

To: Corporate Services Committee

From: Tracy Adams, Commissioner,
Corporate Services Department

Report Number: CORP-21-20

Date of Report: April 7, 2021

Date of Meeting: April 12, 2021

Subject: Updated Complaint Management and Resolution Policy and
Proposed Frivolous, Vexatious or Unreasonable Requests or
Complaints Policy

File: A-2100

1.0 Purpose

The purpose of this report is to respond to the March 29, 2021 direction of City Council (CNCL-21-22) that:

“Direct staff to undertake a review of the City of Vaughan and other municipalities’ frivolous and vexatious complaint policies and report back with a proposed policy for Council’s consideration and report back to the Corporate Services Committee”.

The report also recommends that Council approve an updated Complaint Management and Resolution Policy and the implementation of a Frivolous, Vexatious or Unreasonable Requests or Complaints Policy.

Attachment 1 is the updated Complaint Management and Resolution Policy (the “Complaint Policy”).

Attachment 2 is the 2016 Complaint Management and Resolution Policy.

Attachment 3 is the proposed Frivolous, Vexatious or Unreasonably Persistent Requests or Complaints Policy (the “Frivolous Policy”).

Attachment 4 is the City’s Respect in the Workplace – Harassment and Violence Policy LR14.10.

Attachment 5 is the Ombudsman Ontario, “Tips for Municipal Complaint Resolution Policies”.

Attachment 6 is the City of Vaughan’s Frivolous and Vexatious Policy.

2.0 Recommendation

That the Corporate Services Committee recommend to City Council:

That in accordance with Report CORP-21-20, dated April 7, 2021, Council approve the updated Complaint Management and Resolution Policy as outlined in Attachment 1 and the Frivolous, Vexatious or Unreasonable Requests or Complaints Policy as outlined in Attachment 3.

3.0 Executive Summary

Not applicable.

4.0 Input From Other Sources

- Corporate Leadership Team
- City Clerk Services
- Corporate Security Manager
- Facilities Management Services
- Municipal Law Enforcement and Licensing Services
- Office of the Ontario Ombudsman
- Municipalities: Aurora, Ganonoque, Mississauga, Mount Pearl, Newmarket, Vaughan and Wasaga Beach.

5.0 Analysis

The City is committed to providing exemplary service to all members of the public and aims to respond to service requests and complaints in an equitable, comprehensive and timely manner.

With the passage of Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014 ("Bill 8"), the Ontario Ombudsman's oversight authority was expanded to investigate complaints at the municipal level, only after local investigations have been completed. In 2016, the City of Oshawa established the Complaint Policy in response Bill 8 (Attachment 2). The Policy provides the public with an avenue for submitting complaints about City programs, facilities, services and employees. The Policy has been updated to add definitions, clarify responsibilities and the complaint management process. The Policy is appended as Attachment 1.

5.1 Legislation and Polices

The City has a general legislated duty under the *Occupiers' Liability Act*, R.S.O. 1990, c 0.2, to take such care, as in all the circumstances is reasonable, for any persons entering on its premises, and the property brought on the premises are reasonably safe. The City has further duties under the *Occupational Health and Safety Act*, R.S.O. 1990, c 0.1, to address workplace violence and harassment and to:

- make reasonable efforts to provide a safe, healthy working environment for its employees;
- ensure that all persons on the property are reasonably safe while on the premises; and,
- make reasonable efforts to provide for the safety of Council members, employees and the public in City operations and in public use of City facilities.

The City's Respect in the Workplace - Harassment and Violence Policy LR14.10, appended as Attachment 4, outlines that it is the Corporation's goal to provide a healthy and safe work environment that is free from discrimination, harassment and violence of any kind.

The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("*Municipal Freedom of Information Protection of Privacy Act*"), provides that a request for information may be denied if, on reasonable grounds, it is found to be frivolous or vexatious.

Enforcement By-law 92-2014, Section 4.4 (c) states that Officers may, subject to the Director's directions, conclude investigations if the complaint is trivial, frivolous, vexatious or made in bad faith.

In 2017, the Ontario Ombudsman's Office investigated a complaint about the Township of Red Rock. The investigation recommended, among other things, the creation of a public conduct policy "that enables administrators to respond in a more appropriate, proportionate and fair manner when dealing with citizens."

The Ontario Ombudsman's Office has provided feedback that policies should provide clear definition and defined processes, which are applied fairly and are clearly communicated to the customer (see Attachment 5).

5.2 Frivolous, Vexatious and Unreasonable Complaints or Requests

On occasion, employees deal with situations and customers who are submitting complaints or using employee's time in a frivolous, vexatious or unreasonable manner. These situations require a significant amount of employee's time to respond and resolve, and detract from the City's ability to serve others.

The purpose of the proposed Frivolous Policy is to address frivolous, vexatious or unreasonable requests or complaints, received by employees either directly or indirectly from the public, that consume a disproportionate amount of City time and resources and impede employees from attending to other essential issues. The proposed Frivolous Policy establishes the process to be used by all employees when handling such requests or complaints which will guide employees in identifying situations that meet the criteria of frivolous, vexatious, or unreasonable complaints or requests, and the associated actions that may be taken in such circumstances.

The aim of the proposed Frivolous Policy is to support the City of Oshawa's commitment to service excellence and good governance by addressing all requests and complaints equitably and efficiently, while acknowledging that there may be a need to protect employees from unreasonable behaviour. While the events requiring the application of the proposed Frivolous Policy are rare, it is important that employees be prepared to manage these situations in advance of their occurrence.

5.3 Proposed Frivolous, Vexatious or Unreasonable Requests or Complaints Policies

Many municipalities have implemented frivolous, vexatious or unreasonable requests or complaint policies that provide:

- Definitions for what is considered frivolous, vexatious or unreasonable.
- Roles and responsibilities with regard to responding to these complaints or requests.
- Employees requirement to clearly document and demonstrate that the policy needs to be applied.
- Procedure and restrictions to be consistently applied.

In June 2017, the City of Vaughan (Attachment 6) adopted a Frivolous and Vexatious Complaints Policy. The Policy establishes the process, which is to be used by all staff to identify the issue and how to proceed when handling these types of requests or complaints, including the responsibilities of employees and senior staff in the application of the Policy. The Policy also includes information on to notify the individual and the restrictions applied as well as information regarding a review of the restrictions.

As directed by Council at its meeting of March 29, 2021, the Frivolous Policy proposed in Attachment 3 is modeled after the City of Vaughan. It contains the same information and provisions as included in the City of Vaughan's policy. For instance, providing employees with consistent and fair practices for handling frivolous, vexatious or unreasonable requests or complaints and examples to assist in identifying whether a request or complaint is considered frivolous, vexatious or unreasonable. It also includes the process on how to proceed once a complaint or request has been determined to be frivolous, vexatious or unreasonable.

The proposed Frivolous Policy does not apply to complaints, which are addressed through the Complaint Policy (see Attachment 1) nor does it apply to a situation where there is a statutory or prescribed process for review or to situations governed by specific legislation and administrative hearings (e.g. Hearings Officer, Ombudsman Ontario, the Integrity Commissioner, *Municipal Freedom of Information Protection of Privacy Act*).

5.3.1 Process

The decision in determining if an individual's request or complaint is frivolous, vexatious or unreasonable may be made as a result of a repeated pattern of conduct.

Directors are responsible for determining if a complaint or request applies to the Frivolous Policy in consultation with their respective Commissioner, the City Solicitor and the Chief

Administrative Officer ("C.A.O."). A written warning will be provided to the complainant, with a copy to members of Council, the C.A.O., the Corporate Leadership Team, the Director responsible for the complaint and Manager, Customer Service, advising of actions that will be put into effect if the frivolous, vexatious or unreasonable behaviour continues. Actions will be tailored to address individual circumstances as outlined in the Frivolous Policy.

If the complainant disregards the warning letter and continues to submit complaints deemed to be frivolous, vexatious or unreasonable, the Director will advise their Commissioner who, in consultation with the City Solicitor and the C.A.O., will notify the complainant in writing that the actions outlined in the written warning will take effect immediately.

Members of Council, the C.A.O., the Corporate Leadership Team, the Director and the Manager, Customer Service will be copied on the written notification.

6.0 Financial Implications

There are no financial implications with this Report.

7.0 Relationship to the Oshawa Strategic Plan

This report supports the Oshawa Strategic Plan goal of Accountable Leadership.



Mary Medeiros, City Clerk,
City Clerk Services



Tracy Adams, Commissioner,
Corporate Services Department

Attachments



Policy: Complaint Management and Resolution Policy			
Issued: 2016	Revised: March 2021	Page: 1 of 8	Number:
Related Policies:	<i>Frivolous, Vexatious or Unreasonable Requests or Complaints Policy</i> <i>Respect in Workplace – Harassment and Violence Policy LR14.10</i>		

1.0 Purpose/ Background

The purpose of this Policy is to support the City of Oshawa's dedication to serving our community. The City recognizes the importance of public input and welcomes Complaints as valuable forms of Feedback. This Policy provides the public with an avenue for submitting Complaints and provides City Employees with consistent practices for handling Complaints about City programs, facilities, services and Employees.

2.0 Policy Statement

This policy has been developed in response to Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014 and has been updated to align with the goal of Accountable Leadership identified in the 2020-2023 Oshawa Strategic Plan.

3.0 Scope/Application

This Policy applies to all Employees (including employees of the Oshawa Senior Community Centres), Volunteers, Students, and/or Contracted Service Providers of the Corporation of the City of Oshawa.

The following types of Complaints will not be investigated in accordance with this Policy and includes but not limited to:

- Anonymous Complaints;
- Complaints regarding a decision or recommendation of Council or a Committee of Council;
- Complaints regarding whether a meeting of Council was appropriately held in accordance with the Closed Meeting provisions outlined in the Municipal Act, 2001 (closed meeting complaints are governed by the Ontario Ombudsman);
- Complaints about Members of Council (as they are governed by the Council Code of Conduct and investigated by the Integrity Commissioner);
- Complaints which involve ongoing litigation;
- Complaints from Employees about other Employees or working conditions;
- Frivolous, Vexatious or Unreasonable Requests or Complaints;

- Issues that have statutory review and appeal processes including but not limited to Freedom of Information Requests, development charge levies, land use planning, by-law notices, orders and appeals;
- Outside boards and agencies including, for example, the Oshawa Public Library and Robert McLaughlin Gallery;
- Requests for Service;
- Requests to change a by-law;
- Suggestions;
- Civil matters.

4.0 Definitions

City means the Corporation of the City of Oshawa.

Complaint means an expression of dissatisfaction or concern about the action or lack of action taken regarding operations, facilities, services or programs provided by the City or a person or body on behalf of the City. A Complaint can be spoken, written or submitted by another method of communication.

Complainant means a customer who is submitting a Complaint. Any customer who uses or is affected by City services can make a Complaint including residents, visitors, businesses and community groups.

Compliment means an expression of approval or satisfaction for a City service, Employee, program, facility or process.

Contracted Service Provider means an individual or business that undertakes a contract or agreement with the City in order to perform a service on a continuing basis (e.g. Security Guard Services, Marriage Officiants, etc.).

Council means Oshawa City Council as a whole.

Council Member means an individual member of Council, including the Mayor.

Employee means all full-time, part-time, temporary, seasonal and staff hired on a contract basis for a defined period of time, of the City of Oshawa as well as, Students.

Feedback means an opinion or comment about a program, facility, service or Employee.

Frivolous means a Complaint/Request that has no serious purpose or value or may have little merit and be trivial and is part of a pattern of conduct that amounts to an abuse of the right of access, interferes with the operations of the institution, or is made in bad faith or for a purpose other than to obtain access.

Ombudsman means the Ombudsman of Ontario or the Ombudsman appointed by Council in accordance with Section 223.13 (1) of the Municipal Act, 2001, S.O. 2001, c 25.

Personal Information means personal information as defined in Section 2(1) of the Municipal Freedom of Information Protection of Privacy Act including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual;
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, telephone number, fingerprints or blood type of the individual;
- (e) the personal opinions or views of the individual except if they relate to another individual;
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the individual; and,
- (h) the individual's name if it appears with other Personal Information relating to the individual or where the disclosure of the name would reveal other Personal Information about the individual.

Request means the act of asking for something to be given or done.

Request for Service means a request made to the City for a specific service or to notify the City that a service was not provided on time. Examples include:

- Requesting that the City repair a street surface;
- Reporting a malfunctioning street light;
- Notifying the City of a missed garbage collection;
- Reporting a by-law infraction.

Suggestion means an idea submitted to the City with the aim of improving services, programs or processes.

Student means an individual at least 15 years of age and registered in an educational program at a high school, college or university level.

Unreasonable means a Complaint/Request that is likely to cause distress or disruption to the City, its Employees or other members of the public, without any proper or justified cause. Behaviour that because of the nature or frequency of a Complaint's contact with the City, negatively affects the ability to deal with their Complaints or those of others.

Vexatious means a Complaint/Request without merit, that is pursued in a manner that is malicious, intended to inconvenience, embarrass or Harass the recipient or is a pattern of conduct by the Complainant that amounts to the misuse of the complaints processes and procedures.

Volunteer means an individual who volunteers their services, from time to time, to assist in areas of the City.

4.1 Examples of Complaints

The following are some examples of Complaints covered by this policy:

- Complaints about receiving poor customer service;
- Complaints about the quality of a service provided;
- Timeliness in responding to a complaint;
- Concern that a matter was not completed or carried out in accordance with City Policies and By-laws.

5.0 Responsibilities

5.1 Customer Service Manager

The Customer Service Manager is responsible for directing Complaints to the appropriate Manager or Director, monitoring status of Complaints and ensuring response by departments in accordance with the service standards.

5.2 Employees

City Employees are to have knowledge and understanding of the purpose of receiving Complaints, the process through which a Complaint can be made and the service standards that apply to Complaints.

5.3 Managers, Directors and members of the Corporate Leadership Team

Managers and Directors or a member of the Corporate Leadership Team are responsible for investigating and responding to Complaints about services for which they are responsible. Complaints about Employees are to be processed by that Employee's direct Supervisor.

5.4 Customers

Customers are to recognize that the City must consider the needs of the whole community. They are to provide honest and respectful communication with a goal to improving services.

6.0 Principles

6.1 Customer focused

The City will deal with Complaints promptly and respond in a format that meets the needs of the customer.

6.2 Continuous improvement

The City will consider Complaints as opportunities to evaluate programs and services for possible improvement and will record lessons learned.

6.3 Fair and impartial

The City will deal with Complaints in an open-minded and impartial way. Making a Complaint will not negatively affect future dealings with the City. Customers will not be discriminated against during the investigation or because of a Complaint. Employees about whom a Complaint is launched will be treated fairly.

6.4 Accountable

The City will provide honest, evidence-based explanations and give reasons for decisions. Information will be provided in a clear and open way. When requested and if appropriate, the City will inform the Complainant about the lessons learned and corrective actions taken.

6.5 Confidentiality

Protecting the privacy of all parties is of utmost importance. Personal Information will only be collected, used and/or disclosed in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.

7.0 Procedure

7.1 Resolution Attempt

Whenever possible, customers are encouraged to work with Employees at the first point of contact to have issues addressed. Employees will listen with an open mind and make efforts to resolve Complaints in a timely manner.

7.2 Submitting a Complaint

Should a resolution not be made at the first point of contact, formal Complaints can be submitted through the following channels:

- Online at www.oshawa.ca/complaint
- Complete the [Complaint Form](#) and submit:
 - By email at service@oshawa.ca

- By mail to Service Oshawa, 50 Centre St. S., Oshawa ON L1H 3Z7;
- By fax to 905-436-5642; or
- In person at Service Oshawa, 50 Centre St. S., Oshawa ON L1H 3Z7.

7.3 Details of Complaint

In order to submit a formal Complaint to the City, Complainants are required to provide as much information as possible including:

- Contact Information – name, address, phone number, email (anonymous Complaints will not be accepted);
- Details of the Complaint (what was or was not said or done);
- Location;
- Date/time;
- Names of any individuals or Employees involved;
- Resolution being sought.

7.4 Complaints Regarding Employees

Complaints regarding an Employee will be forwarded to the Employee's direct Supervisor. If follow up information is requested, the Complainant will be advised that the matter is being investigated or is resolved, but no further information will be provided.

7.5 Service Standards

The City will provide an acknowledgement of receipt of their Complaint and an assigned tracking number within three business days. This acknowledgement will identify who will be following up on the Complaint and provide their contact information.

The investigation and any corrective action will take place in a timely manner. Acknowledging that every situation is different and may require more or less time to resolve, wherever possible, the City will provide a final response to the Complainant within 20 business days. In exceptional circumstances if this timeframe cannot be met, the City will keep the Complainant informed of status of their Complaint.

7.6 Complaint Investigation Process

Investigations of Complaints will be carried out internally. The appropriate investigating direct Supervisor will:

- Contact the Complainant as soon as practicable, where a quick resolve is possible.
- Notify the Complainant of an estimated timeframe, if the investigating direct Supervisor feels the investigation may result in a lengthy process.

- Review the issues identified by the Complainant by:
 - Reviewing relevant legislation, where applicable;
 - Reviewing the relevant City policies and procedures;
 - Interviewing any Employees who may have knowledge of the Complaint, where applicable;
 - Identifying actions that may be taken to address the Complaint or improve City operations.
- Consult with the appropriate Corporate Leadership Team member and Chief Administrative Officer where appropriate to do so depending on the severity of the issues.
- Determine if a Complaint or Request is considered Frivolous, Vexatious or Unreasonable. If it is, the Frivolous, Vexatious or Unreasonable Requests or Complaints Policy will be followed.
- Decisions of an investigation will be provided to the Complainant and may consist of information such as:
 - Overview of the Complaint;
 - Details of how the investigation was conducted;
 - Summary of the facts;
 - Outline the findings;
 - Identification of next steps; and,
 - Suggestions of an appropriate resolution along with the rationale supporting the proposed resolution.

7.7 Complaint Appeal Process

There is no additional appeal process at the municipal level. If the Complainant is not satisfied with the results of the investigation or the process, they may contact the Office of the Ontario Ombudsman. The Ontario Ombudsman has the authority to look at how the issue was handled at the City, the steps taken, and the outcome. The Ombudsman has the authority to consider and make recommendations as to whether the process was fair, transparent, and in accordance with the applicable policies and by-laws of the City.

8.0 Monitoring and Evaluation

This policy is reviewed by the City Clerk or designate at least every three years to ensure its effectiveness and compliance with legislation and current business processes or as required based on legislative changes.

The City Clerk is authorized to make minor or housekeeping amendments to this Policy, as required.

For further information regarding this policy, please contact City Clerk Services at 905-436-3311 or clerks@oshawa.ca

9.0 References

Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014

Ontario Ombudsman - Tips for Municipal Complaint Resolution Policies

Frivolous, Vexatious or Unreasonable Requests or Complaints Policy

Respect in Workplace – Harassment and Violence Policy LR14.10

10.0 Approved

Authority	Date	Signature

1.0 Purpose

The purpose of this policy is to support the City of Oshawa's dedication to serving our community. The City recognizes the importance of public input and welcomes complaints as valuable forms of feedback. This policy provides the public with an avenue for submitting complaints and provides City staff with consistent practices for handling complaints about City programs, facilities, services and staff.

2.0 Source

This policy has been developed in alignment with the Accountable Leadership goal identified in the 2015 – 2019 Oshawa Strategic Plan and in response to recommendations in the Ombudsman Ontario 2014/2015 Annual Report.

3.0 Definitions

Complainant is a customer who is submitting a complaint. Any customer who uses or is affected by City services can make a complaint including residents, visitors, businesses and community groups.

Complaint is an expression of dissatisfaction or concern about the action or lack of action taken by the City related to:

- Programs, facilities, services or staff; or
- Failure to meet a standard of service.

Compliment is an expression of approval or satisfaction for a City service, staff member, program, facility or process.

Feedback is an opinion or comment about a program, facility, service or staff member.

Inquiry is a request for information that is resolved at the point of service delivery.

Personal Information means recorded information about an identifiable individual as outlined in Section 2 of the *Municipal Freedom of Information and Protection of Privacy Act*.

Request for Service is a request made to the City for a specific service or to notify the City that a service was not provided on time. Examples include:

- Requesting that the City repair a street surface
- Reporting a malfunctioning street light
- Notifying the City of a missed garbage collection
- Reporting a by-law infraction

Suggestion is an idea submitted to the City with the aim of improving services, programs or processes.

4.0 Scope

This policy applies to:

- All City of Oshawa staff, services, programs and facilities
- Contractors and consultants working on behalf of the City

This policy does not apply to:

- Complaints about Members of Council
- Complaints from City staff about other City staff or working conditions
- Compliments
- Decisions made by City Council or one of its Committees
- Inquiries
- Issues that have statutory review and appeal processes including but not limited to Freedom of Information Requests, development charge levies, land use planning, by-law notices, orders and appeals.
- Outside boards and agencies including, for example, the Oshawa Public Library and Robert McLaughlin Gallery
- Requests for Service
- Requests to change a by-law
- Suggestions
- Civil matters

5.0 Principles

Customer focused

The City will deal with complaints promptly and respond in a format that meets the needs of the customer.

Continuous improvement

The City will consider complaints as opportunities to evaluate programs and services for possible improvement and will record lessons learned.

Fair and impartial

The City will deal with complaints in an open-minded and impartial way. Making a complaint will not negatively affect future dealings with the City. Customers will not be discriminated against during the investigation or because of a complaint. Staff about whom a complaint is launched will be treated fairly.

Accountable

The City will provide honest, evidence-based explanations and give reasons for decisions. Information will be provided in a clear and open way. When requested and if appropriate, the City will inform complainant about the lessons learned and corrective actions taken.

Confidentiality

Protecting the privacy of all parties is of utmost importance. Information will be collected, used and disclosed in accordance with the Municipal Freedom of Information and Protection of Privacy Act.

6.0 Roles and Responsibilities

The **Customer Service Manager** is responsible for directing complaints to the appropriate Manager or Director, monitoring status of complaints and ensuring response by departments in accordance with the service standards.

Customers are to recognize that the City must consider the needs of the whole community. They are to provide honest and respectful communication with a goal to improving services.

Staff are to have knowledge and understanding of: the purpose of receiving complaints, the process through which a complaint can be made and the service standards that apply to complaints.

Managers and Directors are responsible for investigating and responding to complaints about services they are responsible for. Complaints about staff are to be processed by that staff member's immediate supervisor.

7.0 Process**Resolution Attempt**

Whenever possible, customers are encouraged to work with staff at the first point of contact to have issues addressed. Staff will listen with an open mind and make efforts to resolve concerns in a timely manner.

Submitting a Complaint

Should a resolution not be made at the first point of contact, formal complaints can be submitted through the following channels:

- Online at www.oshawa.ca/complaint
- Complete the [Complaint Form](#) and submit by:
 - By email at service@oshawa.ca
 - By mail to Service Oshawa, 50 Centre St. S., Oshawa ON L1H 3Z7
 - By fax to 905-436-5642
 - In person at Service Oshawa, 50 Centre St. S., Oshawa ON L1H 3Z7

Details of Complaint

In order to submit a formal complaint to the City, customers are required to provide as much information as possible including:

- Contact Information (name, address, phone number, email)
- Details of what happened
- Location
- Date/time
- Names of any individuals or staff involved
- Explanation of what was or was not said or done
- Resolution being sought

Complaints regarding Staff

If follow up information is related to staff disciplinary action, the City will inform the complainant that the matter is being investigated or is resolved, but details of the disciplinary action will not be disclosed.

Service Standards

The City will provide an acknowledgement of receipt of their complaint and an assigned tracking number within three business days. This acknowledgement will identify who will be following up on the complaint and provide their contact information.

The City will provide a final response to the complainant within 20 business days. In exceptional circumstances if this timeframe cannot be met, the City will keep the complainant informed of status.

8.0 Further Information

For more information on this policy, please contact:

Customer Service Manager

City of Oshawa

50 Centre St. S., Oshawa, ON L1H 3Z7

905-436-3311

service@oshawa.ca



Policy: Frivolous, Vexatious or Unreasonable Requests or Complaints Policy			
Issued: DATE	Revised:	Page: 1 of 9	Number:
Related Policies:	Complaint Management and Resolution Policy Respect in Workplace – Harassment and Violence Policy LR14.10		

1.0 Purpose/ Background

The purpose of this Policy is to support the City of Oshawa's dedication to serving our community. The City recognizes the importance of public input and welcomes Complaints as valuable forms of Feedback. The City also recognizes that Complaints, which are Frivolous, Vexatious or Unreasonable, can consume a disproportionate amount of time and resources and impede Employees from attending to other customers or essential issues. This Policy provides City of Oshawa Employees with consistent practices for handling Frivolous, Vexatious or Unreasonable Requests or Complaints about City programs, facilities, services and Employees.

2.0 Policy Statement

Actions taken pursuant to this Policy will ensure that municipal resources are used effectively and efficiently, while maintaining a high level of service excellence and responsiveness and at the same time providing a work environment that is free from discrimination, Harassment, bullying and violence as outlined in the Respect in the Workplace – Harassment and Violence Policy LR14.10.

3.0 Scope/Application

This Policy applies to all Employees (including employees of the Oshawa Senior Community Centres), Volunteers, Students, and/or Contracted Service Providers of the Corporation of the City of Oshawa.

This Policy does not apply to:

- Complaints about Members of Council (as they are governed by the Council Code of Conduct and investigated by the Integrity Commissioner);
- Members of advisory and quasi-judicial committees and local and other boards;
- A function where there is a statutory or prescribed process for review or which is governed by specific legislation;
- Complaints from Employees about other Employees or working conditions;
- Allegations of violations of Canada's Criminal Code.

This Policy does not apply where legal action against the City or a City official has been threatened or commenced. Additionally, the Policy does not apply to typical Complaints, which are addressed through the Complaint Management and Resolution Policy, which provides the public with an avenue for submitting Complaints about City programs, facilities, services and Employees, and provides a consistent practice for handling Complaints.

4.0 Definitions

City means the Corporation of the City of Oshawa.

Complaint means an expression of dissatisfaction or concern about the action or lack of action taken regarding operations, facilities, services or programs provided by the City or a person or body on behalf of the City. A Complaint can be spoken, written or submitted by another method of communication.

Complainant means a customer person who is submitting a Complaint. Any customer who uses or is affected by City services can make a Complaint including residents, visitors, businesses and community groups.

Contracted Service Provider means an individual or business that undertakes a contract or agreement with the City in order to perform a service on a continuing basis (e.g. Security Guard Services, Marriage Officiants, etc.).

Council means Oshawa City Council as a whole.

Council Member means an individual member of Council, including the Mayor.

Cyberbullying means the use of communication technologies to engage in deliberate, repeated or hostile behaviour intended to harm, embarrass, Harass or slander someone deliberately, including, but not limited to: social media outlets (e.g. Facebook, Instagram, Twitter, YouTube, LinkedIn, etc.), personal blogs, web pages, discussion groups or online media/newspaper articles.

Employee means all full-time, part-time, temporary, seasonal and Employees hired on a contract basis for a defined period of time, of the City of Oshawa as well as, Students.

Feedback means an opinion or comment about a program, facility, service or Employee.

Frivolous means a Complaint/Request that has no serious purpose or value or may have little merit and be trivial and is part of a pattern of conduct that amounts to an abuse of the right of access, interferes with the operations of the institution, or is made in bad faith or for a purpose other than to obtain access.

Harassment or Harass means engaging in a course of behaviour, comment or conduct, whether it occurs inside or outside the work environment, that is or ought reasonably to be known to be unwanted. It includes but is not limited to any behaviour, conduct or comment that is directed at or is offensive to another person:

- on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status, as well as any other grounds under the provisions of the Human Rights Code; or
- which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate or ridicule the recipient.

Ombudsman means the Ombudsman of Ontario or the Ombudsman appointed by Council in accordance with Section 223.13 (1) of the Municipal Act, 2001, S.O. 2001, c 25.

Request means the act of asking for something to be given or done.

Student means an individual at least 15 years of age and registered in an educational program at a high school, college or university level.

Unreasonable means a Complaint/Request that is likely to cause distress or disruption to the City, its Employees or other members of the public, without any proper or justified cause. Behaviour that because of the nature or frequency of a Complaint's contact with the City, negatively affects the ability to deal with their Complaints or those of others.

Vexatious means a Complaint/Request without merit, that is pursued in a manner that is malicious, intended to inconvenience, embarrass or Harass the recipient or is a pattern of conduct by the Complainant that amounts to the misuse of the Complaints processes and procedures.

Volunteer means an individual who volunteers their services, from time to time, to assist in areas of the City.

4.1 Examples of Frivolous, Vexatious and Unreasonable Complaints/Requests

Examples of what might be considered Frivolous, Vexatious and Unreasonable Complaints/ Requests are detailed below. This list is not exhaustive nor does a single behaviour on its own necessarily imply that a Complaint or Request will be considered Frivolous, Vexatious or Unreasonable.

Generally, the Complainant will exhibit one or more of these examples over a period of time:

- Refusing to specify the grounds of a Complaint, despite offers of assistance.
- Prolonged submission of Requests with high volume and frequency of communications to one or more City Employees via one or more customer service channels.
- Requests for information the Complainant has already seen, or clear intent to reopen issues that have already been considered and concluded.
- Refusing to accept the decision of the City, repeatedly arguing points with no new evidence.

- Where complying with the Request would impose significant burden on the Corporation in terms of expense, and affect our ability to provide service to others.
- Where the Complainant states that the Request is meant to cause maximum inconvenience, disruption or annoyance.
- Where the Request lacks any serious purpose or value. An apparent lack of value would not usually be enough on its own to make a Request Vexatious, but may when considered with other factors.
- Complaint is retaliatory or is initiated with the intent to embarrass or annoy another customer or resident or in an attempt to use City services or by-laws as a tool in an ongoing neighbour dispute.
- Making excessive demands on the time and resources of Employees with lengthy phone calls, emails to numerous Employees, excessive social media posts on City channels, or detailed correspondence every few days and expecting immediate responses.
- Causing distress to Employees using intimidation or hostile, abusive or offensive language, or an Unreasonable fixation on an individual Employee or any of the prohibited behaviours defined in the City's Respect in the Workplace - Harassment and Violence Policy LR14.10.
- Making unjustified Complaints about Employees who are trying to deal with the issues, and threatening to negatively affect their employment status with the City.
- Excessive, repeated or hostile Cyberbullying and contact with City social media accounts, intended to harm, embarrass, Harass or slander the City or its Employees.

5.0 Responsibilities

5.1 Employees

Employees are to have knowledge and understanding of the purpose of receiving Complaints, the process through which a Complaint can be made and the service standards that apply to Complaints. They are to be aware of this Policy and any accompanying guidelines and protocols.

5.2 Managers, Directors and Direct Supervisors

Managers, Directors and direct Supervisors are responsible for ensuring that relevant Employees are aware of and trained on this Policy and any accompanying guidelines and protocols.

5.3 Commissioner

Commissioner is responsible to consult with the City Solicitor and the Chief Administration Officer ("C.A.O.") in the application of the Policy.

5.4 Corporate Leadership Team

Corporate Leadership Team is responsible for ensuring this Policy is applied organization-wide, and adhered to by all Employees of the City and for clarifying and resolving any ambiguity, which may exist within this Policy.

5.5 Customers

Customers are asked to recognize that the City must consider the needs of the whole community. They are to provide honest and respectful communication with a goal to improving services.

6.0 Legislative and Policy Overview

6.1 Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M. 56

The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M. 56, provides that a Request for information may be denied if, on reasonable grounds, it is found to be Frivolous or Vexatious.

6.2 Occupiers' Liability Act and Occupational Health and Safety Act

The City has a general legislated duty under the *Occupiers' Liability Act*, R.S.O. 1990, c 0.2, to take such care, as in all the circumstances is reasonable, for any persons entering on its premises, and the property brought on the premises are reasonably safe. The City has further duties under the *Occupational Health and Safety Act*, R.S.O. 1990, c 0.1, to address workplace violence and harassment and to:

- make reasonable efforts to provide a safe, healthy working environment for its Employees;
- ensure that all persons on the property are reasonably safe while on the premises; and,
- make reasonable efforts to provide for the safety of all Council, Employees, Students, Volunteers and the public in City operations and in public use of City facilities.

6.3 Related By-laws and Policies

The City of Oshawa is committed to ensuring a climate of understanding and mutual respect and to make reasonable efforts to provide a safe workplace, free from any form of discrimination, Harassment, bullying or actual, attempted or threatened violence. The Respect in the Workplace – Harassment and Violence Policy LR14.10 details the steps available to the City to ensure that a respectful and safe workplace is maintained.

The City's Complaint Management and Resolution Policy provides the public with an avenue for submitting Complaints and provides City Employees with consistent practices for handling Complaints about City programs and services.

Enforcement By-law 92-2014, Section 4.4 (c) states that Officers may, subject to the Director's directions, conclude investigations if the Complaint is trivial, Frivolous, Vexatious or made in bad faith.

7.0 Procedure

7.1 Classifying Requests

Deciding whether a customer's actions fall under this Policy must take into account all the circumstances of the case. There is no rigid test or criteria in deciding whether this Policy applies as each case will be considered on an individual basis. Employees must establish, through the documented words and/or actions of a Complainant (e.g. emails, letters, Employee notes reporting a conversation or incident, voice mails), that the Complaint is Frivolous, Vexatious or Unreasonable before applying the process outlined in this Policy.

7.2 Employee Review

If an Employee believes that a Complaint is Frivolous, Vexatious or Unreasonable, the Employee should consult with their Manager or direct Supervisor, provide any supporting materials and advise the Manager or direct Supervisor of the steps that have been taken to resolve the issue, including:

- The length of time that the Employee has been in contact with the Complainant and the amount of correspondence that has been exchanged with the Complainant;
- The number of Complaints that the Complainant has brought and the status of each;
- The nature of the Complainant's behaviour; and,
- A list of other branches/departments and Employees the Complainant has also contacted.

Employees may choose to contact their Manager or direct Supervisor for assistance prior to a pattern of conduct being established if the Complainant's behaviour is of concern.

7.3 Manager/ Direct Supervisor Review

Managers/ direct Supervisors are responsible for reviewing the information provided by Employees and determining if the Complaint should be escalated to the appropriate Director/Commissioner.

Before escalating to the Director/Commissioner, the Manager or direct Supervisor must be satisfied that:

- The Complaint has been dealt with properly and in line with the relevant procedures (e.g. the City's Complaint Management and Resolution Policy) and statutory guidelines.

- Employees have made reasonable efforts to satisfy or resolve the Complaint and communication with the Complainant has been adequate.
- The Complainant is not attempting to provide any significant new information when contacting Employees.

7.4 Director/ Commissioner Confirmation

Directors are responsible for reviewing the information provided by the Manager/ direct Supervisor in a timely manner and confirming whether or not this Policy should apply. Directors/ Commissioners may want to contact or convene Employees from other departments to confirm the extent of the Complainant's contact with the City.

If, after reviewing the circumstances, the Director/ Commissioner determines that action under this Policy should be taken, they will determine the appropriate action(s)/restrictions in accordance with this Policy and in consultation with their respective Commissioner, the City Solicitor and the C.A.O.. A written warning will be provided to the Complainant, with a copy to members of Council, the C.A.O., the Corporate Leadership Team, the Director responsible for the Complaint and Manager, Customer Service, advising of actions that will be put into effect if the Frivolous, Vexatious or Unreasonable behaviour continues. Actions will be tailored to address individual circumstances as outlined in the Frivolous Policy.

7.5 Restrictions

Actions available to Directors/ Commissioners to address Complainant's behaviour may include one or more of the following:

- limiting the Complainant's correspondence with Employee to a particular format (e.g. email only), time (e.g. telephone calls only at specific times and days of the week) or duration (e.g. conversations may last no longer than ten minutes);
- limiting the Complainant to an established point of contact at the City (where possible, other Employees should be advised not to respond to the Complainant, but to refer them to the established point of contact);
- requiring any face-to-face interactions between the Complainant and Employee to take place in the presence of an appropriate witness and in a suitable location;
- requiring the Complainant to make contact only through a third party (e.g. solicitor, counsellor, friend acting on their behalf);
- requiring that the Complainant produce full disclosure of documentation or information before Employees will investigate any new Complaints;
- instructing Employees not to respond to further correspondence from the Complainant regarding the Complaint of a substantially similar issue;
- instructing Employees not to investigate any Complaints regarding an issue that has already been investigated, or which is substantially similar to an issue which has already been investigated;

- limiting or regulating the Complainant's use of or access to the City's services or facilities (e.g. community centres, access to technology systems);
- informing the Complainant that further contact on the matter of the Complaint or Request will not be acknowledged or replied to;
- in extreme circumstances, instructing Employees to severely reduce or completely cease responses to further Complaints and correspondence from the Complainant; and/or
- other actions as deemed appropriate.

7.6 Application of Restrictions (if required)

If a Complainant disregards the warning letter and continues to submit Complaints deemed to be Frivolous, Vexatious or Unreasonable, the Director will advise their Commissioner.

The Commissioner will:

- Consult with the City Solicitor and the C.A.O. and notify the Complainant in writing that the actions outlined in the warning letter will take effect immediately and advise when the decision will be reviewed.
- Determine a date for the decision to be reviewed. This could be for a period of a few months or longer depending on the severity of the situation.
- Advise the Corporate Leadership Team, the Mayor, members of Council, the Director and the Manager, Customer Service of the action the City has taken and the reasons for it.

7.7 Review of Restrictions

The Director will monitor review dates and facilitate a review at least four weeks prior to the expiration of any restrictions. The status of the Complaint and subsequent behaviour will be reviewed with their Commissioner, Director and any other applicable Employees. In consultation with the City Solicitor and the C.A.O., the Commissioner will determine if the restrictions should continue or if the restrictions will be extended. The Complainant will be informed of the outcome of the review in writing and, if applicable, will be given another date for review.

7.8 New Complaints

Complaints on a separate or new issue from a Complainant who has come under this Policy will be treated on their individual merits. The Commissioner, in consultation with the City Solicitor and the C.A.O., will decide if any restrictions, which are currently in effect, should be applied to the new Complaint.

8.0 Maintaining Detailed Records

Employees are responsible for maintaining detailed records of their interactions with Complainants (emails, notes of telephone conversations and notes of in-person discussions) in order to justify any action being taken to restrict the Complainant's access to Employees. Records must be retained in accordance with the City's Records Retention By-law and Schedule.

9.0 Monitoring and Evaluation

This Policy is reviewed by the City Clerk or designate at least every three years to ensure its effectiveness and compliance with legislation and current business processes or as required based on legislative changes.

The City Clerk is authorized to make minor or housekeeping amendments to this Policy, as required.

For further information regarding this Policy, please contact City Clerk Services at 905-436-3311 or clerks@oshawa.ca

10.0 References

Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014

Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended.

Occupational Health and Safety Act, R.S.O. 1990, c 0.1

City's Respect in the Workplace - Harassment and Violence Policy LR14.10

Complaint Management and Resolution Policy

Ontario Ombudsman - Tips for Municipal Complaint Resolution Policies

11.0 Approved

Authority	Date	Signature

Policy: Respect in the Workplace – Harassment and Violence Policy			
Issued: 1989 10 31	Revised: 2016 08 09	Page: 1 of 8	Number: LR14.10
Replaces: H& S Policy – SWS Section 1.06 Preventing Workplace Violence			

Policy Statement

The Corporation of the City of Oshawa is committed to providing and maintaining a working environment that is based on respect for the dignity and rights of everyone in the organization. It is the Corporation's goal to provide a healthy and safe work environment that is free from discrimination, harassment and violence of any kind.

Purpose

This policy and procedures are intended to:

1. Promote and support a work environment free from harassment and workplace violence.
2. Provide definitions of harassment and workplace violence.
3. Identify the responsibilities of the workplace parties to maintain a workplace free of harassment and actual, attempted or threatened violence.
4. Establish procedures for reporting, resolving and investigating harassment complaints or workplace violence.

Scope

This policy applies to all employees, representatives, agents, contractors, clients and volunteers. It applies to any location where employees are engaged in work-related activities. This includes, but is not limited to:

- the workplace
- during work-related travel
- at restaurants, hotels or meeting facilities that are being used for business purposes
- in municipal-owned or leased facilities
- during telephone, email or other communications; and
- at any work-related social event, whether or not it is company sponsored

This policy also applies to situations in which an individual is harassed or subjected to violence in the workplace from individuals who are not employees of the organization. The Corporation will make its best effort to mitigate these situations, however in the course of public service, events may be beyond the Corporation's control.

Definitions

Behaviours associated with harassment and violence in the workplace fall under the broad categories of discrimination, sexual harassment, workplace harassment (bullying) and workplace and domestic violence; please refer to Annex A for detailed definitions.

The Test of Harassment

It does not matter whether a person intended to offend someone. The test of harassment is whether they knew or *should have reasonably known* that the comments or conduct were unwelcome to the other person. For example, someone may make it clear through their conduct or body language that the behaviour is unwelcome, in which case that person must immediately stop that behaviour.

Although it is commonly the case, the harasser may not necessarily hold power or authority over the recipient. Harassment can occur from co-worker to co-worker, supervisor to employee and employee to supervisor.

What Isn't Harassment

Workplace harassment should not be confused with legitimate, reasonable management actions that are part of the normal work function, including:

- measures to correct performance deficiencies, such as placing someone on a performance improvement plan,
- imposing discipline for workplace infractions,
- requesting medical documents in support of an absence from work; or
- normal workplace conflict that may occur between individuals or differences of opinion between co-workers.

Corporation's Commitment

The Corporation of the City of Oshawa is committed to maintaining an environment free from discrimination, harassment or violence in the workplace. This includes promoting awareness of this policy and procedure and applicable legislation and investigating issues of harassment and violence consistent with this policy. The Corporation will review this policy annually.

Preventing Harassment and Violence

It is our mutual responsibility to ensure that we create and maintain a harassment and violence-free workplace and address violence and/or the threat of violence from all possible sources (including customers, employers, supervisors, workers, strangers and domestic/intimate partners).

Responsibilities of Supervisors and Managers

Supervisors and managers will ensure this policy is communicated to staff and that complaints are handled with sensitivity and incidents of violence, discrimination, intimidation or harassment are addressed as quickly as possible. Whether or not a complaint has been brought forward it is management's responsibility to investigate and address any issues of which they are aware.

It is the responsibility of Management to ensure that workplace discrimination, violence or harassment does not occur in their departments and to ensure protection from retaliation for any employee who has made a complaint in good faith. The Director, Human Resource Services should be contacted immediately, if a complaint of workplace harassment or violence is received.

Supervisors and managers must also take every reasonable precaution to protect employees from workplace violence, including evaluating a person's known history of violent behaviour to determine whether this employee poses a risk and to whom. In making this evaluation, supervisors should consider:

- whether the person's history of violence was associated with the workplace or work;
- whether the history of violence was directed at a particular employee or employees in general,
- how long ago the incidence of violence occurred.

In certain circumstances, supervisors and managers may have a duty to provide information about a risk of workplace violence from a person with a history of violent behaviour, if an employee can be expected to encounter that person during the course of his or her work, and the risk of workplace violence may expose the employee to physical injury. Supervisors and managers are required to consult with the Director, Human Resource Services, prior to releasing information about a person with a history of violence.

Responsibilities of All Employees

Employees are responsible for knowing and following this policy and demonstrating respectful workplace behaviour at all times. Employees should treat others in a professional manner with courtesy and respect and discourage any behaviour that can be seen as harassing or violent. Employees are responsible for their actions and are expected to change their conduct when advised that their behaviour is unacceptable.

Employees are required to report to their supervisor or the Director, Human Resource Services, the existence of any workplace violence or threat of workplace violence.

Employees are also obligated to participate in the investigation process when identified as a witness or a respondent in a complaint; failure to do so may result in disciplinary action up to and including dismissal.

Procedures for Resolving and Investigating Harassment Complaints

Informal Procedure

If you believe that you are being harassed, the first thing to do is to tell the person to stop. Do so as soon as you receive any unwelcome comments or conduct. Although this may be difficult to do, telling the person you don't like their actions is often enough to stop the behaviour. Some of the things you can say that might stop the behaviour include:

- "I don't want you to do that."
- "Please stop doing or saying..."
- "It makes me uncomfortable when you ..."
- "I don't find it funny when you ..."

If the harassment continues after you have confronted the individual, you may provide him or her with a written statement of the situation. Include specific details of the behaviours you consider to be harassing, your request to the harasser to stop and your expectations that he or she will stop. Provide details of the next steps you plan to take if the harassment does not stop e.g., filing a formal complaint, notifying a supervisor. Please keep a copy of this statement for yourself.

Keep a record of any incident(s) that you experience. This includes when the harassment started, what happened, whether there were any witnesses and your response.

If you believe that someone who is not a member of our organization, e.g., a customer, supplier, etc., has harassed or discriminated against you, please report the harassment to your Manager/Supervisor. Although the Corporation has limited control over third parties, we will do our best to address the issue and prevent further problems from arising.

Formal Procedure

If the complaint cannot be resolved informally or it is too serious to handle on an informal basis, it should be brought to the attention of your Manager/Supervisor. Failing resolution at this level, you may bring a formal complaint to the Director, Human Resource Services. Complaints that name a Manager/Supervisor that you report to, may be brought directly to Human Resources.

If you bring a formal complaint, provide as much written information as possible, including;

- name of the person you believe is harassing you,
- place, date and time of the incident(s), and
- names of any possible witnesses.

A copy of the Workplace Respect Complaint form (Annex B) is available electronically (J:\Forms\Workplace Respect Complaint Form) or on the intranet (My HR/Policies and Procedures/Respect in the Workplace) or from Human Resources. It is important that your complaint is received as soon as possible so that the problem doesn't escalate or happen again.

Once your complaint is received, it will undergo a preliminary review to assess whether a formal investigation will be initiated. Single incidents or incidents indicative of typical workplace conflict may not be investigated unless the behaviour is deemed as particularly egregious in nature.

Complaints that will not proceed to a formal investigation will be referred back to managerial staff in the affected area to address.

Discrimination and harassment are serious matters. Therefore, if you decide not to make a formal complaint, the matter may still need to be investigated and steps taken to prevent further harassment. For example, we may need to continue with an investigation if the allegations are serious or if there have been previous complaints or incidents involving the respondent.

Please note: anonymous complaints will not be investigated unless there are extenuating circumstances.

Investigation Procedure

The Director, Human Resource Services, will appoint an internal or external investigator, depending on the nature of the complaint. The investigator and Director, Human Resource Services will determine if an investigative panel is required and if so who shall be part of the panel (i.e. Operational Managers, Union Executive, additional HR representatives). Once this is determined, the investigation will commence as quickly as possible.

The investigation may include:

- interviewing the complainant and respondent to ascertain all of the facts and circumstances relevant to the complaint, including dates and locations
- interviewing witnesses, if any
- reviewing any related documentation; and
- making detailed notes of the investigation and maintaining them in a confidential file

Once the investigation is complete, the investigator(s) will prepare a detailed report of the findings to the Director, Human Resource Services. A summary of the findings will also be provided to the complainant, respondent and union representative where appropriate. All recipients are expected to maintain confidentiality; failure to do so may result in disciplinary action.

Where possible, investigation and communication of results to the complainant and respondent will occur within thirty days after a complaint is received. The alleged harasser and complainant will be informed in writing of any corrective action that has been taken or will be taken as a result of the investigation.

Potential Outcomes

The Director, Human Resource Services, will determine what action should be taken as a result of the investigation.

If a finding of harassment is made, the Corporation of the City of Oshawa will take appropriate corrective measures, regardless of the respondent's seniority or position in the Corporation.

The Corporation's response to findings of harassment may include one or more of the following:

- discipline, such as a verbal warning, written warning or suspension without pay
- referral for counseling (sensitivity training), anger management training, supervisory skills training or attendance at educational programs on workplace respect
- a demotion or denial of a promotion
- reassignment or transfer
- any other disciplinary action deemed appropriate under the circumstances up to and including termination with or without cause

The Director, Human Resource Services, has the authority to place employees in suitable positions temporarily or permanently to ensure the purpose of this policy is met.

If there is not enough evidence to substantiate the complaint, corrective measures will not be taken.

Procedure for Resolving and Investigating Workplace Violence

Workplace Violence

You have the right to refuse work if workplace violence is likely to endanger you. In that instance, please immediately contact your supervisor at which point appropriate measures will be taken to protect you and investigate the situation. You will be moved to a safe place as near as reasonably possible to your normal work station and will need to be available for the purposes of investigating the incident. In some circumstances, you may be provided with reasonable alternative work during normal working hours.

In appropriate circumstances, we may contact the police, or other emergency responders as appropriate, to assist, intervene or investigate workplace violence.

Investigation Procedure

You are required to report the existence of any workplace violence or threat of workplace violence to your supervisor or the Director, Human Resource Services. The Manager, Human Resource Services and Safety will commence an investigation as quickly as possible. An internal or external investigator may be appointed, depending on the nature of the incident.

The investigation may include:

- conducting interviews of relevant individuals to ascertain all of the facts and circumstances relevant to the complaint, including dates and locations
- reviewing any related documentation; and
- making detailed notes of the investigation and maintaining them in a confidential file

Once the investigation is complete, the investigator(s) will prepare a detailed report of the findings.

Potential Outcomes

The *Director, Human Resource Services*, will determine what action should be taken as a result of the investigation.

If a finding of workplace violence is made, The Corporation of the City of Oshawa will take appropriate corrective measures, regardless of the respondent's seniority or position in the Corporation.

The Corporation's response to findings of workplace violence may include one or more of the following:

- discipline, such as a verbal warning, written warning or suspension without pay
- termination with or without cause
- referral for counseling (sensitivity training), anger management training, supervisory skills training or attendance at educational programs on workplace respect
- a demotion or denial of a promotion
- reassignment or transfer
- any other disciplinary action deemed appropriate under the circumstances

The Director, Human Resource Services, has the authority to place employees in suitable positions temporarily or permanently to ensure the purpose of this policy is met.

Procedures for Addressing Domestic Violence

If you are experiencing domestic violence that could lead to disruption, intimidation or physical injury in the workplace, you may seek immediate assistance by contacting the Director, Human Resource Services, who will appoint appropriate resources in preventing and responding to the situation.

Confidentiality of Complaints and Investigations

The Corporation recognizes the sensitive nature of harassment and violence complaints and will keep all complaints confidential, to the extent possible. Information will only be released as necessary to investigate and respond to the complaint or situation or if required to do so by law.

Out of respect for the relevant individuals, it is essential that the complainant, respondent, witnesses and anyone else involved in the formal investigation of a complaint maintain confidentiality throughout the investigation and afterwards.


Protection from Retaliation

The Corporation of the City of Oshawa will not tolerate retaliations, taunts or threats against anyone who complains about harassment or takes part in an investigation. Any person who taunts, retaliates against or threatens anyone in relation to a harassment or violence complaint may be disciplined up to and including termination.

If you make a complaint in good faith and without malice, regardless of the outcome of the investigation, you will not be subject to any form of discipline and/or retributions. Those who are named in a complaint, regardless of the outcome, shall not retaliate in any manner. The Corporation of the City of Oshawa may however, discipline up to and including termination, anyone who brings a false and malicious complaint or who engages in retaliatory behavior after being named in a complaint

Notwithstanding this policy, an employee has the right to pursue his or her complaint through the Ontario Human Rights Commission or the Ministry of Labour.

APPROVED

Authority	Date	Signature
Executive Director, Human Resource Services	2016 08 09	

Attachments

Annex A – Definitions
Annex B – Workplace Respect
Complaint Form
Annex C – FAQ's (Frequently Asked Questions)

Authority

Ontario Human Rights Code
Occupational Health and Safety Act of Ontario
(R.S.O. 1990, c. 0.1)
Criminal Code of Canada
City of Oshawa Health and Safety Policy



Tips for Municipal Complaint Resolution Policies

- 1** Every municipality should have a general complaint policy approved by council.
- 2** The complaint policy should be publicly posted.
- 3** The policy should specify if anonymous complaints will be accepted.
- 4** There should be a clear timeline for responding to complaints, including a timeline for acknowledging receipt of the complaint.
- 5** Staff should be trained on the policy.
- 6** Complaints should be treated in confidence as much as possible.
- 7** General complaint resolution should be distinguished from complaints about the conduct of council, committee and local board members. The municipality should provide referral information for these complaints – for example, to an integrity commissioner.
- 8** The policy should distinguish between requests for service (“I need garbage pick-up”) and a complaint (“The staff who picked up my garbage were rude”).
- 9** The policy should also distinguish between complaints and inquiries (“When will my garbage be picked up?”), or suggestions and compliments (“Garbage pick-up would be more convenient on Fridays”).
- 10** The municipality may want to establish a separate process for monetary claims against the municipality (such as for negligence or pothole damage) which may be referred for review by a municipal insurer.
- 11** There should be information provided for service request referrals and for processing financial claims.
- 12** There should be contact information provided for municipal staff so residents can appropriately direct their complaints.
- 13** The policy should encourage complaint resolution at the lowest level; each department should be responsible for initially addressing and attempting to resolve complaints.
- 14** There should be a clear complaint path. If a complaint is not resolved at one level, there should be clear direction to the next level of complaint resolution.
- 15** There should be an official with the ultimate responsibility to address complaints within the municipality (the Clerk, City Manager or Chief Administrative Officer, for example). Some municipalities may choose to establish a municipal ombudsman.

Contact us, make a complaint, or learn more at:
www.ombudsman.on.ca
1-800-263-1830

- 16** A record should be kept of every complaint received, any interactions between municipal staff and the individual complaining, and the results.
- 17** There should be clear delegation to staff to confirm the scope of their authority in addressing complaints.
- 18** Where the competence or conduct of staff is the subject of a complaint, the complaint should generally be reviewed by someone who has not had prior involvement in the matter.
- 19** All relevant information and documents should be considered during the complaint review process, staff should be required to co-operate with complaint resolution attempts, and complainants should have an opportunity to comment before a final decision is made about the complaint.
- 20** An individual or body that has complained should be provided with a written explanation concerning any decisions made in response to their complaint and be advised where they can go next if they remain dissatisfied.
- 21** The complaint policy should prohibit retaliation for anyone making a complaint.
- 22** Municipalities should address how they will deal with frivolous and vexatious complaints.
- 23** It is useful to set out examples of remedies that may be available, such as apologies (apologies go a long way and don't create legal obligations: see *Apology Act*), changes in policies or practices, financial or other remedial action as appropriate.
- 24** The complaint policy should cross-reference the municipality's accessibility policy and accommodations available in accordance with the Ontario *Human Rights Code* as well as any general customer service policy.
- 25** The municipality should provide a way for complainants to provide feedback about their experience with the complaint process.
- 26** Complaint statistics including volume, issue complained about, and result should be collected, analyzed and reported on publicly.
- 27** The policy should explain that members of the public can contact the Ontario Ombudsman if they are dissatisfied with the municipality's final response to their complaint.

Policy No:	CCO – 011
Department:	OFFICE OF THE CITY CLERK
Subject:	VEXATIOUS AND FRIVOLOUS COMPLAINTS POLICY

**POLICY FOR HANDLING VEXATIOUS, FRIVOLOUS OR UNREASONABLY
PERSISTENT REQUESTS OR COMPLAINTS**

PURPOSE

The Corporation of the City of Vaughan (the “City”) is committed to providing exemplary service to all members of the public. The City aims to address service requests and complaints equitably, comprehensively, and in a timely manner.

The purpose of this policy is to address vexatious, frivolous, or unreasonably persistent requests or complaints that consume a disproportionate amount of City time and resources and impede staff from attending to other essential issues. This policy establishes the process to be used by all staff when handling such requests or complaints. Actions taken pursuant to this policy will ensure that municipal resources are used effectively and efficiently, while maintaining a high level of service excellence and responsiveness.

This policy will guide staff to identify situations that meet the criteria of vexatious, frivolous or unreasonably persistent, and the associated actions that may be taken in such circumstances. The aim of this policy is to contribute to the City’s commitment to service excellence and good governance by addressing all requests and complaints equitably and efficiently, while acknowledging that there may be a need to protect staff from unreasonable behavior.

For immediate threats to persons or property, 911 should be contacted.

RELATED POLICIES

In addition to this policy, the following City policies and tools may be relevant and should be consulted:

- Respectful Workplace Policy (Harassment and Discrimination) (HR-017)
- Workplace Violence Policy (and Procedure) (HR-018)
- Safe Community Centres Policy (04.1.28)
- Commentary to Rule 1(b) of the Code of Ethical Conduct for Members of Council
- Compliments and Complaints Instructions (see City’s website)

Note: The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, provides that a request for information may be denied if, on reasonable grounds, it is found to be frivolous or vexatious.

Council Approval:	2017/06/27	Amended:	yyyy/mm/da
Report No/Item:	FAA7(8)	Report No/Item:	xx/xx
Cross Reference:	N/A		

Policy No:	CCO – 011
Department:	OFFICE OF THE CITY CLERK
Subject:	VEXATIOUS AND FRIVOLOUS COMPLAINTS POLICY

SCOPE

This policy is not intended to deal with generally difficult requests or complaints. This policy applies to vexatious, frivolous or unreasonably persistent requests or complaints. Deciding whether a request or complaint is vexatious, frivolous or unreasonably persistent, is a flexible balancing exercise, taking into account all the circumstances of the situation. There is no rigid test or criteria in deciding whether a request or complaint is vexatious, frivolous or unreasonably persistent. The key question is whether there is a pattern of conduct likely to cause distress, disruption or irritation, without proper or justified cause.

The decision to classify a subject person's behaviour as unreasonable, or to classify a request or complaint as vexatious or frivolous, could have serious consequences for the subject person, including restricting their access to municipal services.

The decision may be made as a result of a repeated pattern of conduct when, on multiple occasions, the subject person engages in one or more behaviours or actions identified as unreasonable, frivolous or vexatious. This does not preclude a single significant incident from being considered under this policy.

Examples of Vexatious, Frivolous or Unreasonably Persistent Requests or Complaints

Examples of what might be considered vexatious, frivolous or unreasonably persistent requests or complaints are provided below. The list is not exhaustive, nor does a singular action set out below necessitate the application of this policy.

- Complaints concerning an issue which staff have already investigated and determined to be groundless.
- Complaints concerning an issue which is substantially similar to an issue which staff have already investigated and determined to be groundless (e.g. with respect to the same neighbour or same property).
- Unreasonable conduct which is abusive of the complaints process, including, but not limited to:
 - harassing, verbally abusing or otherwise seeking to intimidate staff dealing with a complaint;
 - excessive or multiple lines of enquiry regarding the same issue (e.g. pursuing a

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complaint with staff in multiple City departments and/or an elected official simultaneously) while a complaint is in the process of being investigated;

- repeatedly challenging the findings of a complaint investigation, complaining about the outcome and/or denying that an adequate response has been given;
- refusing to accept that an issue falls outside the scope of the City’s jurisdiction;
- making unreasonable demands on staff by, for example, insisting on responses to complaints and enquiries within an unreasonable time-frame;
- making statements or providing representations that the subject person knows or ought to know are incorrect, or persuading others to do so;
- demanding special treatment from staff by, for example, not following the normal chain of command and immediately demanding to speak to a manager or supervisor;
- using new complaints to resurrect issues which were investigated and completed in previous complaints;
- changing the basis of the complaint as the investigation progresses and/or denying statements made at an earlier stage;
- refusing to co-operate with the investigation process while still wanting the complaint to be resolved;
- failing to clearly identify the precise issues of the complaint, despite reasonable efforts of staff to obtain clarification of the concerns; or
- providing false or misleading information.

Identifying the Problem

Staff must establish, through documented words and/or actions of the subject person (e.g. emails, letters, posts on social media, photographs, voicemails, and staff notes reporting a conversation or incident), that the complaint or request is frivolous, vexatious or unreasonably persistent, before applying the processes and restrictions outlined in this policy.

Each case will be considered on an individual basis. The decision to classify the subject person’s behavior as unreasonable or to classify the request as vexatious or frivolous will be made by the

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Department Head or designate of the relevant service area in consultation with Senior Management.

Dealing with the Complaint

Employee

If an employee believes that a request or complaint is unreasonable, frivolous or vexatious, the employee should consult with their Department Head (or designate), provide any supporting materials and advise the Department Head (or designate) of the steps that have been taken to resolve the issue, including as appropriate:

- the length of time that staff have been in contact with the subject person, the history of the interactions (where appropriate), and the amount of correspondence that has been exchanged with the subject person;
- the number of requests and complaints made by the subject person and the status of each; and
- the nature of the subject person's behaviour.

Department Head (or designate)

The Department Head (or designate) is responsible for reviewing the information provided by staff in a timely manner and opining on whether this policy should be applied. The Department Head (or designate) may want to contact other municipal departments to determine if the subject person is contacting multiple municipal staff/departments.

The Department Head (or designate) will:

- review the information provided by staff and determine if the subject person's behavior warrants the application of restrictions;
- work with the staff to determine appropriate restrictions, how to inform the subject person of the restrictions and determine a review date for removing, modifying or continuing restrictions; and
- meet with Senior Management and outline the situation, including proposed restrictions, how to inform the subject person of the restrictions and determine a review date for removing, modifying or continuing restrictions.

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Senior Management

Before making a determination to classify the subject person's request or complaint as vexatious, frivolous or unreasonably persistent, a panel comprised of Senior Management must be satisfied that:

- the request has been properly investigated;
- communication with the subject person has been adequate; and
- the subject person is not attempting to provide any significant new information when contacting staff.

Notification to the Subject Person

When the decision, in consultation with Senior Management, has been made to classify the subject person's request or complaint as vexatious, frivolous, or unreasonably persistent, the subject person (where possible and appropriate) will receive written notification that:

- detail what action staff have taken and why;
- explain what it means for the subject person's contact with the City; and,
- advise how long the restrictions will last and when the decision will be reviewed.

Application of Restrictions

Actions available under this policy may include, but are not limited to:

- limiting the subject person's correspondence with staff to a particular format (e.g. email only), time (e.g. telephone calls only at specific times and days of the week) or duration (e.g. conversations may last no longer than ten minutes);
- limiting the subject person to a particular point of contact at the City (where possible, other staff members should be advised not to respond to the subject person, but to refer them to the point of contact);
- requiring any face-to-face interactions between the subject person and staff to take place in the presence of an appropriate witness;

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- requiring that the subject person produce full disclosure of documentation or information before staff will further investigate a complaint;
- instructing staff not to respond to further correspondence from the subject person regarding the complaint or a substantially similar issue;
- instructing staff not to investigate any complaints regarding an issue that has already been investigated, or which is substantially similar to an issue which has already been investigated;
- instructing staff to severely reduce or completely cease responding to further complaints and correspondence from the subject person;
- instructing staff to close the matter;
- limiting or regulating the subject person's use of municipal services e.g. community centres, access to technology systems, etc.;
- refusing the subject person access to any municipal buildings except by appointment;
- informing the subject person that further contact on the matter of the complaint/request will not be acknowledged or replied to;
- pursuing legal action; and/or
- other actions as deemed appropriate.

Review of Restrictions

When any restrictions are put in place, a review date will be set. This will be based on the circumstances of the case and could be for a period of 3 months or longer depending on the severity of the situation. The status of the subject person will be reviewed by the relevant Department Head (or designate) on or before the review date. The subject person (where possible) will be informed of the outcome of the review.

The Department Head (or designate), in consultation with Senior Management, may extend the restrictions beyond the review date where appropriate. The subject person shall be notified of the extension and be given another date for review.

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MAINTAINING RECORDS

Staff are responsible for maintaining detailed records of their interactions in order to justify any action being taken to restrict the subject person's access to City staff. Records must be retained in accordance with the Records Retention By-law, as amended.

POLICY ADMINISTRATION

This policy shall be administered by the Office of the City Clerk.

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