions with respect to the application of the Code of Conduct, and of procedures, rules and responsibilities of the City governing the ethical behaviour of Members of Council.

The Council Code of Conduct operates along with, and as a supplement to, in addition to other By-laws of the Council, statutes of the Provincial Legislature, and of the Parliament of Canada, that govern the conduct of Members of Council, including:

- the *Municipal Act, 2001*;
- the *Municipal Conflict of Interest Act*;
- the *Municipal Elections Act, 1996*;
- the *Municipal Freedom of Information and Protection of Privacy Act*;
- the *Ontario Human Rights Code*; and
- the *Criminal Code* (Canada).

Of particular note, Sections 11 and 13 of the Council Code of Conduct regarding Conduct Respecting City Employees are relevant to this matter which state:

Section 11 (1) Every Member of Council, in accordance with his or her responsibilities as a Councillor; every City officer, in accordance with the terms of her or his appointment; and every City employee, in accordance with his or her employment agreement and responsibilities determined by Council; all subject to law, serve the City and are expected to act in the public interest and the interests of the City of Hamilton. Accordingly:

(a) every Member of Council shall be respectful of the role of City officers and employees to provide service and advice based on political neutrality and objectivity, and without undue influence from any one or more Members of Council;

(b) no Member of Council shall maliciously, falsely, negligently, recklessly, or otherwise improperly, injure the professional or ethical reputation, or the prospects or practice, of any one or more City employees; and

(c) every Member of Council shall show respect for the professional capacities and position of officers and employees of the City.

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(2) No Member of Council shall ask, expect or take any step to compel, any City officer or employee to engage in any partisan political activity, or be subjected to threat or discrimination for refusing to do so.

(3) No Member shall use, or attempt to use, the Member's authority or influence for the purpose of intimidating, threatening, coercing, or otherwise improperly influencing any City employee with the intent of interfering with that employee's duties, including the duty to disclose improper activity.

(4) It is the policy of the City that all persons be treated fairly in the workplace in an environment free of discrimination and of personal and sexual harassment and workplace violence. Accordingly:

(a) under this section, "harass" and "harassment" include any behaviour by a person that is directed at, or is offensive to, another person, on grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, family status or any other improper ground;

(b) no Member of Council shall harass or engage in acts of workplace violence towards another Member of Council, any City officer or employee, or any member of the public; and

(c) every Member of Council shall:

(i) treat other Members, City officers and employees, and members of the public, appropriately, and without bullying, abuse, intimidation or violence; and

(ii) make all reasonable efforts to ensure that his or her work environment is free from discrimination, harassment and violence.

Section 13 (3) No Member of Council shall take a reprisal or make a threat of reprisal against a Complainant or any other person for providing information to the Integrity Commissioner.

The City upholds a zero tolerance to personal harassment and as such, does 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.

Personal (Workplace) harassment as defined by the *Occupational Health and Safety Act* and our policy, "means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome or workplace sexual harassment."

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The intention of the policy and its procedure 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.

Types of behaviour that may constitute personal harassment include, but are not limited to:

- Ongoing condescending comments or name calling
- Repeated offensive gestures or comments
- Practical jokes
- 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.
- Bullying
- Actions which create a “Poisoned Work Environment” which is hostile, intimidating or offensive

Issues Raised by the Integrity Commissioner’s Report

Council directed staff to develop a plan of action to address the issues identified in the Integrity Commissioner’s report dated June 10, 2022. In response, staff has developed a Safety Plan that will be communicated to Council members and affected City of Hamilton staff.

The Integrity Commissioner’s report stated that the evidence reveals a repeated pattern of unacceptable bullying and harassing behaviour directed at particular staff. The evidence discloses that, even in the face of efforts by other members of Council to curtail this conduct, the Councillor persists in engaging in unacceptable behaviour.

The Safety Plan is intended to provide specific guidance to Council and staff to ensure all parties are aware of their respective obligations and resources in addressing workplace harassment. The harassment may include in-person or virtual interactions, emails, and voicemails.

Council had also imposed sanctions on Councillor Whitehead on November 10, 2021 that included restrictions on direct communication with City staff below Senior Leadership Team, City Clerk, and City Solicitor:

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- (i) That Councillor Whitehead be restricted in his communications with City staff, outside of his own office staff, to communicating only with the City Manager, General Managers or designate; City Solicitor and City Clerk for the remainder of the 2018 – 2022 Council term;
- (ii) That Councillor Whitehead be obliged, during Council and Committee meetings, to confine his questions of staff by directing his questions to the Mayor or Chair and not directly addressing staff for the remainder of the 2018 – 2022 Council term; and
- (iii) That Councillor Whitehead be relieved of his responsibilities as Chair and Vice Chair of Committees of Council and local boards for the remainder of the 2018 – 2022 Council term.

The Safety Plan has been developed by Health, Safety and Wellness and Corporate Security staff. The Safety Plan will augment existing policies and procedures and the steps already taken to eliminate the potential for unwelcome interactions between Councillors, staff and others.

Objectives of the Safety Plan

1. To limit, control or eliminate situations that could lead to interactions between staff and an individual with a known history of harassing behaviour
2. To set out clear expectations and limits on in-person contact and other work-related interactions
3. To provide processes for reporting incidents or violations of any requirements set out in the Safety Plan.
4. To provide general guidance and recommendations for personal safety on and off the job.
5. To maintain confidentiality of employee information except where disclosure is required by legislation, tribunal or court of law.
6. To ensure all persons involved are able to fulfil their duties while complying with the terms of the Plan.

Elements of the Safety Plan

The Safety Plan will apply to areas of City Hall including the areas in the building that are exclusively used by Council Members and their staff, as well as the City Clerk's area.

The elements of the Safety Plan include:

- Roles and responsibilities for individuals covered by the Safety Plan

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- Councillors
- City Manager
- City Hall Security
- Human Resources
- City of Hamilton staff
- Protocols for reporting and responding to in-person interactions, incidents or messages that may constitute personal harassment
 - Who to contact?
 - Who will investigate?
 - Reporting findings
- Physical safety and security
 - Restrictions on access through key locks and swipe cards
 - Enhanced monitoring and patrolling by Security Staff
- Personal safety related to parking, entering and exiting City Hall, working in the building
 - Parking lot safety
 - After-hours access
 - Buddy systems (pairing with two or more co-workers and peers to provide support and to look out for each other)
 - Ability for staff to remove themselves from unwelcome interactions
- Personal safety outside of work
 - Tips and resources for personal time situational awareness, home and family security
 - Reporting incidents to responsible authorities
- Use of video monitoring technology
 - Review of existing CCTV locations and areas for enhancements with privacy impact and good governance application
- Summoning assistance
 - How to notify Security at City Hall
 - Protocols for notifying all staff
 - Calling 911
- Access to secured areas at City Hall
 - Protocols for alerting staff before anyone with restricted access due to sanctions can attend secure areas of City Hall including Councillors office area.
 - Protocols for entering, exiting and moving within restricted areas
- Communication to staff

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- Updating Council Members and affected City of Hamilton staff on details of the Safety Plan
- Providing information to others affected by the plan
- Provide updates on any changes to the plan

The Safety Plan will remain in place and may be revised at any time as circumstances change.

The detailed Safety Plan will be shared with Council Members as a confidential Appendix A to the report.

APPENDICES AND SCHEDULES ATTACHED

Confidential Appendix “A” – Detailed Safety Plan

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