

CITY OF NANAIMO

BYLAW NO. 7381

A BYLAW TO PROMOTE A SAFE, HEALTHY, RESPECTFUL AND POSITIVE ENVIRONMENT FOR MEMBERS OF THE PUBLIC, VOLUNTEERS, COUNCIL, AND STAFF

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WHEREAS the City of Nanaimo wishes to provide an inclusive environment in municipal facilities and in the delivery of municipal services, where all individuals are free of harassment, bullying, intimidation, violence, and discrimination and where they are treated with respect and dignity;

THEREFORE BE IT RESOLVED that the Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. Title

This Bylaw may be cited as “Respectful Spaces Bylaw 2024 No. 7381”

2. Severability

If any provision of this Bylaw is found invalid by a court of competent jurisdiction, the provision must be severed and the remainder of the Bylaw is deemed to have been adopted without the severed provision.

3. Definitions

In this Bylaw:

"ABUSIVE
LANGUAGE"

Includes:

- (1) profane, obscene, abusive, threatening, derogatory, or discriminatory language;
- (2) language that may be perceived as inciting violence; or
- (3) words that are intended to or may be perceived to abuse Municipal Staff, Council, or members of the public.

"CHARTER OF
RIGHTS AND
FREEDOMS"

means the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

"CHIEF
ADMINISTRATIVE
OFFICER"

means the municipal officer appointed by Council under section 147 [Chief administrative officer] of the Community Charter, SBC 2003 c. 26.

"COUNCIL"

means the Council of The Corporation of the City of Nanaimo.

"DIRECTOR"

means the director of the department of the Municipality involved in the Incident.

"GENERAL
MANAGER"

Means the General manager who has functional responsibility and accountability for operations of a specific City Division.

"HARASSMENT"

means conduct, actions or behaviour that a person knew or reasonably ought to have known would be objectionable and unwelcome, or would cause another person to be humiliated or intimidated.

"HUMAN RIGHTS
CODE"

means the Human Rights Code, RSBC 1996 c. 210.

"INAPPROPRIATE
BEHAVIOUR"

means behaviour that obstructs or interferes with the lawful free use and enjoyment of Municipal Facilities or participation in Municipal Services, programs or events, or that compromises the safety and well-being of others, including Municipal Staff, volunteers, Council and members of the public. For the purposes of this Bylaw, Inappropriate Behaviour includes:

- Abusive Language,
- Vandalism,
- Violence,
- Harassment,
- possession of weapons,

- theft of property, and
- contravention of a Public Code of Conduct;

Inappropriate Behaviour does not include decisions made by Bylaw enforcement staff in the course of their duties.

"INCIDENT"	means any occurrence involving one or more individuals engaging in Inappropriate Behaviour.
"MANAGER"	means a person employed by the Municipality as the manager in the relevant department of the Municipality involved in the Incident.
"MUNICIPALITY"	means The City of Nanaimo.
"MUNICIPAL FACILITY"	means facilities owned, leased, rented, allocated, programmed, operated or managed by the Municipality, intended for public or Municipal Staff use. This includes, but is not limited to, parks and trails, recreation facilities, staff offices and workspaces, meeting rooms, community meeting spaces, Municipal Hall, and spaces where Municipal Services are provided, but does not include facilities or portions thereof that are occupied by the RCMP or police department.
"MUNICIPAL SERVICES"	means all services provided by the Municipality. This includes but is not limited to, utility services, waste collection, bylaw enforcement, building inspections, front counter services, and volunteer events, but does not include the RCMP and other police services and Municipal Staff employed for the purpose of supporting the RCMP and other police services.
"MUNICIPAL STAFF"	means a person employed by the Municipality and includes volunteers and contractors authorized to act on behalf of the Municipality.
"PUBLIC CODE OF CONDUCT"	means a document posted in a Municipal Facility that outlines the rule, roles, rights or responsibilities of Municipal Staff, patrons or members of the public.
"SUPERVISOR"	means the person employed by the Municipality as a supervisor in the relevant department of the Municipality involved in the Incident.
"SUSPENSION"	means the prohibition of an individual from entering all or specified Municipal Facilities for a specified duration of time.

“VANDALISM” means the malicious, willful or deliberate destruction, damaging or defacing of Municipal Facilities or other Municipal-owned property, including equipment, vehicles, materials and furniture.

“VIOLENCE” includes:

- throwing articles or objects in a deliberate or aggressive manner that may endanger or cause injury or damage to any persons or property,
- physically aggressive or threatening behaviour,
- threats or attempts to intimidate, and,
- attempts to goad or incite violence.

4. Interpretation

4.1 In this Bylaw, a reference to the Chief Administrative Officer, General Manager, Director, Manager, and Supervisor includes a reference to the person appointed as deputy or appointed to act in the place of that person from time to time.

5. Scope

5.1 Except as expressly exempted herein, this Bylaw applies to all members of the public in the Municipality:

- (a) within Municipal Facilities;
- (b) in any space in which Municipal Services are provided; and
- (c) in any space where Municipal programs or events are being held.

5.2 This Bylaw applies to Incidents between:

- (a) members of the public;
- (b) members of the public and Municipal Staff; and
- (c) members of the public and Council.

5.3 This Bylaw does not apply to an RCMP detachment or its staff, including Municipal Staff employed for the purpose of supporting the RCMP and other police services.

5.4 This Bylaw does not apply to Incidents between:

- (a) Municipal Staff;
- (b) Members of Council; or
- (c) Members of Council and Municipal Staff.

6. Respectful Behaviour

- 6.1 All persons using Municipal Facilities have a duty to:
- (a) treat others with respect, courtesy, fairness, and equality;
 - (b) use Municipal Facilities and equipment in a safe and respectful manner; and,
 - (c) comply with all posted policies and Public Code of Conduct regarding the use of Municipal Facilities and equipment.
- 6.2 A person must not commit or engage in Inappropriate Behaviour or contravene the Public Code of Conduct in a Municipal Facility.
- 6.3 A person must not commit or engage in Inappropriate Behaviour in any space in which Municipal Services are provided.

7. Responding to Incidents

- 7.1 When a member of the public witnesses an Incident and wishes to bring the Incident to the attention of the Municipality, they must follow the procedures set out in Appendix A of this Bylaw.
- 7.2 When Municipal Staff witness or receive a report regarding Inappropriate Behaviour from the public, they will follow the procedures set out in Appendix A of this Bylaw.
- 7.3 The Director, Public Safety is authorized to issue a Suspension to any person who is not in compliance with this Bylaw, for a period of up to eighteen (18) months. In exercising their discretion under this section, the Director, Public Safety must consider the factors set out in Appendix B of this Bylaw.
- 7.4 A person that is subject to a Suspension under this Bylaw must not access, enter or use any Municipal Facility included in the Suspension, subject to the terms and conditions of the Suspension.
- 7.5 All Municipal Staff will exercise their power and authority under this Bylaw in accordance with the Human Rights Code, the Charter of Rights and Freedoms, and all other applicable enactments.
- 7.6 The Municipality is responsible for providing a safe work environment for Municipal Staff, in accordance with the General Safety Regulations of WorkSafeBC and the British Columbia Occupational Health and Safety Act. This includes providing a safe work environment within Council meetings. If the Chief Administrative Officer or the Corporate Officer believes the health or safety of Municipal Staff is at risk in a Council meeting due to Inappropriate Behaviour by members of the public, either of those senior officials may direct Municipal Staff to leave a Council meeting.

- 7.7 For clarity, the response to an Incident referred to in section 7.6 of this Bylaw may also include expulsion from the Council meeting of the person or persons engaging in Inappropriate Behaviour, pursuant to section 133 of the *Community Charter*.

8. Appeal Process

- 8.1 A person subject to a Suspension under this Bylaw may request a review of the decision by the Chief Administrative Officer. Requests for review of a Suspension must be made in writing and must be delivered to the office of the Chief Administrative Officer within ten (10) business days of the date the notice of Suspension was issued.
- 8.2 In exercising their discretion under this section, the Chief Administrative Officer must consider the factors set out in Appendix B of this Bylaw.
- 8.3 Appeal hearings will be held by the Chief Administrative Officer in accordance with Appendix C of this Bylaw.
- 8.4 The decision of the Chief Administrative Officer with regards to a Suspension is final.

9. Probationary Period and Subsequent Suspensions

- 9.1 Once a Suspension has been completed, regardless of the duration, the person subject to the Suspension will be subject to a six (6) month probationary period with the following conditions:
- (a) if an Incident occurs during the probationary period, the Director, Public Safety will impose a subsequent Suspension of equal or greater duration than the initial Suspension;
 - (b) a subsequent Suspension issued under this section may be for a duration of up to three (3) years;
 - (c) a subsequent Suspension under this section must be issued by the Director, Public Safety or the Municipality's Legal Counsel in writing; and,
 - (d) notwithstanding section 8.1 of this Bylaw, a person subject to a subsequent Suspension under this section is not entitled to appeal that Suspension, regardless of whether the person requested an appeal of the initial Suspension.

10. Offence and Penalty

- 10.1 Every person who:
- (a) contravenes or violates any of the provisions of this Bylaw,
 - (b) causes, suffers or allows any act of thing to be done in contravention or in violation of any of the provisions of this Bylaw, or

- (c) neglects or refrains from doing anything required to be done under this Bylaw

commits an offence, and each day that the offence continues constitutes a separate offence.

10.2 On being found guilty of an offence, a person is liable to pay:

- (a) if a proceeding is brought under the *Offence Act*, a fine of not less than \$5000 and up to \$50,000, in addition to the costs incurred by the City in investigating and prosecuting and compensation for any damage or loss sustained by the Municipality or other person because of the commission of the offence, as may be ordered by the Provincial Court;
- (b) if issued a bylaw notice under the Bylaw Notice Enforcement Bylaw 2012 No. 7159, the person is liable to pay the maximum penalty set out in that bylaw and an applicable administration fee as authorized under the *Local Government Bylaw Notice Enforcement Act*.

PASSED FIRST READING: 2024-JUN-17
PASSED SECOND READING: 2024-JUN-17
PASSED THIRD READING: 2024-JUN-17
ADOPTED: _____

MAYOR

CORPORATE OFFICER

Appendix A – Incident Procedures

1. This procedure is to be followed by members of the public who observe an Incident and by Municipal Staff when Municipal Staff observe an Incident, have reason to believe that an Incident has occurred in a Municipal Facility, or receive a complaint of an Incident by a member or members of the public.
2. The Municipality's primary concern is the safety of members of the public and Municipal Staff. If at any time Municipal Staff feel that the safety of any person is at risk, they will request police assistance. Municipal Staff are not expected to jeopardize their safety or that of others in responding to an Incident.
3. Municipal Staff are expected to act in accordance with this Bylaw fairly and equitably and in accordance with the Human Rights Code, the Charter of Rights and Freedoms, and all other applicable enactments.
4. If appropriate, Municipal Staff will attempt to explain to the person or persons engaging in the Inappropriate Behaviour that their Behaviour is unacceptable and ask that the Behaviour cease. Municipal Staff may also attempt to de-escalate the situation, where appropriate.
5. If the Inappropriate Behaviour continues, and depending on the severity of the Inappropriate Behaviour, Municipal Staff may require the person to leave the Municipal Facility immediately and the Manager may issue the person a temporary suspension of up to thirty (30) days. If the person refuses to leave the Municipal Facility, Municipal Staff may request police assistance.
6. If the Incident involves alleged Inappropriate Behaviour by a minor, Municipal Staff will make reasonable attempts to notify the parent(s) or guardian of the minor as soon as reasonably possible following the Incident.
7. As soon as is reasonably possible following the Incident, Municipal Staff will complete an Incident Report which will include the following:
 - a. details of the Incident;
 - b. the names and contact information of the person(s) who engaged in the Inappropriate Behaviour;
 - c. the names and contact information of any witnesses; and,
 - d. any written statement provided by any witnesses. Municipal Staff will submit the completed Incident Report to their Supervisor who will provide a copy to their Manager and to their department Director.
8. If the complainant of Inappropriate Behaviour is a member of the public, the complainant must contact a Manager and explain the Incident in as much detail as possible. The details should include, but are not limited to, the time and location of the Incident. The complainant must also provide as many details of the Inappropriate Behaviour as well as sufficient details for the Municipality to identify the individual(s) engaged in the Inappropriate Behaviour.

9. Incidents will be reviewed and investigated. When a Manager receives an Incident Report, they will consult with their department Director. If the Director is aware of previous Incidents involving the person, the Director may consult with the Municipal Staff who reported or were involved in the previous Incidents. After considering the Incident Report and other available information as well as the Guidelines set out in Appendix B of this Bylaw, the Director and Manager will take such action as they consider appropriate in the circumstances, which may include:
 - a. determining that the Incident did not constitute a violation of this Bylaw and take no further action;
 - b. determining that the Incident constituted a violation of this Bylaw but decide that no further action is required in the circumstances;
 - c. determining that the Incident constituted a violation of this Bylaw and take further action, including one or more of the following:
 - i. issuing a written warning letter or letter of expectation;
 - ii. requiring that the person meet with the Manager or the Director, including that the person not enter or use any Municipal Facility until they meet with the Manager or Director;
 - iii. recommending that the Director, Public Safety impose a Suspension.
 - iv. issuing a ticket or bylaw notice for a contravention of this Bylaw.
10. If the Director and Manager determine that a Suspension is appropriate, they will compile and forward all information gathered during their investigation to the Director, Public Safety and will make recommendations to the Director, Public Safety regarding the proposed scope and duration of the Suspension and any terms and conditions.
11. The Director, Public Safety will review the information and take such action as they consider appropriate after considering the factors set out in Appendix B of this Bylaw. The Director Public Safety may refuse to impose a Suspension or, if a Suspension is imposed, establish the scope and duration of the Suspension and any terms and conditions.
12. If a Suspension is issued, the Director, Public Safety or the Municipality's legal counsel must notify the person in writing of the terms and conditions of the Suspension and of their right to appeal under this Bylaw, if applicable.
13. Once an investigation is completed, the complainant must be notified that a formal investigation has been carried out.
14. If a Suspension is issued, a confidential memorandum regarding the Suspension will also be sent from the Director, Public Safety to Municipal Staff for whom the information is necessary for the performance of their duties. Further confidential memoranda may be issued to notify Municipal Staff of changes to or extensions of the Suspension and upon completion of the Suspension.

15. Except where prohibited by law, the Director, Public Safety may, pursuant to any information sharing agreements between the Municipality and other local governments, public bodies, RCMP and police, share the confidential memorandum and any information involved in the investigation.
16. The Director, Public Safety may extend the duration of a Suspension where the person breaches the terms and conditions of the Suspension or where there are further Incidents involving the person.

Appendix B – Inappropriate Behaviours Enforcement Guidelines

In determining the appropriate measures to deal with a contravention of this Bylaw, Municipal Staff will consider the following factors:

1. the nature and severity of the Inappropriate Behaviour;
2. whether the Inappropriate Behaviour was a single or repeated act;
3. whether the person was told that the Behaviour was inappropriate and nonetheless continued the Behaviour;
4. the impact of the Inappropriate Behaviour on members of the public and Municipal Staff;
5. the person's acknowledgement of wrongdoing; and
6. the person's history of other contraventions.

Appendix C – Appeal Procedure

1. Requests for review of a Suspension under this Bylaw must be made in writing and must be delivered to the office of the Chief Administrative Officer within ten (10) business days.
2. Within ten (10) business days of receiving a request for review under section 8.1 of this Bylaw, the Chief Administrative Officer will notify the person subject to the Suspension of the date for their hearing.
3. The person appointed as the City of Nanaimo's Freedom of Information and Protection of Privacy Head will provide the person subject to the Suspension with copies of all materials that will be considered by the Chief Administrative Officer a minimum of ten (10) business days prior to the hearing. The materials will be redacted as necessary to comply with the Freedom of Information and Protection of Privacy Act, RSBC 1996, c. 165 and any other applicable enactments.
4. The person subject to the Suspension may attend the hearing and may be accompanied by a representative of their choice, including legal counsel.
5. The Director of Public Safety will attend the hearing on behalf of Municipal Staff.
6. The Chief Administrative Officer may request the attendance of any other person at the hearing, including a member of Municipal Staff or Municipal legal counsel.
7. At the hearing, the person subject to the Suspension will have ten (10) minutes to address the Chief Administrative Officer. This time may be extended if deemed necessary by the Chief Administrative Officer due to the complexity of the issues or the severity of the allegations.
8. The Chief Administrative Officer will notify the person subject to the Suspension of their decision in writing within ten (10) business days of the hearing.
9. The decision of the Chief Administrative Officer with regards to a Suspension is final.