

DATE OF MEETING JUNE 17, 2024

AUTHORED BY DAVID LABERGE, DIRECTOR, PUBLIC SAFETY

SUBJECT RESPECTFUL SPACES BYLAW

OVERVIEW

Purpose of Report

To introduce the Respectful Spaces Bylaw which provides formal regulatory processes to address situations of inappropriate behaviour that may occur in municipal facilities.

Recommendation

Respectful Spaces Bylaw 7381

That:

1. "Respectful Spaces Bylaw 2024 No.7381" (a bylaw to promote a safe, healthy, respectful and positive environment for members of the public, volunteers, Council and Staff) pass first reading.
2. "Respectful Spaces Bylaw 2024 No. 7381" pass second reading.
3. "Respectful Spaces Bylaw 2024 No. 7381" pass third reading.

Bylaw Notice Enforcement Amendment Bylaw 7159.20

That:

1. "Bylaw Notice Enforcement Amendment Bylaw 2024 No. 7159.20 (a bylaw to assign fines for violations against the Respectful Spaces Bylaw) pass first reading.
2. "Bylaw Notice Enforcement Amendment Bylaw 2024 No. 7159.20" pass second reading.
3. "Bylaw Notice Enforcement Amendment Bylaw 2024 No. 7159.20" pass third reading.

BACKGROUND

City Plan: Nanaimo Reimagined expresses a commitment to providing a wealth of safe, equitable and inclusive public spaces where everyone is welcome without harassment or discrimination. The purpose of the Respectful Spaces Bylaw is to maintain public order and safety by providing staff with clear authority, direction and support to deal with situations of inappropriate behaviour in City facilities and public spaces.

Enforcement of safety rules, policies and codes of conduct to maintain orderly conduct of all persons who access and use facilities is a shared responsibility for all employees and managers. City Staff, Council, volunteers and members of the public have the right to a safe and respectful workplace that is free from abuse, bullying and harassing behaviours.

There is no current bylaw or policy framework which provides direction to staff on how to address incidents of inappropriate behaviour with consistency and in accordance with principles of procedural fairness in the many locations where municipal services are provided.

The Parks, Recreation and Culture Division has a *Code of Conduct Policy and Procedure* which provides a framework of responses to inappropriate behaviours which occur in recreation facilities. These responses include measures that start with informing individuals of rules and expectations and progressing to written warnings and suspensions which prohibit access to a facility in circumstances where behaviours are serious or recurring.

Similar approaches are undertaken in other City facilities that are accessible to the public including City Hall and the Public Works yard. There are many competing interests and rights at play in these situations. The City must take measures to protect the public and its employees and staff have the right to safe and respectful workplaces, but the public also have the right to access public properties, facilities and democratic institutions, to access services, and freedom of expression.

This is the imperative for a bylaw which provides a framework for staff to deal with inappropriate behaviour that balance these interests fairly and consistently. This will be explained in greater detail.

DISCUSSION

Legal Authority to Restrict Access

s. 8(1) *Community Charter* provides municipalities with the capacity, rights, powers and privileges of a natural person to manage public spaces, provide access to services, and to create rules and policies as owners of land. Council may delegate this authority to Staff, through enactment of a bylaw, in accordance with s. 154. In the absence of delegated authority, the lawful means for Staff to remove a person or restrict their access to a facility because of inappropriate behaviour is unclear.

Occupational Health and Safety Obligations

In accordance with the BC Workers Compensation Act, employers have a duty to ensure the health and safety of all workers and to remedy any workplace conditions that are hazardous to health or safety. The City currently has administrative policy to address Staff conduct in maintaining respectful workplaces, but no formal procedures on how to address inappropriate behaviour of the general public, or to remove or deny access, if necessary, to those who do not abide by a Code of Conduct.

Human Rights Code Obligations

Persons cannot be deprived of access to a service or facility customarily available to the public without a bona fide and reasonable justification because of a prohibited ground of discrimination.

The Human Rights Code is engaged if a disability is a factor in a municipality's decision to restrict a person's access to a facility. The disability need not be the only, or even a significant factor in the decision, nor does there need be an intention to discriminate for a case to be made. In circumstances where inappropriate conduct is the result of mental disability, for example, the City will be held to a high standard to justify decisions to limit or remove access to a service ordinarily available to the public in the interests of providing a safe venue for the public and a safe workplace for Staff.

Procedure

Inappropriate behaviours are clearly defined in the bylaw, and include abusive language, vandalism, violence, harassment, possession of weapons, theft of property, and contravention of posted rules.

If a member of the public or staff is subjected to, or witnesses, inappropriate behaviour and wishes to bring it to the attention of the City, the procedure to investigate and respond is prescribed in detail. Highlights include;

- Prioritizing the immediate safety of Staff and the public.
- Respecting the Human Rights Code and Charter Rights of all persons.
- Steps to be taken to educate and correct inappropriate behaviours and to de-escalate situations in a timely manner.
- Measures to remove persons from a facility or to issue a temporary ban to immediately de-escalate a situation and provide time for proper investigation and review.
- Guidelines on what information is required for a full investigation.
- A process for decision making, independent review and appeals.
- Procedures for enforcement and consequences for subsequent or repeated incidents.

The Bylaw will apply to all municipal facilities, including properties that are owned, leased, rented, allocated, programmed, operated or managed by the municipality. This includes City Hall, the Service and Resource Centre, Public Works facilities, recreation facilities, parks and trails. Facilities occupied by the RCMP are not included. Suspensions, if necessary, banning individuals for a period of time for inappropriate behaviour may be issued by the Director of Public Safety.

The Bylaw also provides for an appeal process in which a person subject to a suspension may request the Chief Administrative Officer for a review of the decision. The individual also has the option to bring a representative or their legal counsel with them to that appeal hearing.

Inappropriate behaviour at Council and Committee meetings would be treated a little differently, due to the sanctity of the meetings. In these instances, it would be the Mayor, or Chair in the case of a Committee meeting, that has the delegated authority to have individuals removed for exhibiting inappropriate behavior through the authority outlined in Section 133 of the *Community Charter*. Banning an individual from a Council or Committee meeting for repeated incidents of inappropriate behavior would be dealt with via the court injunction process.

Benefits

The Respectful Spaces Bylaw clearly sets out behavioural expectations of all persons using and accessing City facilities and services, acknowledging that everyone has the right to an inclusive environment that is free of harassment, intimidation, discrimination and violence. Further benefits include;

- Providing staff with requisite authority to deal with inappropriate behaviour.
- Clear articulation of behaviours considered to be inappropriate with processes to investigate and deal with contraventions that are consistent and uphold the principles of procedural fairness.
- Balancing of rights and interests including freedom of expression, freedom from discrimination, the right to be free from harassment, open and transparent government, and access to democratic institutions, facilities, services and public property.

Bylaw Notice Enforcement Bylaw 2012 No. 7159

The City has established a bylaw notice adjudication system in accordance with the Local Government Bylaw Notice Enforcement Act which provides a cost-effective system for enforcing and adjudicating minor bylaw contraventions. The authority and framework for the bylaw notice dispute adjudication system is set out in Bylaw Notice Enforcement Bylaw 2012 No. 7159. Designated bylaw contraventions of the Respectful Spaces Bylaw will be listed in Schedule 'A' of Bylaw No. 7159 with prescribed penalties. Offences will include;

- 6.2 Inappropriate behaviour or contravene public code of conduct in a municipal facility.
- 6.3 Inappropriate behaviour in a public space where municipal services are provided.
- 7.4 Access or enter a municipal facility contrary to suspension.

The penalty for contraventions of s. 6.2 or 6.3 will be \$250. The penalty for contraventions of s. 7.4 will be \$500.

OPTIONS

Option 1:

Respectful Spaces Bylaw 7381

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Option 2:

Council direction is sought.

SUMMARY POINTS

- A new Respectful Spaces Bylaw is proposed which will provide formal processes to deal with incidents of inappropriate behaviours that occur around City facilities and properties.
- The City has a duty to ensure for the safety and wellbeing of its employees and the general public who use and access municipal facilities and services.
- The proposed bylaw provides a framework to receive and investigate complaints, and measures to deal with inappropriate behaviour which are consistent and in accordance with principles of procedural fairness.

ATTACHMENTS:

Attachment 1 – Respectful Spaces Bylaw 2024 No. 7381

Attachment 2 – Bylaw Notice Enforcement Amendment Bylaw 2024 No. 7159.20

Submitted by:

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Concurrence by:

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John Van Horne, Director, Human Resources
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Richard Harding, General Manager,
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