

# CORPORATE POLICY AND PROCEDURE



**POLICY No.**

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**DATE**

**DECEMBER 22, 2008**

**REVISION**

**MAY 10, 2016**

<b>Tab</b>	Human Resources
<b>Authority</b>	All Departments
<b>Subject</b>	Harassment & Discrimination Policy
<b>Related Policies</b>	Workplace Violence Prevention Policy
<b>Approved by</b>	Council
<b>Revision Date</b>	May 10, 2016

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## **POLICY STATEMENT**

In keeping with its Corporate Values, the Corporation of the City of Guelph is committed to providing an environment free from all forms of harassment, discrimination and disrespectful behaviour. The City expects and promotes respectful interactions which show regard for the rights, dignity, health and safety of all.

This policy is consistent with the spirit and provisions of the *Ontario Human Rights Code*, *Occupational Health and Safety Act* and shall be read in conjunction with any applicable collective agreement provisions.

The City will not tolerate, ignore or condone workplace harassment, discrimination or any pattern of inappropriate, disrespectful behaviour that a reasonable person would consider to be humiliating, demeaning, offensive or intimidating. The City considers such actions to be a serious offence, which may result in disciplinary action up to and including termination of employment.

The City will:

- work to prevent incidents from taking place through information, education, early identification and corrective discipline where appropriate
- thoroughly investigate reported incidents in an objective, sensitive and timely manner with due regard to the confidentiality of all parties concerned
- provide fair and effective resolution of complaints
- take necessary action against those who are found in contravention of this policy; up to and including termination of employment
- provide support to those affected by misconduct, to maintain self worth, health and wellness

## **SCOPE**

This policy applies to all City of Guelph full-time, part-time, casual and temporary employees. Volunteers and Councillors are afforded the same rights and protections provided by this policy, while performing authorized activities for the City of Guelph. This may include off-site job related functions and social events related to work and employment.

**DEFINITIONS**

**Discrimination**

Workplace discrimination is the unequal treatment, exclusion or preference based on the protected grounds in the Ontario Human Rights Code, which reduces the equality of opportunity or causes a disadvantage in the terms or conditions of employment. The protected grounds of discrimination are:

- Race, colour, ancestry, citizenship, ethnic origin or place of origin
- Creed, religion
- Age
- Sex (including pregnancy and gender identity/expression)
- Sexual orientation
- Family, marital (including same-sex partnership) status
- Disability or perceived disability
- A record of offences for which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or an offence in respect of any provincial enactment

**Systemic (Indirect) Discrimination**

Systemic discrimination occurs when policies or practices exclude, limit or restrict members of designated groups from employment or opportunities within employment.

**Workplace Sexual Harassment:**

Workplace sexual harassment is a health and safety issue that is covered under the Occupational Health and Safety Act and the Sexual Violence and Harassment Action Plan Act. The acts define **workplace sexual harassment** as:

*Engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression where the course of comment or conduct is known or ought reasonably to be known to be unwelcome*

*or*

*Making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.*

Both men and women can be victims of harassment and someone of the same or opposite sex can harass someone else.

Examples may include, but are not limited to:

- Persistent leering (suggestive staring) or other obscene/offensive gestures
- Unwanted and inappropriate physical contact such as touching, kissing, patting, pinching, brushing up against a person
- Unwelcome sexually oriented remarks, invitations, requests, jokes, gestures

- Unwelcome sexual flirtations, advances, propositions
- Inquiries or comments about a person's sex life
- Demands or requests for sexual favours, especially by a person who is in a position of authority
- Displaying sexually offensive materials
- Sexual assault

### Discriminatory Harassment

Discriminatory harassment is a pattern of inappropriate actions or ongoing behaviour that a reasonable person would consider to be humiliating, demeaning or intimidating. It includes comments or conduct based on the prohibited grounds in the *Ontario Human Rights Code*, which the recipient does not welcome or that offends him or her. A single incident may constitute harassment, depending on the severity of the behaviour.

Some examples of discriminatory harassment include:

- Offensive comments, jokes or behaviour that belittle or ridicule a person's membership in one of the protected grounds, such as race, religion or sexual orientation
- Imitating a person's accent, speech or mannerisms
- Persistent or inappropriate questions about whether a person is pregnant, has children or plans to have children; or
- Inappropriate comments or jokes about an individual's age, sexual orientation, personal appearance or weight

Harassing comments or conduct can poison someone's working environment, making it a hostile or uncomfortable place to work, even if the person is not being directly targeted. This is commonly referred to as a **poisoned work environment** and it is also a form of harassment.

Some examples of actions that can create a poisoned work environment include:

- Displaying offensive or sexual materials such as posters, pictures, calendars, web sites or screen savers
- Distributing offensive e-mail messages or attachments such as pictures or video files
- Practical jokes that embarrass or insult someone; or
- Jokes or insults that are offensive, racist or discriminatory in nature

### Workplace Harassment and Bullying

Workplace harassment is a health and safety issue that is covered under the Occupational Health and Safety Act. It defines **workplace harassment** as:

*Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.*

Workplace harassment may have some or all of the following components:

- It is generally an ongoing behaviour, although a single incident may constitute harassment, depending on the severity of the behaviour
- It is hostile, abusive or inappropriate
- It effects the person's dignity
- It results in a poisoned work environment
- It intimidates, isolates or discriminates against the recipient

Some examples of workplace harassment are:

- Verbally abusive behaviour such as yelling, insults, ridicule and name calling, including remarks, jokes or innuendos that demean, ridicule, intimidate or offend
- Workplace pranks, bullying and hazing
- Gossiping or spreading malicious rumours
- Excluding or ignoring someone, including persistent exclusion of a particular person from workplace social gatherings
- A leader undermining someone else's efforts by setting impossible goals, with short deadlines and deliberately withholding information that would enable a person to do their job
- A leader providing only demeaning or trivial tasks in place of normal job duties
- Humiliating someone
- Sabotaging someone else's work
- Displaying or circulating offensive pictures or materials
- Offensive or intimidating phone calls or e-mails
- A leader blocking an individual's efforts at promotions or transfers for reasons that are not legitimate; and
- Making false allegations about someone

### **What Isn't Harassment**

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

- Actions to correct performance deficiencies
- Imposing discipline for workplace infractions
- Requesting medical documents in support of an absence from work
- Normal workplace conflict that may occur between individuals or differences of opinion between co-workers
- Friendly teasing or bantering that is mutually acceptable and not offensive to others

### **Workplace:**

Any location where a City of Guelph employee is carrying out their occupational duties, including those locations that are not on primary work sites. This may include a social function, training and conferences, during travel, at restaurants, hotels or meeting facilities being used for business purposes, during telephone, e-mail or other communications. This may also include social networking sites (Facebook, Twitter, Linked-In etc.).

**Poisoned Work Environment:**

Workplace harassment may also include behaviour, conduct, comments or activities which are not directed specifically at an individual but which nonetheless create a degrading or offensive “poisoned” work environment.

**Frivolous or Malicious Complaints**

Frivolous complaints are those with no merit, importance, significance or seriousness. Malicious complaints are those which are made in bad faith with the intent to harm the Respondent.

**Abuse of Authority**

An individual using undue authority or power related to their position with the intention of compromising an employee’s job performance and adversely affecting their career.

**Retaliation**

The Respondent or somebody acting in interest of the Respondent taking action against a Complainant for pursuing a complaint or someone associated with the complaint. This may include direct actions such as threats or indirect actions such as exclusion. Retaliation intends to stop a person from pursuing a complaint or is an act of revenge once a complaint has been made.

**Complainant**

A person who has allegedly been the target of harassment or discrimination and whom brings a complaint forward under this policy.

**Respondent**

A person alleged to have engaged in behaviour of harassment or discrimination under this policy.

**Investigator**

A person designated by the General Manager, Human Resources to conduct investigations under this policy if it is determined that a formal investigation is required. Allegations against Senior Management staff, Council members or Human Resources staff will be investigated by an external third party.

**Peer Link**

Employees located throughout City Departments who are specially trained to act as a first response support to co-workers in emotional need.

**ROLES &  
RESPONSIBILITIES**

All employees, volunteers and members of Council have a responsibility to ensure their own behaviour and interactions are respectful and not in contravention of this policy. It is critical to understand that the intention behind one’s actions is not relevant in the

determination of a finding of harassment or discrimination; it is the impact the actions have on others. All staff, volunteers and Councilors also have a role in not tolerating such behaviour and reporting it, if it does occur. Specific groups or individuals have particular responsibilities as follows:

### **Leaders**

It is the responsibility of those in supervisory/management positions, up to and including the CAO, to actively foster respectful interactions in the workplace through the provision of information, training, clear expectations and modeling desired behaviour. Leaders must not condone inappropriate workplace behaviour. In the event of an alleged incident of harassment and/or discrimination, Leaders will immediately provide supports to maintain the physical and emotional health of those affected, provide information on the procedures associated with this policy and inform Human Resources.

During an investigation, Leaders will cooperate with and respond to the needs of the Investigator to ensure an effective and timely investigation. The Leader will demonstrate and promote the maintenance of confidentiality.

A person in authority who does not take active steps to ensure a harassment free workplace may be held responsible for failing to do so and face disciplinary action up to and including termination of employment. Active steps include, but are not limited to:

- ensuring employees are aware of this policy
- regularly reinforcing the requirement for respectful interactions
- modeling behaviour in keeping with the Corporate Values
- supporting employees who come forward with complaints under this policy
- notifying Human Resources when becoming aware of harassment and discrimination, regardless of whether the employee wishes to pursue a complaint

### **Union/Association Executive**

Executive members of our Unions and Associations play a leadership role in partnering with the City to promote a workplace that is free of harassment and discrimination. They will ensure their own behaviour is in compliance with this policy, guide the behaviour of others and support training initiatives.

### **Peer Links**

Employees experiencing concerns of harassment may choose to come to a Peer Link as an initial contact. The Peer Link can provide support and direct the employee to this policy, Human Resources and the Employee and Family Assistance Program. The Peer Link's role is not to collect detailed information, investigate or make judgments on the situation.

### **Employees, Volunteers, Members of Council**

Anybody who is the target of harassment or discrimination is asked to take action toward an informal or formal resolution, as outlined in the procedure associated with this policy.

Those who have become aware of or have directly observed harassment or discrimination are asked to provide support to the target of the behaviour and encourage them to take action toward an informal or formal resolution. If that person does not take action, observers are asked to bring information forward to any Leader, Peer Link or Human Resources staff.

Anyone involved in the investigation of an alleged incident is required to cooperate with the Investigator and to maintain confidentiality at all times.

### **Talent and Organizational Development**

Talent and Organizational Development staff will receive complaints and conduct an initial assessment of appropriate next steps. Where the complaint involves a member of the Executive Team, Human Resources or Council, they will facilitate appointment and coordination of an outside, third party investigator.

### **Investigator**

The Investigator will conduct investigations where necessary and make a determination as to whether harassment is present or not. Additionally, the Investigator will be able to provide recommendation of supports such as coaching, training and monitoring. Allegations against members of the Executive Team, Council or Human Resources will be investigated by an external third party investigator.

### **General Manager, Human Resources**

The General Manager, Human Resources will be informed of all formal complaints as well as complex, informal complaints and receive investigation findings from the Investigator. The General Manager, Human Resources will work collaboratively with the impacted departmental leaders and, as applicable, the Manager, Employee Relations and/or external legal counsel in determining the outcome and implementation of the investigation and recommendations. The General Manager, Human Resources will inform the CAO and applicable DCAOs of all complaints which involve a formal investigation or are considered complex and informal in nature. The CAO will be consulted as necessary during the investigation and resolution determination process.

## **PROCEDURE**

Any person who feels they have been the target of or has observed harassment or discrimination is encouraged to document details of the incident shortly after it has occurred. Points to note include:

- Name of the Complainant and Respondent
- Date, time and location of the incident
- Description of the incident, including words, gestures
- Names of witnesses to incident

This information will help with any of the resolution methods described.

### **Informal Resolution**

Those who feel they have been the target of offensive behaviour, are encouraged as an initial step to raise their concern with the offender either in person, by phone or in writing. This step is only suggested if the employee feels comfortable to do so. Talent and Organizational Development staff can support the Complainant to prepare for this conversation and can act as an informal mediator for both parties.

Often times, the person may not be aware that their behaviour is offensive and unwelcome. A clear message to them may stop the behaviour and no further intervention required. If the behaviour does not stop, you are asked to bring your complaint forward to initiate a formal resolution.

### **Formal Complaint**

A formal complaint may be initiated in the following ways:

- Submitting a written complaint to Talent and Organizational Development staff. The Complaint Form may be completed independently or with the assistance of Talent and Organizational Development staff. Contact may be initiated directly with Talent and Organizational Development staff or with assistance from any Leader or Peer Link.
- Contacting your workplace Joint Health & Safety Committee representative
- Filing a grievance, as applicable under a relevant Collective Agreement
- Filing a complaint to the Ontario Human Rights Tribunal, for incidents which are covered under the Ontario Human Rights Code

Complaints which have been initiated through the grievance process or the safety representative will be referred to Talent and Organizational Development staff for follow-up under this policy. Results of the interventions and/or investigation will be shared with the Manager, Employee Relations.

Employees may choose not to pursue a complaint, however should be aware that once the organization is aware of the incident, it may be necessary to proceed with an investigation and take appropriate action in any event.

Formal complaints should be made as soon as possible after the date of the alleged incident and no later than twelve months. This will allow for proper investigation while evidence is still fresh in the minds of witnesses and to ensure timely action occurs.

A Complainant may initiate a complaint to the Ontario Human Rights Commission or Ministry of Labour, as applicable or seek outside legal assistance at their own expense at any time during this internal process. Subsequent complaints on the same matter made to another party, may however be held without action pending the outcome of the first investigation.

Acts of violence and criminal harassment such as stalking, threats, sexual or physical



assault are addressed through the Workplace Violence Prevention Policy and the Criminal Code and may be supported by the local Police.

Complaints may be assessed to require no further action in the following circumstances:

- the complaint has been viewed to be frivolous or malicious
- the alleged incident occurred greater than twelve months from the date of the complaint
- an investigation regarding the same incident has already been initiated by another party
- the alleged incident does not comply with the definition of harassment and discrimination under this policy

Even where allegations do meet the definition of harassment and discrimination under this policy, dependent upon the nature of the complaint, Talent and Organizational Development staff may promote a supported informal resolution method as a more effective means of resolving the issue.

#### **Formal Investigation**

In instances where a formal investigation is required, the Investigator will lead a fact finding investigation, informing the immediate supervisor of the Complainant and Respondent. Individual interviews will occur as follows:

Complainant - to discuss, confirm and formally document details of the incident(s)

Respondent – to inform of the concern and receive their response to the allegations

Witnesses – may include those with direct observations of the incident or those with historical information – to provide additional accounts of the incident or surrounding dynamics

Interview subjects may be accompanied by a person of their choice for moral support during any step of the investigation. Where interview subjects are part of a bargaining unit, they are encouraged to choose a union representative as their support person. Interviewees will be asked to review meeting notes and sign them to indicate their accuracy.

Upon completion of the investigation, the Investigator will review all evidence collected and examine the “balance of probabilities” as standard of proof to determine whether the Policy has been contravened.

The Investigator will provide a report to the General Manager, Human Resources with a determination of findings. Human Resources may seek advice from legal counsel or the Ontario Human Rights Commission as required.

The General Manager, Human Resources and Investigator will meet with the affected employee’s leaders and, as applicable, the Manager, Employee Relations Health and Safety to review the findings of the investigation. The General Manager, Human

Resources will work collaboratively with the leadership group in determining the outcome of the investigation and implementation plan. The applicable DCAO(s) and CAO will be informed of all outcomes.

### **Outcomes and Resolutions**

Informal and formal outcomes and resolutions may include but not be limited to:

- Education to an individual and/or group
- Mediation
- Review and modification of workplace policies, procedures and practices
- Discipline including, but not limited to, a reprimand, suspension, demotion, transfer, termination of employment

The complainant and respondent will be informed of the results of the investigation and any corrective action that has been taken as a result of the investigation. As required, applicable leaders of both the complainant and respondent will be advised of the results and corrective actions.

A plan to monitor the behaviour of individuals and dynamics of the group impacted will be developed by the Talent and Organizational Development Specialist and applicable leaders to follow up periodically six months after the conclusion of the investigation. This measure is set to guard against potential retaliation, prevent future issues and evaluate the effectiveness of resolution strategies.

### **Malicious Complaints**

Complaints determined as malicious will be considered a contravention of this policy. The resolution and outcomes will focus appropriate disciplinary action toward the original Complainant, up to and including termination of employment.

### **Frivolous Complaints**

A repeated pattern of frivolous claims by the same complainant may result in disciplinary action.

### **Retaliation**

Retaliation or threats to that effect, toward anyone involved in a complaint investigation is viewed as a violation of this Policy. Investigation of such behaviour will occur and appropriate disciplinary action taken, up to and including termination of employment.

### **Confidentiality**

All information related to a complaint and investigation is confidential. Information obtained during the investigation will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident, or is otherwise required by law. Anyone involved in an investigation shall not disclose information, except as required by this procedure and will be required to sign a

confidentiality statement. Anyone who breaches confidentiality of any part of a complaint will be subject to discipline, up to and including termination of employment.

### **Records Retention**

All records related to meetings, interviews or any part of the investigation will be treated as confidential and not be disclosed, except as required by law. Documentation related to the investigation will be retained as a separate file in Human Resources for a period of three years from the conclusion of the investigation. Records may be subject to release under the Municipal Freedom of Information and Protection of Privacy Act or legal proceedings.

Copies of any disciplinary action will be placed in the employee's file.

### **Information and Training**

The City of Guelph will ensure all employees, volunteers and Councillors have read this policy and make it readily available for reference. New employees will be provided with the policy upon hire. And online orientation programs will include content on the policy including examples and process to bring forward concerns. Training to enhance understanding of how to prevent and respond to Harassment and Discrimination will be conducted annually as part of the Policy Review program. Regular classroom training for employees and leaders will be scheduled and monitored for effectiveness. More frequent or additional training may be requested or directed to individuals or groups as required.

### **Complaints Against Executive Staff Or Elected Officials**

Complaints initiated against Senior Staff (CAO, Deputy CAO) or Elected Officials (Mayor, Councillors) should be directed to Talent and Organizational Development staff, who will support the Complainant in developing a detailed written complaint. Subsequent actions will be dependent on the Respondent identified in the complaint, as follows:

In the case of the **Mayor** being the Respondent, Talent and Organizational Development staff shall notify the General Manager, Human Resources, who shall advise the CAO, the applicable DCAO(s) and the three longest serving members of Council authorized to act in place of the Mayor. An external Investigator will be selected and retained by Council to collect facts regarding the complaint and make recommendations. Findings of the investigation will be shared with the Council Members, CAO, and General Manager, Human Resources who will develop a recommended outcome and implementation. The recommendations will be reported to Council, who will decide the actions toward the Mayor, in keeping with the provisions of the Municipal Act. The CAO will provide a summary report to the Complainant, outlining the actions taken in response to their claim.

In the case of a **Councillor** being the Respondent, Talent and Organizational Development staff shall notify the General Manager, Human Resources who shall notify the applicable Deputy CAO(s) and provide a confidential report on the matter to the Mayor. An external Investigator will be selected and retained by Council to collect facts regarding the complaint and make recommendations. Findings of the investigation will be shared with the Mayor, CAO and General Manager, Human Resources who will develop a recommended outcome and implementation. The recommendations will be reported to Council, who will decide the actions toward the Respondent, in keeping with the provisions of the Municipal Act. The

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CAO will provide a summary report to the Complainant, outlining the actions taken in response to their claim.

In the case of the **Chief Administrative Officer** being the Respondent, Talent and Organizational Development staff shall notify the General Manager, Human Resources, who will inform the applicable DCAO(s) and provide a confidential report on the matter to the Mayor. An external Investigator will be selected and retained by Council to collect facts regarding the complaint and make recommendations. Findings of the investigation will be reported to the Mayor and General Manager, Human Resources who will develop a recommended outcome and implementation. The recommendations will be reported to Council, who will decide the actions toward the CAO, up to and including termination of employment. The Mayor will provide a summary report to the Complainant, outlining the actions taken in response to their claim.

In the case of a **Deputy CAO** being the Respondent, Talent and Organizational Development staff shall notify the General Manager, Human Resources, who will inform the Chief Administrative Officer. An external Investigator will be selected and retained by the CAO to collect facts regarding the complaint and make recommendations. Findings of the investigation will be reported to the CAO and (as applicable) General Manager, Human Resources who will determine a recommended outcome and implementation, up to and including termination of employment. The CAO will provide a summary report to the Complainant, outlining the actions taken in response to their claim.

## LEGISLATION

Ontario Human Rights Code  
Occupational Health & Safety Act  
CUPE 241 Collective Agreement, Article 5.0  
CUPE 973 Collective Agreement, Article 4.0  
CUPE 1946 Collective Agreement, Article 4.0  
ATU 1189 Collective Agreement, Article 6.0