



## ADMINISTRATIVE PROCEDURE 6800.01:

### I. Introduction

These procedures provide guidance and direction in responding/resolving allegations/complaints under the Respectful Workplace Policy.

### II. Objectives

The objectives of these procedures are as follows:

- provide a fair, efficient, consistent and time-sensitive process in resolving complaints/allegations resulting from respectful workplace issues.
- ensure that complaints are dealt with confidentially and objectively.
- provide guidance to management and Human Resources Department staff in the administration of the Respectful Workplace policy.

### III. Authorities

The Respectful Workplace Policy was adopted / amended by Council on July 28, 2008.

### IV. Complaint Procedures

Discrimination, Sexual Harassment and Personal Harassment are sensitive issues in the workplace and therefore require a process for dealing with complaints which is confidential to the fullest extent possible, flexible and accessible. The City of Richmond encourages prompt reporting of all alleged violations of this Policy.

At all times throughout the complaint procedures, it must be emphasized that both the Complainant(s) and the Respondent(s) will have the opportunity to be accompanied by a support person of their choice. In the case of unionized employees, the assistance of their union's representation must be offered for their consideration.

To assist individuals in this complaint process, the department manager or Human Resources Personnel may educate and discuss with employees the following items before any action is commenced. Additionally and to aid understanding, a simple summary of the full process for dealing with a complaint under this policy is provided at Appendix "1" and will be provided to employees.

**Assessing Harassment / Discrimination** – Prior to reporting allegations/complaints, questions that may help individuals assess whether the behavior constitutes harassment/discrimination, inappropriate behavior or workplace violence are:

- Is the behavior unwelcome or offensive?
- Would a reasonable person view the conduct as unwelcome or offensive?
- Did it demean, belittle or cause personal humiliation or embarrassment?
- Is it a single incident?
- Is it a series of incidents over a period of time?



**Recording of Complaints** – Detailed written records of the incidents should be maintained by the complainant to support the allegations/complaints including documentation of:

- Each incident of occurrence,
- Specific date and time;
- Place of occurrence;
- Specific nature of the behavior/actions, including comments, mannerisms, and a description of how such behavior made the complainant feel;
- Names and/or physical description (including clothing) of the individual(s) involved;
- Names of the individuals who observed /witnessed the behavior/actions;
- Names of others who the complainant may have confided in following the incident.

### **Options**

#### **Informal Resolution Options**

An employee who believes that she/he has been subject to Discrimination, Sexual Harassment or is having to deal with Personal Harassment should take the following steps:

- Bring the matter to the attention of the person responsible for the conduct, advise them that the conduct is unwelcome and ask that the conduct cease. The employee should keep a written record of the steps taken to alleviate the problem.
- If the conduct persists or if the employee does not feel comfortable dealing with the person responsible for the conduct, the employee should submit their concerns, in writing, for discussion with his/her functional Manager or with their Manager or Director, Human Resources who will review with the employee the Policy, the definitions of Discrimination, Sexual Harassment and Personal Harassment and options for resolution.

#### **Informal Process**

The employee may discuss with their functional Manager or their Manager or Director, Human Resources the possibility of having the matter resolved informally. Where the Respondent, Complainant and the Manager or Director, Human Resources all wish to have the matter resolved informally, this approach should be used whenever possible. Through the informal process, the Manager or Director, Human Resources will meet with the parties (either separately or together) and attempt to mediate a resolution that is acceptable to both parties. If a solution is reached, the complaint will be deemed resolved.

If any of the parties do not feel that informal resolution would be an appropriate or effective option, or the informal resolution process is not successful, then the employee may proceed with the filing of a Formal Complaint.

#### **Filing a Formal Complaint**

A formal written complaint must be filed by the Complainant, or a co-worker who witnessed the incident. Such written complaint should be filed with the Director, Human Resources who is responsible for ensuring the complaint investigation process is conducted within the policy,



scope and procedural guidelines envisioned by Council. Anonymous complaints will not be accepted.

Once the Formal Complaint has been submitted to the Director, Human Resources, he/she will determine or delegate the process of investigation, reporting and recommendation to either an internal or external investigator. The assigned Investigator will be responsible for all aspects of investigation, documentation and final report preparation with recommendations for action to the Director, Human Resources.

That assigned investigator will review and determine whether the allegations on which the complaint is based, if substantiated, would fall within the definition of Discrimination, Sexual Harassment, or Personal Harassment as defined in the Human Rights Code and as set out in this Policy. If the allegations would not constitute a violation of this Policy, no investigation will be conducted and the Complainant will be informed of this decision in writing.

Employees have an obligation to participate in the investigative process under this procedure. It may be grounds for disciplinary action should a complainant, respondent, or witness refuse to participate in an investigation without reasonable justification.

Either party to a complaint may object to the participation of a person in the administration of this procedure on grounds of a clear conflict of interest or reasonable apprehension of bias. The Director, Human Resources or alternate will determine if the person will participate.

If it is determined that the allegations on which the complaint is based do fall within the definition of Discrimination, Sexual Harassment or Personal Harassment under the Human Rights Code and this Policy, the Director, Human Resources, through the assigned investigator, will notify the Respondent in writing that a Formal Complaint has been made. Such communication will stipulate there has been a request for a formal investigation and therefore the Respondent is to be provided with an account of the allegations made in the Formal Complaint, and will also inform the Respondent that it is his or her right to be accompanied by a support person of his or her choice, at any stage of the Formal Complaint. The Respondent will be provided with the opportunity to submit a written response.

All complaints must be submitted in writing within a prescribed time limit. Complaints must be submitted within six months from the date the alleged Discrimination, Sexual Harassment, or Personal Harassment occurred, and will only be accepted outside of this six-month limitation period should substantial and extenuating circumstances warrant same.

Complaints against members of City Council, the Chief Administrative Officer (CAO), members of the Senior Management Team (SMT) or the Human Resources Department shall be immediately referred to external consultants for investigation. The work of external consultants is subject to the requirements of this Policy and the related Administrative Procedures. Either the Director, Human Resources or the Deputy Chief Administrative Officer will serve as the liaison with such external consultants with such responsibility being assigned to either individual or elsewhere to ensure no conflict of interest situation exists or could develop.



**Note:** Potential Discrimination, Sexual Harassment or Personal Harassment complaints brought to the City’s attention shall be investigated. The City is not able to honor a Complainant’s request that it not investigate his or her complaint as failure to do so may place the City of Richmond in a position of liability with either Human Rights or Civil litigation.

**Mediation**

Mediation is a voluntary process whereby the Complainant and the Respondent meet with a trained mediator, recommended by the Director, Human Resources, to determine whether the complaint can be resolved in a mutually satisfactory manner.

The Director, Human Resources may find that mediation, under certain situations, is preferable and more effective in resolving a complaint rather than conducting an extensive investigation. An investigation may be suspended for a mediation to occur. Mediation is done, however, only with the consent of both the Complainant and the Respondent. Settlement reached as a result of this process is done on a “without prejudice” basis. Any settlement would have to be satisfactory to both parties.

The City recognizes that mediation may not always be appropriate especially in a situation where there is severe Discrimination, Sexual Harassment or Personal Harassment requiring disciplinary action.

**V. Investigation Procedure**

An investigation is launched if mediation failed to resolve the complaint or if an investigation is found to be more appropriate under the circumstances.

Once the Complainant, Respondent or Manager has submitted his or her request for a formal investigation, the appointed Investigator will inform the appropriate parties that such a request has been made.

The Complainant will be required to provide the Investigator with the details of the allegations in writing. The Complaint should include a brief account of the incident, the dates/times it occurred, the persons involved, names of witnesses, if any, and the remedy sought. The complaint must be signed and dated by the Complainant. The Investigator will then make the Respondent aware of the details of the allegations within five (5) business days of receiving the allegations from the Director, Human Resources.

The Respondent will be provided up to ten (10) business days after notification to respond to the allegations. The Respondent may offer his/her perspective regarding the allegations, and/or present a proposal for resolution. This response is to be delivered to the investigator.

At any time during the investigation, the Complainant and Respondent may agree to resolve the formal complaint on their own.

Admission of allegations by the Respondent for unintentional offensive behavior would most likely result in an apology or commitment from the Respondent to cease the offending behavior.



Depending on the seriousness of the circumstances, the Investigator may find it necessary to recommend additional disciplinary action and/or training for the Respondent.

The investigation into the formal complaint will be conducted in a manner where both the Complainant and the Respondent each have a fair opportunity to be heard and to know what the other is saying. Both will be instructed not to discuss the case with anyone until the investigation is completed.

Proceedings under this Policy may be terminated or held in abeyance if either party retains legal counsel, or is actively pursuing the complaint under another forum outside of this Policy (i.e. a grievance under the Collective Agreement, a complaint with the Human Rights Commission/Provincial Labour Relations Board, or a complaint with the police).

The Investigator will apply the principles of due process and natural justice to conduct the investigation. Without limiting the generality of the foregoing, the following guidelines are provided:

- The Investigator shall provide an opportunity to both the Complainant and the Respondent to provide verbal and written information related to the allegations in the form of a signed statement.
- All potential witnesses may be interviewed by the Investigator.
- The Complainant and the Respondent will be provided an opportunity to respond to all relevant information provided by witnesses.
- If more than one complaint has been lodged against the Respondent, the complaints may be investigated together.
- In cases where the respondent files a harassment complaint against the complainant immediately after the complainant has filed his or her complaint, the first complaint will be investigated and the matter concluded prior to the investigation of the second complaint.
- Typically within thirty (30) days, the Investigator shall review all relevant information and make a determination whether or not there has been a violation of this Policy.
- The final report of the investigation shall contain: a summary description of the allegations, a summary of the testimony provided by witnesses and the Respondent; a determination as to whether or not the allegations have been proven on the balance of probabilities; a determination as to whether or not this Policy has been violated; or if the complaint is not substantiated, a determination as to whether the complaint was vexatious and made in bad faith, and mitigating or aggravating circumstances affecting either party.
- The final report may or may not contain recommendations for final disposition of the complaint, the degree of disciplinary action to be or not be taken, any training or reinforcement that may benefit the work group or involved individuals.

A copy of the final investigation report will be submitted to the Director, Human Resources who will make a determination of the timing and release of any reporting, the report or an executive summary to other involved personnel on a strict need to know basis, i.e. CAO/SMT, the appropriate department head, the Manager, the Complainant, the Respondent, the applicable Union.



Interim measures may be imposed during the investigation process to ensure that the work environment remains respectful and the service of the involved department is not compromised. These measures will be determined and implemented by the Manager in consultation with the Investigator, and other relevant parties.

It is the intention of these procedures to protect the personal dignity of all parties. Interference with the conduct of an investigation or retaliation against a Complainant or witness, whether the complaint was substantiated or unsubstantiated, may itself result in disciplinary action. Interference or retaliation may take the form of direct contact between the parties, or actions including but not limited to shunning, reassignment, spreading of rumors and breaches in confidentiality.

The report and all written materials pertaining to the investigation will be held in confidence by the Investigator and ultimately, will be placed in the confidential records of Human Resources.

**VI. Results of the Investigation**

If the formal investigation concludes that there is insufficient evidence to support the complaint, there will be no documentation concerning the complaint placed in the Respondent’s employee file. No further action will be taken and the matter is considered to be closed if the findings do not support the complaint.

If the formal investigation substantiates the complaint, the incident will be recorded in the Respondent’s employee file.

If the formal investigation substantiates the complaint, the Director, Human Resources will determine final resolution of the complaint and this may include a number of options including, but not limited to, individual or group education, job site or position transfer, no contact for a period of time, mediation, counseling, or discipline up to and including dismissal. Where appropriate, such determination will be reviewed with the General Manager of the department and the Chief Administrative Officer; the approved decision by the CAO is considered final.

The Director, Human Resources will conduct meetings with the Respondent, his or her Manager or designate and any other parties deemed relevant to the proceedings to discuss the findings of the Investigator’s report, to review the Policy, and to outline the actions to be taken to remedy the situation. The Respondent will be invited to involve a support person.

An action plan to remedy the situation will be developed on a case-by-case basis. It may involve the development and implementation of a program of rehabilitation and/or progressive discipline, up to and including termination of employment. Any action plan will be in writing and will be provided to the Respondent.

Malicious Reports: Where it is determined that a person had made a complaint in bad faith or with the intent to harm another and/or has misrepresented what is going on in the workplace, then formal disciplinary action may be taken against the person. Conduct based on mistakes or misunderstandings shall not constitute malicious conduct.



If the Complaint was made in good faith, no record of the complaint, investigation or decision will be placed in the Complainant's employee file

Decisions made under this process are considered final. However a decision made under this process does not affect the rights of an individual to seek recourse through the collective agreement, if applicable, or through the B.C. Human Rights Tribunal.

### VII. Confidentiality

Persons involved in a complaint under this Policy shall ensure that the matter is kept confidential in accordance with the *Freedom of Information and Protection of Privacy Act*. Any unwarranted breach of confidentiality may result in disciplinary action against those responsible. Information is only released on a need to know basis during the investigation after consultation with the Director, City Clerk's Office.

### VIII. Documentation

Documentation pertaining to the complaint is maintained in confidential storage in the Human Resources Division. There shall be no records of the complaint placed in the personal files of the Complainant, the witnesses or that of the Respondent when the allegations are not proven and there is no disciplinary action. Disciplinary warnings or actions taken against the Respondent for infractions under this Policy, however, is placed in the personal files of that employee.



# Dispute Resolution Options

EARLY PROBLEM RESOLUTION

INFORMAL RESOLUTION PROCESS

FORMAL COMPLAINT PROCESS

