

Vexatious Conduct Policy

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| Policy # | 86 |
| Effective Date | September 20 2022 |
| Final Approver | Council. |

1.0 Interpretation

1.1 In this policy, unless the context requires otherwise:

"Charter of Rights and Freedoms" means Part 1 of the *Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c. 11*;

"City" means the Corporation of the City of Kingston;

"City employee" means a person who performs work or supplies services directly to the *City* for monetary compensation under an employment contract and includes *CMT members, directors and managers* but does not include *council members*;

"Clerk" means the person appointed clerk by the *City*;

"CMT member" means a member of the *City's* corporate management team and includes the person appointed chief administrative officer by the *City*, the person appointed treasurer by the *City*, and a commissioner responsible for the leadership and operation of a portfolio of *City* departments;

"council member" means a person elected to office on the council of the *City*;

"direct supervisor" means the *manager, director, or CMT member* to whom a *City employee* directly reports;

"director" means the director of a *City* department;

"Human Rights Code" means the *Human Rights Code, R.S.O. 1990, c. H.19*;

"manager" means a *City employee* who reports directly to a *director*;

"meeting" has the meaning given to it in the *City's By-Law Number 2021-41*;

"Occupational Health and Safety Act" means the *Occupational Health and Safety Act, R.S.O. 1990, c. O.1*;

"restriction" has the meaning given to it in section 3.3;

"supervisor" means a *City employee* who reports directly to a *manager*;

"vexatious conduct" means behaviour which, due to its nature or frequency, or both, substantially and unjustifiably compromises the *City's* ability to provide services to the public in a respectful, fair and timely manner, including:

- (a) harassing, verbally abusing, threatening or otherwise seeking to intimidate one or more *City employees*;
- (b) engaging in violence, or the threat of violence, against one or more *City employees*;
- (c) making excessive demands on the time or resources of one or more *City employees* with unreasonably frequent or long attendances at one or more *City* facilities or phone calls, emails or correspondence to one or more *City employees*;
- (d) repeatedly challenging the findings of one or more *City employees* or the adequacy of a response, investigation or answer of one or more *City employees*;
- (e) placing unreasonable demands on one or more *City employees*, including by demanding a response to a request, investigation into a complaint, or answer to an enquiry within an unreasonable timeframe;
- (f) refusing to accept that a request, complaint or enquiry falls outside of the *City's* jurisdiction;
- (g) making statements or submitting information, or permitting or encouraging one or more other persons to make statements or submit information, to one or more *City employees* that the person knows is untrue;
- (h) denying or attempting to alter statements already made or information already submitted during an ongoing request, complaint or enquiry or an earlier request, complaint or enquiry;
- (i) using a new request, complaint or enquiry to attempt to resurrect a matter or issue which was responded to, investigated or answered after an earlier request, complaint or enquiry;
- (j) making requests, complaints or enquiries to multiple *City employees* to attempt to address the same matter or issue;

- (k) explicitly stating that a request, complaint or enquiry is intended to cause one or more *City employees* inconvenience, disruption or annoyance or was otherwise made for an improper purpose;
- (l) failing to reasonably cooperate with one or more *City employees* who are attempting to respond to a request, investigate a complaint or answer an enquiry made by that person;
- (m) unreasonably changing the basis of a request, complaint or enquiry while one or more *City employees* are attempting to respond to the request, investigate the complaint or answer the enquiry;
- (n) demanding special treatment from one or more *City employees* or attempting to circumvent the *City's* structure, hierarchy, processes or procedures; or
- (o) failing to clearly identify the grounds of a request, complaint or enquiry despite the reasonable efforts of one or more *City employees* to assist in clarifying such grounds.

- 1.2 In this policy, "include", "includes" and "including" indicate that the subsequent list is not exhaustive.
- 1.3 A reference to any legislation, regulation, by-law, rule, policy or to a provision thereof includes a reference to any legislation, regulation, by-law, rule, policy or to a provision thereof enacted in substitution thereof or amendment thereof.
- 1.4 A reference to legislation includes all of the regulations made thereunder.
- 1.5 A reference to the position or title of any *City employee* includes a reference to any position or title created in substitution thereof.

2.0 Purpose

- 2.1 The purpose of this policy is to establish a formal system for managing persons who engage in *vexatious conduct* which recognizes and is consistent with the following:
 - (a) the *City* endeavours to provide exemplary service to all members of the public in a respectful, fair and timely manner;
 - (b) the *City* or a *City employee* may, in some circumstances, have a statutory duty to act or provide services;

- (c) every *City employee* is entitled to a healthy and safe workplace in accordance with the *Occupational Health and Safety Act* and the *City's "Workplace Violence and Harassment Prevention Program", "Respect in the Workplace Policy", and "Health, and Safety & Wellness Mandate Policy"*;
- (d) every person has a right to equal treatment with respect to services, goods and facilities without discrimination in accordance with the *Human Rights Code*; and
- (e) responding to *vexatious conduct* compromises the *City's* ability to provide exemplary service to all members of the public in a respectful, fair and timely manner.

3.0 Restrictions

3.1 A *CMT member* who believes or suspects that a person has engaged in or has continued to engage in *vexatious conduct* must, prior to imposing any *restrictions* pursuant to section 3.3, give a warning in writing to such person.

3.2 When giving a warning to an affected person, a *CMT member*:

- (a) must use Form 1, attached as Appendix 9.1 to this policy;
- (b) must include in the warning a description of the *restriction* or *restrictions* that the *City* may impose if the person continues to engage in *vexatious conduct* and the particulars of the *vexatious conduct* which caused the warning to be given;
- (c) must inform the affected person that the affected person may make written submissions to the *CMT member*, including any supporting information or documents, about why one or more possible *restrictions* described in the warning are not necessary to achieve the purpose set out in section 2.1; and
- (d) may give the warning to the affected person by personal service, courier, registered mail or email, provided that the *CMT member* has reason to believe that the affected person will receive the notice.

3.3 A *CMT member* who has reasonable grounds to believe that a person has continued to engage in *vexatious conduct* after having been given a warning pursuant to section 3.1 may impose one or more restrictions on the way that *City*

employees will interact with that person for a period of up to two years (each a "**restriction**") in accordance with section 3.5 and 3.6, including:

- (a) restricting telephone calls to a specified time period;
- (b) limiting the person to one or more methods of contacting the *City*;
- (c) limiting the person's point-of-contact at the *City* to one specified *City employee*;
- (d) requiring any in-person interactions between the person and one or more *City employees* to take place in the presence of an appropriate witness;
- (e) requiring the person to fully disclose and produce all relevant documents or information before any *City employee* will further respond to a request, investigate a complaint or answer an enquiry;
- (f) instructing one or more *City employees* not to respond to the person regarding a particular request, complaint or enquiry or a reasonably similar request, complaint or enquiry; and
- (g) instructing one or more *City employees* to reduce or completely cease providing service to or communicating with the person.

3.4 A *City employee* must not give a warning or impose a *restriction* unless authorized to do so in accordance with section 3.1 or 3.3.

3.5 In exercising the authority delegated under section 3.3, a *CMT member*:

- (a) must impose the least restrictive *restrictions* necessary to achieve the purpose set out in section 2.1, considering all relevant factors, including:
 - (i) the nature of the affected person's *vexatious conduct*;
 - (ii) the frequency of the affected person's *vexatious conduct*;
 - (iii) the degree to which the affected person's *vexatious conduct* compromised the *City's* ability to provide exemplary service to all members of the public in a respectful, fair and timely manner;
 - (iv) the likelihood that the affected person will continue to engage in *vexatious conduct*;

- (v) any warnings previously given to the affected person under this policy;
 - (vi) the nature, severity and duration of any *restrictions* previously imposed on the affected person under this policy;
 - (vii) if known, the affected person's personal circumstances, including access to *meetings*, housing, family, employment, *City* services and supports, and community agencies and service providers and the likely impact of *restrictions* on such access;
 - (viii) whether the *City* or a *City employee* has a statutory duty to act or provide services; and
 - (ix) the degree and kind of *restrictions* necessary for the health or safety of one or more *City employees*;
- (b) must consider all relevant information, documents and reports received from a *director*;
 - (c) must consider any submissions, including supporting information or documents, received from the affected person after being given a warning; and
 - (d) may seek and consider additional information or documents from any person, and may consult with other *City employees*, legal counsel, or other advisors, all as the *CMT member* considers necessary.

3.6 When imposing one or more *restrictions*, a *CMT member* must give written notice of the *restriction* or *restrictions* to the affected person.

3.7 When giving written notice of one or more *restrictions* to an affected person, a *CMT member*:

- (a) must use Form 2, attached as Appendix 9.2 to this policy;
- (b) must include in the written notice a description of the *restriction* or *restrictions* being imposed and the particulars of the *vexatious conduct* the person engaged in which made that *restriction* or those *restrictions* necessary;

- (c) may give written notice to the affected person by personal service, courier, registered mail, or email, provided that *CMT member* has reason to believe that the affected person will receive the notice; and
 - (d) must give a copy of the written notice to all *CMT members* by email.
- 3.8 Subject to section 3.9, a *CMT member's* decision to impose one or more *restrictions* is final.
- 3.9 Where a *restriction* is imposed for a period of more than one year, a *CMT member* must reconsider the decision to impose such *restriction* within 30 days after the first anniversary of the original notice of the *restriction*, and, after such reconsideration, may confirm, modify or revoke the *restriction* in accordance with this policy.
- 3.10 A *CMT member* must give written notice of the reconsideration decision to the affected person in accordance with section 3.7.
- 3.11 A *CMT member's* reconsideration decision is final.

4.0 Reporting

- 4.1 Any *City employee*, other than a *CMT member*, who believes that a person is engaging in or continuing to engage in *vexatious conduct* must, as soon as reasonably possible,:
- (a) report to the *City employee's direct supervisor* the *City employee's* belief that the person is engaging in or continuing to engage in *vexatious conduct*;
 - (b) collect all relevant and available information or documents;
 - (c) make a written report in the prescribed form describing:
 - (i) the nature and frequency of the person's behaviour which the *City employee* believes is *vexatious conduct*;
 - (ii) if known, the person's personal circumstances, including access to *meetings*, housing, family, employment, *City* services and supports, and community agencies and service providers and the likely impact of *restrictions* on such access;
 - (iii) whether the *City* or a *City employee* has a statutory duty to act or provide services;

- (iv) the degree to which the person's behaviour compromised the *City's* ability to provide exemplary service to all members of the public in a respectful, fair and timely manner; and
 - (v) if known, the effect of the person's behaviour on any *City employee's* health or safety; and
- (d) give all relevant and available information, documents and reports to the *City employee's direct supervisor* for review.

For the purposes of clause (a), if a *City employee* reports directly to a *supervisor*, that *City employee* must report to the *City employee's manager* the *City employee's* belief that the person is engaging in or continuing to engage in *vexatious conduct*.

4.2 Any *manager* who receives information, documents and reports from a *City employee* pursuant to clause 4.1 (d):

- (a) must review such information, documents and reports in order to determine whether there are sufficient grounds to submit the information, documents and reports to their *director* for further review;
- (b) may, in conducting a review pursuant to clause (a), seek and consider additional relevant and available information, documents or reports from any person, and may consult with other *City employees*, legal counsel, or other advisors, all as the *manager* considers necessary; and
- (c) must give a copy of all relevant information, documents and the report to their *director* for review, if, following a review pursuant to clause (a), the *manager* determines that there are sufficient grounds to do so.

4.3 Any *director* who receives information, documents and reports from a *manager* pursuant to clause 4.2 (d):

- (a) must review such information, documents and reports in order to determine whether there are sufficient grounds to submit the information, documents and reports to a *CMT member* for further review;
- (b) may, in conducting a review pursuant to clause (a), seek and consider additional relevant and available information, documents or reports from any person, and may consult with other *City employees*, legal counsel, or other advisors, all as the *director* considers necessary; and

- (c) must give all a copy of all relevant information, documents and the report to a *CMT member* for review, if, following a review pursuant to clause (a), the *director* determines that there are sufficient grounds to do so.

4.4 A *City employee* must not make a report pursuant to section 4.1 for any frivolous or improper purpose.

5.0 Administration

5.1 *CMT members* and *directors* must take reasonable steps within their authority to:

- (a) implement every *restriction* imposed under this policy; and
- (b) direct compliance with this policy.

5.2 *City employees* must, where circumstances reasonably permit, give effect to every *restriction* imposed under this policy.

5.3 The *director* of Legal Services may:

- (a) prescribe forms of notices, reports or other documents to be given, made or maintained under this policy;
- (b) amend this policy by substituting a new Form 1 for Appendix 9.1 or a new Form 2 for Appendix 9.2.

5.4 A *City employee* who breaches this policy may be subject to discipline up to and including dismissal.

6.0 Application

6.1 This policy applies to all *City employees*.

7.0 Approval Authority

| Role | Position | Date Approved |
|-----------------------|---------------------------|-------------------|
| Quality Review | | |
| Subject Matter Expert | Legal Services Department | September 20 2022 |
| Legal Review | Senior Legal Counsel; and | September 20 2022 |

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| | City Solicitor. | |
| Management Review | Directors. | September 20 2022 |
| Final Approval | Council. | September 20 2022 |

8.0 Revision History

| Effective Date | Revision # | Description of Change |
|----------------|------------|-----------------------|
| Sept. 20, 2022 | 1 | New Policy |
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