



Corporate Report

NO: R081

COUNCIL DATE: May 8, 2006

REGULAR

TO: Mayor & Council DATE: May 1, 2006
FROM: City Solicitor FILE: 0340-00
SUBJECT: Respectful Workplace and Human Rights Policies

RECOMMENDATION

That Council adopt the Respectful Workplace Policy and Human Rights Policy (collectively the "Policies") which are attached as Appendices "A" and "B" to this report.

INTENT

By adopting the Respectful Workplace Policy, Council is committing the City to having a workplace where all elected officials, employees, volunteers, customers, contractors and visitors are treated with respect and dignity, and can enjoy a workplace and service environment that has a productive and professional atmosphere.

By adopting the Human Rights Policy, Council is committing the City to an organizational environment which is free from discrimination based on any of the prohibited grounds of discrimination under the B.C. *Human Rights Code*.

BACKGROUND

The new Policies are a result of a human rights review of the City's workplace by an independent consultant. The consultant and Legal Services staff prepared the Policies in cooperation with the President of CUPE, Local 402. CUPE, Local 402 supports the adoption of the Policies now that some of its proposals have been incorporated into the Policies. The President of IAFF, Local 1271 has also been given an opportunity to review the Policies and finds them generally acceptable.

The consultant has prepared a training curriculum on the Policies for Council and all City employees. Volunteers will also receive appropriate training. The training courses will be conducted by the consultant and the City's Senior Advisor of Labour Relations over the next several months. Regular workplace policy training will also be provided at appropriate intervals for new employees and volunteers.

The consultant was retained to conduct a human rights review of the City's workplace, and in particular to undertake the following:

- (a) Review the administration of the City's existing respectful workplace policy (the "Existing Policy") and make recommendations with respect to improvement in the administration and application of the Existing Policy; and
- (b) Make recommendations with respect to training in the understanding, use of and access to the City's Existing Policy.

After conducting the review, the consultant and Legal Services staff revised the Existing Policy to reflect the recommendations of the consultant which are consistent with the best practices of corporate governance in dealing with personal harassment and prohibited discrimination. The interests of the City as an employer and the employees right to a safe workplace are both protected. In this report, the reasons for the recommended changes to the Existing Policy are discussed in addition to recommendations with respect to training and implementation of the new Policies.

In the absence of a well designed set of human rights policies, the ad hoc approach to dealing with prohibited grounds of discrimination or harassment complaints can leave the City exposed to significant legal liabilities. The lack of any human rights written policy and procedures for dealing with complaints can result in exposure to damage claims from both complainants and respondents to complaints. This is because appropriate due process and confidentiality safeguards will not be in place to protect the reputation, emotional distress and employability of both parties.

DISCUSSION

Executive Summary of Recommendations

1. Recommend the removal of references to conduct which should not properly be part of a harassment free workplace policy, including:
 - (a) references to violence in the workplace,
 - (b) references to diversity,
 - (c) references to employment equity, and
 - (d) personal harassment.
2. Recommend that a separate policy be created for personal harassment which deals with conduct which may be inappropriate or unfriendly, but does not offend one of the prohibited grounds under the B.C. *Human Rights Code*, and is therefore not illegal. This new Respectful Workplace Policy (attached as Appendix "A") provides a separate process by way of an informal facilitation of the issue internally within the City.
3. Recommend that the new policy be titled a Human Rights Policy (attached as Appendix "B") and be limited in scope to discrimination and harassment which is prohibited under the B.C. *Human Rights Code*. As prohibited ground discrimination or harassment is illegal and has specific consequences for

organizations, these types of discrimination should be dealt with separately and subject to a separate procedure for investigation and consequences.

4. Recommend that the Human Rights Policy have a separate process where, if the complaint involves someone at the senior executive level, that complaint will be directed to the City Solicitor who will be responsible to ensure that an independent and impartial investigation is carried out.
5. Recommended a number of procedural changes to the Policies. The time frame for completion of an investigation has been removed and the time frame during which the investigator will complete the investigation is left open, but subject to a commitment to complete the investigation and report expeditiously.
6. Recommend that the investigator have the flexibility to carry out the investigation subject to due process, but taking into account the specifics of the allegations and, in some cases, ensuring that the complaint can be investigated subject to solicitor-client privilege in order to protect the report under the *Freedom of Information and Protection of Privacy Act*.
7. Recommend that training start at the level of Mayor and Council, and then proceed to the senior executive level. Senior management will receive training from an external consultant.
8. Recommend that at the level of bargaining unit employees and supervisors, the City's Senior Labour Relations Advisor will provide this training in conjunction with the consultant. This recommendation will provide an opportunity to introduce the Senior Labour Relations Advisor to the bargaining unit community as a new trustworthy resource. As the Senior Labour Relations Advisor is one of the named individuals to whom a complaint can be made, it will be important for her to obtain this exposure.
9. Recommend that the training be documented at the exempt level through keeping a list of those trained, and at the non-exempt level through an acknowledgement of the training and receipt of the Policies.
10. Recommend that training should be ongoing as part of orientation for new employees and newly elected officials, and that refresher training be given on a regular basis, at least every five years.

Recommendations with respect to the Existing Policy

The Existing Policy covered off a myriad of differing types of behaviour, including diversity issues, employment equity, violence in the workplace and code of conduct, in addition to illegal discrimination. By illegal discrimination we mean discrimination or harassment that contravenes the prohibited grounds of discrimination under the B.C. *Human Rights Code*: race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age and conviction of a criminal or summary conviction offence that is unrelated to employment or intended employment.

The sections dealing with employment equity and diversity, as well as the section on violence in the workplace have been removed from the Existing Policy. These matters are quite distinct from discrimination and harassment, and are not properly part of a harassment free workplace policy. Violence in the workplace is covered by the regulations under the *Workers Compensation Act* which makes provision for specific requirements that employers must follow. Employment equity and diversity are also quite distinct in the kinds of obligations that they place on employers. Failure to comply with employment equity or diversity principles is not normally treated as "offending" conduct which may require investigation and resolution.

Of most concern was the incorporation of what is referred to as "personal harassment" in the Existing Policy. Personal harassment is generally thought to be conduct which is demeaning or bullying in the workplace, but is not conduct based on one of the prohibited grounds under the *Human Rights Code*. It can create an unfriendly and inappropriate working environment for an employee. However, conduct that is not respectful, but does not offend one of the prohibited grounds, is not illegal and should therefore be treated differently than illegal discrimination or harassment.

Under the Existing Policy, it was not clear that there were different procedures and different consequences for the two different types of harassment: prohibited ground and personal harassment. It became clear that many employees, both exempt and bargaining unit employees, did not understand the difference between prohibited ground harassment and personal harassment.

Prohibited ground harassment can lead to serious consequences for an organization. The organization is vicariously liable for this illegal harassment by one of its managers or supervisors, or even between groups of employees. The consequences can include grievance arbitrations and Human Rights Tribunal decisions which award damages to employees for lost wages, hurt feelings and other heads of damages. It also has the potential of causing reputational injury to organizations when these matters become publicized.

On the other hand, personal harassment, as noted, is not illegal. The B.C. Human Rights Tribunal will not take jurisdiction over a complaint of personal harassment. An arbitrator will likely only take jurisdiction over a complaint of personal harassment if the collective agreement specifically refers to the rights of members to be free from personal harassment. While it is obvious that employees should not have to work in an abusive environment, the fact is that the different types of conduct do have different consequences for organizations, and should, for that reason, be treated differently.

The other point to note in dealing with personal harassment is that these types of complaints can involve petty, minor workplace conflicts between individuals. In these circumstances, the experience has been that other forms of resolution, other than investigations and hearings, are more appropriate and suitable and can cause less disruption and cost to the organization. These types of resolutions can include training and education, facilitated resolutions, use of alternative dispute resolution techniques and counselling to try and assist the employees to work through their personal conflicts.

Having said the above, the Existing Policy confuses the distinction between prohibited ground and personal harassment so that it was not clear that when an investigator was appointed to hear complaints of prohibited ground harassment, that the investigator also had jurisdiction to hear complaints of personal harassment.

Moreover, some exempt and bargaining unit employees at the City appear to consider prohibited ground harassment and personal harassment to be one and the same, with the same right to investigation and consequences for offending individuals. For all of these reasons it is recommended that it would be most appropriate to remove the section dealing with personal harassment from the Existing Policy, and create a separate policy with a separate procedure for personal harassment.

The attached Policies, therefore, are actually two policies: a Human Rights Policy which deals specifically with prohibited ground harassment and discrimination, and a Respectful Workplace Policy which deals with inappropriate and disrespectful conduct that is not prohibited by law. The prohibited ground policy, or Human Rights Policy, defines prohibited ground harassment and sets out specific processes for informal and formal resolution procedures, including the right for an investigator to be appointed who will conduct an impartial and independent investigation and report back to the City. The personal harassment or Respectful Workplace Policy contemplates a more informal process where complaints can be made and will be resolved by the City internally.

Recommendations with Respect to the New Human Rights Policy

With respect to the Human Rights Policy, a number of specific policy issues were considered and the recommendations are described below. The recommendations are incorporated in the attached Human Rights Policy.

To help ensure trust in the new process a separate procedure has been introduced in the event that the complaint involves a Senior City Manager, a term which is defined in the Human Rights Policy to be the following: "the City Manager; the General Manager, Human Resources; the General Manager, Finance & Technology; the General Manager, Engineering; the General Manager, Planning & Development; the General Manager, Parks, Recreation & Culture; the Chief Librarian; the Fire Chief; and the City Solicitor". In that event, the complaint is directed to the City Solicitor, who is responsible to ensure that an investigation is carried out which is independent and impartial. In that case, the Senior City Manager who is alleged to be involved in the offending conduct, would not participate in decisions respecting the complainant, or how the investigation was carried out.

The Human Rights Policy has been specifically drafted to ensure that there is an informal process where minor issues can be simply resolved between the parties. Human Resources will have a role to play in that resolution, and can monitor conduct on an ongoing basis once it is aware of the issue. Where issues cannot be resolved, they can be moved to the formal investigation and resolution process. In that case, the City has a right to retain the investigator appropriate to the situation, be it an external or internal investigator, and someone who is most suited to deal with the kind of conflict that has arisen. Different investigators can and should be chosen depending on the nature of the conflict. Choosing the right investigator can be one of the most important steps in the process.

The building of trust by City employees should include the involvement of Human Resources. Once it is seen that the City has developed a process which can be implemented and used by employees to a successful conclusion, facilitated by Human Resources, that revelation will assist in gaining the trust of employees.

Some policies have specific time frames for when investigations must be completed. Experience has shown that every investigation is different, and that delays can occur as a result of witnesses not being available, or the parties themselves not being available to speak with the investigator. Once a policy provides for set time frames, the failure of the investigator to comply with these time frames can result in a flawed investigation. For that reason, a recommended time frame has been inserted, but does not require the investigator to complete the investigation within that time frame. Instead, a commitment has been imposed on the investigator to try and complete the report within an expedited time frame.

Protection is given to complainants from retaliation for speaking out or participating in an investigation. Retaliation may include, but is not limited to, penalizing an individual or subjecting them to adverse job consequences. Even if a complaint is withdrawn, the City may continue with the formal investigation of the complaint. This new provision will balance the right of the respondent to clear his or her name of the allegation and the need for the City to ensure that inappropriate behaviour is appropriately dealt with so that it stops.

The process of the investigation should include guidelines, but be flexible in terms of what can be implemented by the investigator. In some cases, the City may choose to conduct a confidential solicitor-client privileged investigation, in which case the report will be provided only to the City Solicitor, and if properly implemented will be protected from review under the *Freedom of Information and Protection of Privacy Act*. In that circumstance, it would not be appropriate to provide a copy of the report to the complainant and respondent. This issue was considered because, for transparency purposes, some policies require that the organization provide a copy of the investigator's report to both the complainant and the respondent.

Given the obligations of the access to information legislation, it is recommended that the Human Rights Policy not specifically require the investigator to give out copies of the report. In some cases it may be appropriate that the investigator does provide copies of his/her report to the parties, and in the event of litigation, disclosure of the investigation report will be sought. However, assuming that the investigator is properly trained in the requirements of following due process, and is carefully picked to ensure impartiality and independence, it is recommended that the policy not bind the investigator to follow complex procedural rules.

Recommendations with Respect to Training

The training will provide an opportunity to explain to all employees and elected officials the distinction between the two different types of conduct, the distinction between prohibited ground harassment and personal harassment, as well as the opportunity to explain how the two different types of conduct will be treated differently in terms of process and consequences for breach of the Policies. This is a key factor particularly for the management personnel who need to understand what is meant by harassment, to

model the appropriate behaviour for their staff, to be cognizant of inappropriate behaviours and understand how they should be addressed.

To demonstrate a strong commitment to the following all senior managers, regardless of their level, must attend the training; the fact that senior management of the City are being trained must be transparent. In order to demonstrate the importance of the training, it is recommended that legal counsel also provide the training to the senior level of management.

Following the training of the senior level of management, all employees of the City should receive training as well. It is recommended that the training be on a department basis, so that groups of employees who work together can attend training sessions together. This can be useful because often these training sessions can highlight any disruptive relationships in the workplace and can also be cathartic for those groups to work through any poisoned relationships. This level of training will be provided by the City's Senior Labour Relations Advisor. One of the key factors is that the Advisor will be working to build the trust with the employees so her exposure to these employees as someone who is providing training on the Policies, and is also a designated management employee that the employees are directed to under the Policies to bring a complaint, is a key factor as part of the recommendations in building the trust going forward. Legal counsel will also be involved in these training sessions to provide the training jointly.

At the exempt level, it is recommended that there be a record kept of the fact that employees attended the training session. At the non-exempt level, it is recommended that there be documentation that employees have attended the training session by each signing off on an acknowledgement of receipt of the Policies and training on the Policies. Each employee will be given a training certificate at the conclusion of the training session.

As part of ongoing training, training should be part of orientation for all new employees. Newly elected officials should also be given training on the new Policies. Refresher training exercise will be given on a regular basis at least every five years.

CONCLUSION

The City's human rights review and consultation with the City's unions, their members and exempt staff has produced two new Policies and recommendations for training. The Respectful Workplace Policy deals with personal harassment. These types of conflicts are dealt with in the policy with training and education, facilitated resolutions, use of alternative dispute resolution techniques and counseling to try and assist employees to work through their personal conflicts.

The Human Rights Policy dealing with illegal, prohibited ground harassment and discrimination has been drafted to ensure there is an informal process where minor issues can be simply resolved between the parties. Where issues cannot be resolved, they can be escalated to the formal resolution and investigation process.

One of the goals of the new training program will be prevention of workplace conflicts and prohibited ground harassment and discrimination.

CRAIG MacFARLANE
City Solicitor

CM:mlg
Attachments

c.c. Acting City Manager
General Manager, Finance, Technology & HR

APPENDIX "A"

RESPECTFUL WORKPLACE POLICY

<h4>SECTION 1 – ACCOUNTABILITY</h4>
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- 1.1 The City of Surrey is committed to creating an environment where Employees, Elected Officials, Volunteers, Customers, Contractors and Visitors are treated with respect and dignity and can contribute to a productive and professional atmosphere.
- 1.2 This Policy reflects the City's commitment to ensure that all those who work at the City of Surrey do so in a Respectful Workplace, where Employees, Elected Officials, Volunteers, Customers, Contractors and Visitors are treated with respect and dignity.
- 1.3 All Employees, including Management Employees, are accountable for creating an environment that is respectful.
- 1.4 The City of Surrey commits to train and educate Employees, Elected Officials and Volunteers about this Policy. All new Employees will receive training on an ongoing basis as need be.

SECTION 2 – PURPOSES

The Purposes of the Respectful Workplace Policy are:

- 2.1 To formalize the responsibility and commitment of the City of Surrey to ensure that all Employees, Elected Officials, Volunteers, Customers, Contractors and Visitors enjoy a workplace and service environment that is respectful.
- 2.2 To provide appropriate processes and procedures to deal with complaints in an effective and timely matter and remedy situations where the Respectful Workplace principles are not being honoured.

SECTION 3 – WORKPLACE CONFLICT

3.1 What is a Respectful Workplace?

A Respectful Workplace honours the entitlement of others to have a respectful experience and honours the pride and dignity of others. In a Respectful Workplace the principles of promoting cooperative and collaborative behaviours, including healthy group dynamics and proactive problem solving are honoured. A Respectful Workplace includes conduct which is respectful of others. It does not include aggressive or demeaning behaviours, negative or inappropriate communication.

3.2 What is Workplace Conflict?

Workplace conflict occurs where individuals do not honour the principles of a Respectful Workplace. Workplace conflict is not Discrimination or Harassment that is prohibited by the BC *Human Rights Code*; that conduct is covered under the City of Surrey Human Rights Policy.

3.3 How to avoid Workplace Conflict?

Getting along with Employees, Supervisors or Management Employees may not always be easy, but making an effort to resolve conflict at work should be a goal of all Employees at the City of Surrey. It is the experience of the City of Surrey that each Employee will try his/her best to get along with his/her co-workers. This means:

- Bullying or other aggressive or demeaning behaviours towards others will not be tolerated at the City of Surrey. Individuals found to be bullying or otherwise tormenting others, either physically or mentally, will be subject to discipline.
- Employees should respect the fact that others may be different from you and that they may have a different approach or way of doing something than you do.
- Employees should be aware of the fact that how you act can impact others in the workplace.
- Employees should avoid talking negatively, gossiping or being judgmental about your co-workers. This type of behaviour encourages conflict in the workplace, and is not consistent with the goals of the Respectful Workplace Policy.
- If you are not sure if your behaviour is welcome, ask.

SECTION 4 – WORKPLACE CONFLICT RESOLUTION PROCEDURES

- 4.1 If an Employee is behaving in a way that makes you feel uncomfortable at work, or if you are having a conflict with an Employee at work there are steps you can take to resolve the conflict.
- 4.1.1 If you are comfortable discussing the issue directly with the other Employee, you are encouraged to do so and try to resolve the issue. If the issue is not resolved, inform your Supervisor about the conflict.
- 4.1.2 The Supervisor will assist you to resolve the conflict and, if it is resolved to your satisfaction, the issue is considered to be resolved. If the conflict is not resolved, you or your Supervisor should refer the conflict to a Designated Management Employee, as outlined in Section 4.1.3.
- If you do not feel comfortable approaching your Supervisor directly, or if the Supervisor is part of the conflict, go to Section 4.1.3.
- 4.1.3 If you are unable or uncomfortable in resolving the conflict with the steps indicated above, you should speak to one of the following Designated Management Employees who will assist you in resolving the conflict:
- General Manager, Finance, Technology & Human Resources;
- Manager, Human Resources; or
- Senior Advisor, Labour Relations.
- 4.2 If a Customer, Visitor, Contractor, Volunteer or Elected Official is behaving in a way that makes you feel uncomfortable at work, or if you are having a conflict with a Customer, Visitor, Contractor, Volunteer or Elected Official while at work, you should try to resolve the issue. If you are not comfortable attempting to resolve the issue, or, if the issue is not resolved, inform your Supervisor about the conflict. The Supervisor will assist you to resolve the conflict and, if it is resolved to your satisfaction, the issue is considered to be resolved. If the conflict is not resolved, you or your Supervisor should refer the conflict to a Designated Management Employee as outlined in Section 4.1.3.
- 4.3 If you see others behaving in a way that is inappropriate or disrespectful you are encouraged to follow the steps shown above to assist you in resolving the conflict.

APPENDIX I – DEFINITIONS

The following terms are used in this Policy and are defined as follows:

- (a) **City of Surrey** for the purposes of this Policy also includes the Surrey Public Library.
- (b) **Contractor** includes all individuals who access the Workplace, as defined in this Policy, for the purpose of providing services or supplies to the City of Surrey.
- (c) **Customer** includes all individuals who access the Workplace as defined in this Policy for the purposes of obtaining City services on information and may include residents, taxpayers, business agents and contractors.
- (d) **Designated Management Employee** is defined in Section 4.1.3.
- (e) **Elected Official** means those individuals elected to Council and includes the Mayor and Councillors of the City of Surrey.
- (f) **Employee** includes any individual paid a salary or wages by the City of Surrey and may be a Union Employee or Management Employee of the City of Surrey.
- (g) **Management Employee** means an Employee of the City of Surrey who is exempt from Union membership for the purposes of the City of Surrey's Collective Agreement(s).
- (h) **Respectful Workplace** is defined in Section 3.1.
- (i) **Supervisor** means any Employee of the City of Surrey responsible for the directing and supervision of other Employees and may include both Union and Management Employees.
- (j) **Union Employee** means a member of CUPE Local 402-02, CUPE Local 402 or IAFF Local 1271.
- (k) **Visitor** includes all individuals who access the Workplace, as defined in this Policy, who are not Employees, Elected Officials, Volunteers, Contractors or Customers.
- (l) **Volunteer** means a person serving the City of Surrey who is not an Employee, as defined in this Policy, and includes those individuals serving on any board(s), commission(s) or committee(s) established by the City of Surrey.
- (m) **Workplace** is considered to be anywhere where activities directly related to the business of the City of Surrey or the Surrey Public Library occur.

APPENDIX "B"

HUMAN RIGHTS POLICY

<h4>SECTION 5 – ACCOUNTABILITY</h4>

- 5.1 The City of Surrey is committed to creating an environment which is free from any form of discrimination based on any of the prohibited grounds of discrimination under the B.C. *Human Rights Code*.
- 5.2 This policy reflects the City's responsibility under the B.C. *Human Rights Code* to prevent discrimination in the Workplace.
- 5.3 The City of Surrey is committed to providing education and training to all Employees and Elected Officials about the Policy and will ensure that procedures for complaint investigation and resolution are implemented and followed.
- 5.4 All individuals are accountable for creating an environment that is free from Discrimination for Employees, and for Customers, Visitors, Contractors, Volunteers, and Elected Officials.
- 5.5 Management Employees and Supervisors are accountable for creating a working environment where Discrimination and Harassment are not tolerated.
- 5.6 The City of Surrey will communicate the commitment set out in this Policy to Customers, Visitors, Contractors and Volunteers.

SECTION 6 – PURPOSES

The Purposes of the Human Rights Policy are:

- 6.1 To formalize the responsibility and commitment of the City of Surrey to ensure that all Employees, Elected Officials, Volunteers, Customers, Contractors and Visitors enjoy a workplace and service environment that is free from Discrimination or Harassment, as defined by the Policy.
- 6.2 To establish that the City of Surrey promotes a work environment for Employees, Elected Officials, Volunteers, Customers, Contractors and Visitors free from Discrimination and Harassment.
- 6.3 To ensure that all Employees, Elected Officials and Volunteers understand what is meant by an environment free from Discrimination or Harassment and know what to do to ensure that such an environment is created and maintained at the City of Surrey.
- 6.4 To provide appropriate processes and procedures to deal with complaints in an effective and timely manner and remedy situations when Discrimination or Harassment occurs.
- 6.5 Nothing in this Policy should be construed as depriving Union Employees covered under the collective agreement(s) of CUPE Local 402, CUPE Local 402-02 and IAFF Local 1271 of their rights under these collective agreement(s). The intention is for this Policy to work in conjunction with any language on Discrimination or Harassment contained in the collective agreement(s).

SECTION 7 - DEFINITIONS OF DISCRIMINATION AND HARRASSMENT

7.1 Discrimination refers to adverse differential treatment of individuals or groups and is prohibited by law. It may be intentional or unintentional and often stems from prejudice and/or stereotypes we have of others. It can result in one individual or group having an advantage over another individual or group. Discrimination can cause an individual or group to be excluded from activities that they have the right to be included in.

The prohibited grounds of discrimination as set out in the B.C. *Human Rights Code* are race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age and conviction of a criminal or summary conviction offence that is unrelated to employment or intended employment. Discrimination as defined by this Policy is specific to conduct which is prohibited by the B.C. *Human Rights Code*. Other types of conflict which do not fall within the definition of Discrimination are provided for in other City of Surrey policies.

7.2 Harassment is a type of Discrimination. Harassment is defined as:

- Unwelcome conduct;
- That is based on or related to one of the prohibited grounds set out in Section 3.1 of this Policy; and
- That detrimentally affects the work environment or how accommodation, services or facilities are provided or leads to adverse job-related consequences for the victim.

7.3 Sexual Harassment is a type of Discrimination on the prohibited ground of sex.

7.4 Examples of harassment include but are not limited to:

- Remarks, jokes, innuendos or other comments regarding someone's body, appearance, physical or sexual characteristics or clothing;
- Display, distribution or storage of offensive or derogatory pictures, cartoons or other material (including material on computers or e-mail);
- Unwelcome questions or sharing of information regarding a person's sexuality or sexual activity, religious activities or disability status;
- Sexual solicitation or advance that is unwelcome;
- Unwanted physical touching; and

- Favoursing or appearing to other employees to be favoursing a subordinate employee in exchange for sexual favours.
- 7.5 Harassment does not include legitimate job related actions performed in good faith by Supervisors and Management Employees such as work direction or assignment, performance appraisal, attendance monitoring and implementation of disciplinary or other corrective actions.
- 7.6 Retaliation for speaking out, bringing a complaint or participating in the investigation of a complaint of Discrimination or Harassment under this Policy is prohibited by this Policy. A separate complaint of Discrimination or Harassment can be made if an individual has been the subject of retaliatory behaviour for bringing a complaint of Discrimination or Harassment. Retaliation may include, but is not limited to, penalizing an individual or subjecting them to adverse job consequences.

SECTION 8 – APPLICATION OF POLICY
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8.1 This Policy applies to all Employees, Elected Officials, Volunteers, Customers, Contractors and Visitors and covers conduct occurring where activities related to the enterprise of the City of Surrey or the Surrey Public Library occur including:

- At any facilities owned and/or operated by the City of Surrey;
- At City-related social functions;
- At work-related conferences or training sessions; and
- During work-related travel.

SECTION 9 - CONFIDENTIALITY

- 9.1 All processes under this Policy will be conducted confidentially. This means that no one who is in any way involved with any process under this Policy, including Complainants and Respondents, is to disclose any information to anyone except as required for the conduct of Informal Complaint Resolution Processes under Section 7 or Formal Complaint Resolution Processes under Section 8 or for the purpose of making a decision respecting a complaint.
- 9.2 The *Freedom of Information and Protection of Privacy Act* governs rights to privacy and access to information with respect to any complaint.
- 9.3 If any individual knowingly discloses confidential information collected under this Policy contrary to the Policy and without proper authorization, that individual could be subject to disciplinary consequences up to and including termination of employment.

SECTION 10 – SERIOUS MISCONDUCT
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- 10.1 Discrimination and Harassment are serious misconduct. Any Employee who is found to be responsible for Discrimination or Harassment may be disciplined up to and including termination of employment for cause.
- 10.2 A Customer, Visitor, Volunteer or Contractor who breaches this Policy may be temporarily or permanently denied access to the City of Surrey's facilities and/or services.
- 10.3 A majority of the Mayor and Councillors will determine the appropriate corrective action when an Elected Official is found to be in breach of this Policy.
- 10.4 An allegation of Discrimination or Harassment is an extremely serious matter. Complaints that are investigated and determined to be false and malicious may lead to discipline or other negative consequences for the individual who files the complaint. A false and malicious complaint is a complaint brought in bad faith and for improper reasons. A good faith complaint brought for proper reasons, which is found to not have merit, is not a false and malicious complaint.

SECTION 11 – INFORMAL COMPLAINT RESOLUTION PROCESS

11.1 If you feel you have been the subject of Discrimination or Harassment and you are comfortable discussing the issue directly with the other person, clearly tell the person that their behaviour is unwelcome and request that they stop immediately. If the complaint is dealt with to your satisfaction, the issue is considered to be resolved.

Employee Complaints:

11.2 If the complaint is not resolved, or if you feel that you are unable to talk to the person about the behaviour, inform your immediate Supervisor about your complaint. Your Supervisor will assist you to resolve the complaint and, if the complaint is dealt with to your satisfaction, the issue is considered to be resolved. The Supervisor will record the resolution in writing and provide a copy of it to the Manager, Human Resources.

11.3 If you do not feel comfortable approaching your Supervisor directly, or the Supervisor is part of the complaint, you should report your complaint to one of the following Designated Management Employees:

- General Manager, Finance, Technology & Human Resources;
- Manager, Human Resources; or
- Senior Advisor, Labour Relations.

11.4 The Designated Management Employee will set up a confidential meeting with you to discuss your complaint. You should be prepared to disclose all of the pertinent details relating to the complaint in the meeting. If you have kept any written notes or documentation, these should also be presented in the meeting. An Employee may have a shop steward, a friend or a Supervisor accompany you to the meeting. The Designated Management Employee will outline the options available to you for resolution of the complaint. An Employee may have a shop steward, a friend or a Supervisor accompany you to the meeting or to any other step in the process where it is appropriate.

11.5 The Designated Management Employee will assist you with the informal resolution of the complaint. Any resolution will be recorded in writing and placed in a confidential file kept by the Manager, Human Resources.

Customer, Visitor, Contractor, Volunteer or Elected Official Complaints:

11.6 If you are a Customer, Visitor, Contractor, Volunteer or Elected Official and you believe that you have been discriminated against or harassed, you should contact the City Manager's office to access the process for resolution of your complaint. The complaint will be referred by the City Manager to one of the Designated Management Employees.

Complaints against Designated Management Employees, Senior City Managers and Elected Officials:

- 11.7 Complaints against Designated Management Employees, Senior City Managers and Elected Officials must be directed to the City Solicitor who, in consultation with the General Manager, Finance, Technology & Human Resources, will be responsible for implementing an appropriate resolution process. (The General Manager, Finance, Technology & Human Resources will not be consulted by the City Solicitor respecting any complaint brought against the General Manager, Finance, Technology & Human Resources.) Complaints against the City Solicitor must be directed to the General Manager, Finance, Technology & Human Resources who, in consultation with the City's external labour relations counsel, will be responsible for implementing an appropriate resolution process.

SECTION 12 – FORMAL COMPLAINT RESOLUTION PROCESS

- 12.1 If the informal approach has not resulted in a resolution of the complaint or at the option of the Complainant, the complaint will be referred to the City Solicitor for formal resolution through an investigation.
- 12.2 The complaint must be made in writing describing the incidents, names of witnesses and the Respondent(s). The Respondent(s) will be provided with sufficient information to be able to respond to the allegations. The Investigator will give the parties the opportunity to respond to the allegations and present evidence necessary in support of their positions.
- 12.3 The Investigator will prepare a confidential fact-finding report that, at a minimum, describes the allegations, the evidence of the parties and the witnesses, a determination of whether the Policy has been violated, and may provide recommendations with respect to potential outcome. The Investigator will provide the final report to the City Solicitor.
- 12.4 Although there are no firm deadlines, the Investigator will be required to conduct the investigation as expeditiously as possible and in the normal case would be expected to make a determination within 60 days of being retained to conduct the investigation.
- 12.5 The City's Investigator may be an internal or external person who will have experience in the conduct of human rights investigations. The Investigator will conduct a thorough, fair and confidential investigation of the complaint. The Investigator will interview the Complainant, the Respondent and any Witnesses that may have relevant information.
- 12.6 The City reserves the right to retain external legal counsel to conduct the investigation and provide a privileged and confidential report to the City Solicitor.
- 12.7 If the Complainant withdraws the complaint, the City may continue with the formal investigation of the complaint.
- 12.8 Upon receipt of the confidential investigation report from the Investigator, the City Solicitor in consultation with appropriate City personnel will determine the appropriate corrective action.
- 12.9 The decision of the City of Surrey in this process is final and not subject to internal appeal.
- 12.10 A Union Employee retains the right to file a grievance under the Collective Labour Agreement at any time respecting a complaint brought under this Policy.
- 12.11 A decision made by the City of Surrey in this process does not affect the right of an individual to seek recourse under the B.C. *Human Rights Code*.

APPENDIX I – DEFINITIONS

The following terms are used in this Policy and are defined as follows:

- (a) **City of Surrey** for the purposes of this Policy also includes the Surrey Public Library.
- (b) **Complainant** is any individual who seeks recourse pursuant to this Policy as someone who believes he/she has experienced Discrimination or Harassment (including sexual harassment). The City of Surrey may also be a complainant.
- (c) **Contractor** includes all individuals who access the Workplace, as defined in this Policy, for the purpose of providing services or supplies to the City of Surrey.
- (d) **Customer** includes all individuals who access the Workplace as defined in this Policy for the purposes of obtaining City services on information and may include residents, taxpayers, business agents and contractors.
- (e) **Designated Municipal Employee** is defined in Section 7.3.
- (f) **Discrimination** is defined in Section 3.1.
- (g) **Elected Official** means those individuals elected to Council and includes the mayor and councillors of the City of Surrey.
- (h) **Employee** includes any individual paid a salary or wages by the City of Surrey and may be a Union Employee or Management Employee of the City of Surrey.
- (i) **Harassment** is defined in Section 3.2.
- (j) **Investigator** is an internal or external individual who will investigate a complaint brought under this Policy.
- (k) **Management Employee** means an Employee of the City of Surrey who is exempt from Union membership for the purposes of the City of Surrey's collective agreement(s).
- (l) **Respondent** is a person or group of persons, against whom allegation(s) of Discrimination or Harassment have been made pursuant to the terms of this Policy.
- (m) **Senior City Manager** includes: the City Manager; the General Manager, Human Resources; the General Manager, Finance & Technology; the General Manager, Engineering; the General Manager, Planning & Development; the General Manager, Parks, Recreation and Culture; the Chief Librarian; the Fire Chief; and the City Solicitor.

- (n) **Supervisor** means any Employee of the City of Surrey responsible for the directing and supervision of other Employees and may include both Union Employees and Management Employees.
- (o) **Union Employee** means a member of CUPE Local 402-02, CUPE Local 402 or IAFF Local 1271.
- (p) **Visitor** includes all individuals who access the Workplace, as defined in this Policy, who are not Employees, Elected Officials, Volunteers, Contractors or Customers.
- (q) **Volunteer** means a person serving the City of Surrey who is not an Employee, as defined in this Policy, and includes those individuals serving on any board(s), commission(s) or committee(s) established by the City of Surrey.
- (r) **Witness** is any individual(s) determined to have pertinent information with relation to a complaint filed under this Policy.
- (s) **Workplace** is considered to be anywhere where activities directly related to the business of the City of Surrey or the Surrey Public Library occur.