



<u>COUNCIL AGENDA</u>	
Date: <u>July 12, 2021</u>	Item: <u>6.</u>



DISTRICT OF WEST VANCOUVER
750 17TH STREET, WEST VANCOUVER BC V7V 3T3

COUNCIL REPORT

Date:	June 25, 2021
From:	Mark Panneton, Director, Legislative Services/Corporate Officer
Subject:	Proposed Respectful Communication Bylaw No. 5141, 2021
File:	1610-20-5141

RECOMMENDATION

THAT proposed "Respectful Communication Bylaw No. 5141, 2021" be read a first, second, and third time.

1.0 Purpose

The purpose of this report is to seek Council's approval of proposed Respectful Communication Bylaw No. 5141, 2021 (attached to this report as **Appendix A**). If adopted, the proposed bylaw would work in conjunction with *Respectful Behaviour Bylaw No. 4999, 2018*, to promote a safe, healthy, respectful, and positive environment for members of the public, staff, and Council.

2.0 Legislation/Bylaw/Policy

2.1 Legislation

The *Community Charter* provides the District of West Vancouver (District) with the authority to manage its facilities and make regulations with respect to municipal services and public places. Under sections 8(3)(a) and (b) of the *Community Charter*, Council has the authority, by bylaw, to regulate, prohibit and impose requirements in relation to municipal services and public places.

In managing and regulating with respect to its facilities and services, the District has an obligation to comply with the *Canadian Charter of Rights and Freedoms* and the *BC Human Rights Code*.

The *Charter of Rights and Freedoms* guarantees the right to freedom of expression including any non-violent activity that conveys or attempts to convey meaning. As a result, in the management of its facilities and public spaces and the provision of its services, the District has an obligation to ensure that any action it takes that places a limit on an individual's right to freedom of expression is justified.

Under section 8 of the *BC Human Rights Code*, the District is prohibited from denying a person access to a service or discriminating against them in the provision of the service because of their race, colour, ancestry,

place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age.

The District also has obligations as an employer under the *Workers Compensation Act* and the Occupational Health and Safety policies. Under ss. 115(1)(a) and (2)(a), the District must ensure the health and safety of its employees and must remedy workplace conditions that are hazardous to the health or safety of its employees. Under *OHS Policy P2-21-2*, employers are obligated to take reasonable steps to prevent or minimize workplace bullying and harassment.

2.2 Bylaw

Respectful Behaviour Bylaw No. 4999, 2018 was brought forward in an effort to provide for a safe, healthy, respectful and positive environment for members of the public, volunteers and staff inside District facilities. The Respectful Behaviour bylaw was adopted by Council in 2018 and subsequently amended in 2019. The Respectful Behaviour bylaw does not capture conduct that occurs outside of District facilities.

3.0 Council Strategic Objective(s)/Official Community Plan

The enactment of proposed Respectful Communication Bylaw No. 5141, 2021 is an administrative function and has no direct impact on, or relationship to, either Council's strategic objectives or the Official Community Plan.

4.0 Financial Implications

There are no direct financial implications associated with proposed Respectful Communication Bylaw No. 5141, 2021.

5.0 Background

5.1 Previous Decisions

Council, at its September 17, 2018 regular meeting, passed the following resolution:

THAT proposed "Respectful Behaviour Bylaw No. 4999, 2018" be adopted.

Council, at its November 4, 2019 regular meeting, passed the following resolution:

THAT proposed "Respectful Behaviour Bylaw No. 4999, 2018, Amendment Bylaw No. 5039, 2019" be adopted.

5.2 History

The District has a history of operating facilities and providing services that are safe and positive for the community. This includes the operation of the District's community centres that host community programs and events, as

well as resident services provided at the Municipal Hall and at other District facilities such as the Ferry Building Gallery.

Incidents involving members of the public behaving inappropriately occasionally occur within these District facilities. These incidents can range from contravention of posted facility rules or codes of conduct to acts of vandalism, violence and harassment. These incidents can jeopardize the safety and well-being of residents, visitors, volunteers and staff and detract from the positive experience of using District facilities.

Historically, when one or more incidents of inappropriate behaviour by patrons in community facilities occur, staff, using established practices, applied a number of different actions to address the inappropriate behaviour. These actions included: issuing a letter of expectations to the individual(s) that behaved inappropriately; requiring the individual(s) to meet with staff to discuss rules or expected behaviours in facilities; and/or suspending the individual(s) from entering District facilities for a defined period of time. In order to ensure consistency in managing these types of situations, staff developed Respectful Behaviour Bylaw No. 4999, 2018 to provide an overarching and consistent approach and process to manage behavioural issues in District facilities. The Respectful Behaviour bylaw was adopted by Council in the fall of 2018, and subsequently amended in late 2019.

In March 2020, the District was forced to pivot to a virtual service delivery model as the onset of the COVID-19 pandemic necessitated the closure of District facilities to the public. This pivot from physical to virtual service delivery meant that occurrences of in-person inappropriate behaviour, as covered by the Respectful Behaviour bylaw, were drastically reduced due to facility closures. Instead, Council and staff have experienced an increase in inappropriate behaviour via other means, including but not limited to telephone conversations, email exchanges, virtual meetings, and in-person conversations while in the field.

6.0 Analysis

6.1 Discussion

As these incidents of inappropriate behaviour occur outside of District facilities, they were neither contemplated nor covered by the Respectful Behaviour bylaw. Proposed Respectful Communication Bylaw No. 5141, 2021 ("bylaw") is therefore required to provide a clear and consistent way to address inappropriate conduct directed at District staff and Council members outside of District facilities. The proposed Respectful Communication bylaw will work in conjunction with the Respectful Behaviour bylaw to help promote a safe, health and positive environment for members of the public, staff and Council. It will also fulfill the District's obligation to provide a workplace that is free of violence, bullying and harassment while respecting the District's obligations under the *BC Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.

Responsibility to Communicate Respectfully

The proposed Respectful Communication bylaw helps to achieve these considerations by clearly establishing each of the following:

- a duty to communicate in a courteous, civil and respectful manner;
- a definition of what constitutes inappropriate communication;
- a procedure for responding to incidents involving inappropriate communication;
- a range of possible further actions to be taken when responding to an incident, from issuing a letter of expectations to instructing District staff not to acknowledge, respond to and/or publish future communications from the person engaging in inappropriate communication;
- the factors to be considered when deciding what further actions should be taken; and
- an appeal process that may be requested when District staff are instructed not to acknowledge, respond to and/or publish future communications from the person engaging in inappropriate communication.

By defining a duty to communicate respectfully when interacting with staff or using services, and by also defining what constitutes inappropriate communication, the District creates clear and transparent parameters of expectation for members of the public. Per the Respectful Communication bylaw, all persons have a duty to communicate with Council and staff in a courteous, civil and respectful manner, and to not engage in inappropriate communication with staff.

Inappropriate communication is defined in the proposed bylaw as electronic, telephonic or written communication that:

- a person knew or reasonably ought to have known would cause the subject of the communication, the person receiving the communication or both to feel humiliated or intimidated;
- is discriminatory, threatening, violent or defamatory; or
- is part of a pattern of communications that are frivolous, vexatious or made with malicious intent.

Process for Addressing Inappropriate Communication

The roles and authorities of District staff are clearly defined and assigned in the proposed bylaw. In determining the appropriate measures to deal with a contravention of the proposed bylaw, staff will consider the following factors:

- whether the inappropriate communication was in respect of a matter for which the author of the communication had a statutory right to be heard;

- the role of the District Staff to whom the inappropriate communication was directed;
- whether the inappropriate communication relates to comments and feedback regarding a program, service or initiative of the District;
- whether the inappropriate communication is violent, threatening, defamatory of an individual, or discriminatory;
- whether the inappropriate communication was a single or repeated act;
- whether the person has acknowledged wrongdoing or apologized for the inappropriate communication; and
- whether the person had received previous warnings or administrative actions regarding inappropriate communication.

After considering these factors, staff will determine the action required to address the inappropriate communication.

In cases in which it is necessary to instruct staff to not to acknowledge, respond to and/or publish future communications from the person engaging in inappropriate communication, the Director of the involved division is authorized to issue that instruction. In exercising their discretion and in order to ensure that their decision is fair and equitable, the Director will follow the guidelines laid out in the proposed bylaw. In addition, appeals may be made to the Chief Administrative Officer, whose decision with regards to the instruction is final.

Council Members Receiving Inappropriate Communication

A separate process has been established with regard to inappropriate communication sent to Council members. When Council members receive inappropriate communication, they may exercise their discretion and choose not to acknowledge or respond to it. This separate approach for Council members differs from the process outlined for staff above, and is necessitated by the following factors:

- the District has specific legal obligations to its employees, and the process proposed for staff is intended to meet those obligations; and
- Council members occupy public office, and are expected to receive and tolerate a broad range of perspectives from their constituents.

In light of the foregoing, the Respectful Communication bylaw affirms that Council members have the discretionary power to determine whether they wish to acknowledge or respond to inappropriate communication from members of the public.

6.2 Sustainability

There are no direct environmental implications associated with this bylaw. If adopted, proposed Respectful Communication Bylaw No. 5141, 2021 would create a sustainable framework of both behavioural expectations

and associated remedies, thereby promoting a safe, healthy, respectful, and positive environment for members of the public, staff, and Council.

6.3 Public Engagement and Outreach

Upon adoption, proposed Respectful Communication Bylaw No. 5141, 2021 will be posted to the District's website. Staff will also make references to the bylaw in their communications with the public, where appropriate.

6.4 Other Communication, Consultation, and Research

Staff consulted with the Municipal Solicitor when drafting proposed Respectful Communication Bylaw No. 5141, 2021.

7.0 Options

7.1 Recommended Option

Staff recommend that proposed Respectful Communication Bylaw No. 5141, 2021 be read a first, second, and third time.

7.2 Considered Options

Council could instead choose to provide specific feedback relative to proposed Respectful Communication Bylaw No. 5141, 2021, direct staff to alter the proposed bylaw to incorporate that feedback, and direct staff to return to Council with an altered bylaw for consideration.

8.0 Conclusion

The purpose of proposed Respectful Communication Bylaw No. 5141, 2021 is to promote a safe, healthy, respectful and positive environment for members of the public, staff, and Council.

If adopted, Respectful Communication Bylaw No. 5141, 2021 would define inappropriate communication that may negatively impact the safety and well-being of members of the public, staff, and Council, and provide a clear process with assigned roles and authorities for District staff and Council members to address inappropriate communication when it occurs.

Author:



Appendices:

Appendix A – Proposed Respectful Communication Bylaw No. 5141, 2021



District of West Vancouver

Respectful Communication Bylaw No. 5141, 2021

Effective Date:

Respectful Communication Bylaw No. 5141, 2021

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District of West Vancouver

Respectful Communication Bylaw No. 5141, 2021

A bylaw to promote a safe, healthy, respectful and positive environment for members of the public, volunteers, employees and Council members.

WHEREAS the District of West Vancouver wishes to ensure a safe, respectful and positive environment for its employees, volunteers, and Council members and has an obligation to provide a workplace free of bullying and harassment;

AND WHEREAS the District of West Vancouver deems it expedient to define communications from the public that may constitute bullying and harassment, or otherwise be threatening, discriminatory, or defamatory, and to provide a process for responding to such communication conveyed to District employees, volunteers, or Council members in association with any service, program or event provided by the District;

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as Respectful Communication Bylaw No. 5141, 2021.

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed part, section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Definitions

- 3.1 In this bylaw:

“Administrative Action” means any of the actions set out in section 4 of Appendix A of this Bylaw;

“Chief Administrative Officer” means the Municipal Officer position of the District’s Chief Administrative Officer;

“Corporate Officer” means the Municipal Officer position of the District’s Corporate Officer that has been designated the corporate officer under section 148 of the *Community Charter*;

“Council Member” means the Mayor or a Councillor of the District;

“Director” means the Director of the involved division or department of the District;

“District” means the Corporation of the District of West Vancouver;

“District Staff” means a person employed by the District and includes volunteers authorized to act on behalf of the District;

“Inappropriate Communication” means electronic, telephonic or written communication that:

- (a) a person knew or reasonably ought to have known would cause the subject of the communication, the person receiving the communication or both to feel humiliated or intimidated;
- (b) is discriminatory, threatening, violent or defamatory; or
- (c) is part of a pattern of communications that are frivolous, vexatious or made with malicious intent.

“Incident” means any occurrence involving one or more individuals engaging in Inappropriate Communication;

“Manager” means a person employed by the District as a Manager of the relevant department of the involved division or department of the District;

“Supervisor” means the person employed by the District as the Supervisor of the relevant division or department of the District;

“Workplace” means any location from which a District staff or Council member is engaged in a work-related activity for the District, including but not limited to: work sites owned, operated or controlled by the District (such as municipal hall, operations centres, fire halls, parks locations and buildings, construction or maintenance sites, business-related social functions), work locations away from the foregoing venues, work-related conferences and training sessions, work-related travel, telephone conversations, voice mail or electronic messaging, electronic meetings, and video conferencing.

Part 4 Interpretation

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

Part 5 Scope

- 5.1 This Bylaw applies to all persons, including members of the public, when they are communicating with District Staff or Council Members in the Workplace.
- 5.2 This Bylaw does not apply to communication solely between District Staff or between District Staff and Council Members.
- 5.3 Nothing in this Bylaw is intended to replace, supersede, or impact the District's bullying and harassment policy.
- 5.4 Nothing in the Bylaw limits the District's right to pursue other remedies available by law, including statutory injunctions.

Part 6 Bylaw Communication

- 6.1 The Corporate Officer will cause:
 - (a) this Bylaw to be visible and accessible on the District's website; and
 - (b) electronic copies of this Bylaw to be made available to all District Staff and Council Members in easily accessible locations, including the District's intranet.

Part 7 Terms of Respectful Communication

- 7.1 All persons have a duty to communicate with District Staff and Council Members in a courteous, civil and respectful manner.
- 7.2 No person shall engage in Inappropriate Communication with District Staff or Council Members.
- 7.3 **Responding to Inappropriate Communication – District Staff**
 - 7.3.1 If District Staff receive Inappropriate Communication, they will follow the procedures set out in Appendix A of this Bylaw.
 - 7.3.2 A Director is authorized to take Administrative Action in accordance with section 4 of Appendix A of this Bylaw in order to limit the impact of Inappropriate Communication on District Staff. In exercising their discretion under this section, the Director shall consider the factors set out in Appendix B of this Bylaw.
- 7.4 **Responding to Inappropriate Communication – Council Members**
 - 7.4.1 If Council Members receive Inappropriate Communication, they may exercise their discretion to choose not to acknowledge or

respond to the person engaging in Inappropriate Communication.

- 7.4.2 If the Inappropriate Communication received by Council Members is also sent to and/or received by District Staff, the procedures set out in Appendix A in this Bylaw will apply.

7.5 Appeal Process

- 7.5.1 A person who is subject to Administrative Action that falls within section 4(b) of Appendix A under this Bylaw may, within 10 business days of receiving notice of the Administrative Action, request a review of the decision by the Chief Administrative Officer.
- 7.5.2 In considering an appeal brought pursuant to section 7.5.1, the Chief Administrative Officer shall consider the factors set out in Appendix B of this Bylaw.
- 7.5.3 Appeal hearings will be held by the Chief Administrative Officer in accordance with Appendix C of this Bylaw.
- 7.5.4 The decision of the Chief Administrative officer with regard to an Administrative Action is final.

Part 8 Offence and Penalty

- 8.1 Every person who violates a provision of this Bylaw or who neglects to or refrains from doing anything required to be done by a provision of this Bylaw is guilty of an offence and is liable to the penalties imposed under this bylaw, and is guilty of a separate offence each day that a violation continues to exist.
- 8.2 Every person who commits an offence is liable on summary conviction to a fine or imprisonment, or to both a fine and imprisonment, not exceeding the maximum allowed by the *Offence Act*.

APPENDICES

Appendix A – Procedures to Follow After Receipt of Inappropriate Communication

Appendix B – Inappropriate Communication Enforcement Guidelines

Appendix C – Appeal Procedures

READ A FIRST TIME on [Date]

READ A SECOND TIME on [Date]

READ A THIRD TIME on [Date]

ADOPTED by the Council on [Date].

Mayor

Corporate Officer

Appendix A – Procedures to Follow After Receipt of Inappropriate Communication

The following procedure will be followed when District Staff receive Inappropriate Communication.

1. As soon as is reasonably possible following an Incident, District Staff will complete an Incident Report detailing the Incident. District Staff will submit the completed Incident Report to their immediate Supervisor who will provide a copy to their Manager and to the Risk Manager. Where the Incident is limited to written or electronic communication, District Staff will not be required to complete an Incident Report but must instead forward the Inappropriate Communication to their immediate Supervisor.
2. When a Manager receives an Incident Report or a copy of the Inappropriate Communication, they will consult with the Risk Manager and take such action as the Manager considers appropriate in the circumstances, considering the Guidelines set out in Appendix B, including:
 - a. The Manager may determine that the Incident did not constitute a violation of this Bylaw and take no further action;
 - b. The Manager may determine that the Incident constituted a violation of this Bylaw but decide that no further action is required in the circumstances;
 - c. The Manager may determine that the Incident constituted a violation of this Bylaw and take one or more of the following steps:
 - i. issue a written warning letter to the person who engaged in Inappropriate Communication;
 - ii. request that the person who engaged in Inappropriate Communication meet with the Manager; and
 - iii. forward the Incident Report to the divisional Director to take Administrative Action.
3. A Director is authorized to take reasonable action necessary to investigate an Incident.
4. A Director is authorized to take one or more of the following Administrative Actions with respect to a person who is engaging or has engaged in Inappropriate Communication in order to limit the impact of Inappropriate Communication on District Staff:
 - a. imposing limits on the manner in which a person may communicate with District Staff, including limiting the person to communicating:

- i. in a particular manner (e.g. e-mail only);
 - ii. at a particular time (e.g. telephone calls only one day per week, e-mails only reviewed once per week);
 - iii. for a particular duration of time (e.g. a maximum time for telephone calls); and
 - iv. with a particular person (e.g. requiring that all communications from the person be directed to the Director and advising other District Staff not to respond).
 - b. instructing District Staff not to acknowledge, respond to and/or publish future communications from the person engaging in Inappropriate Communication.
5. If a written warning was issued to a person pursuant to section 2(c)(i) of this Appendix A and that person continues to engage in Inappropriate Communication contrary to the written warning, a Director may subject that person to an Administrative Action.
 6. If an Administrative Action is taken under section 4(b) of this Appendix A, the Director will notify the person in writing of the Administrative Action taken and their right to appeal under this Bylaw.
 7. If an Administrative Action is taken, the Risk Manager may, if necessary, prepare a confidential memorandum regarding the Administrative Action. The memorandum will be sent to District Staff for whom the information is necessary for the performance of their duties.

Appendix B – Inappropriate Communication Enforcement Guidelines

In determining the appropriate measures to deal with a contravention of this Bylaw, the decision-maker will consider the following factors:

- a. whether the Inappropriate Communication was in respect of a matter for which the author of the communication had a statutory right to be heard;
- b. the role of the District Staff to whom the Inappropriate Communication was directed;
- c. whether the Inappropriate Communication relates to comments and feedback regarding a program, service or initiative of the District;
- d. whether the Inappropriate Communication is violent, threatening, defamatory of an individual, or discriminatory;
- e. whether the Inappropriate Communication was a single or repeated act;
- f. whether the person has acknowledged wrongdoing or apologized for the Inappropriate Communication; and
- g. whether the person had received previous warnings or Administrative Actions regarding Inappropriate Communication.

Appendix C – Appeal Procedures

1. Requests for review of an Administrative Action made in accordance with section 4(b) of Appendix A of this Bylaw, must be made in writing and must be delivered to the office of the Chief Administrative Officer within 10 business days. For certainty, Administrative Actions made in accordance with section 4(a) of Appendix A of this Bylaw are not subject to review.
2. Within 10 business days of receiving a request for review under section 7.5.1 of this Bylaw, the Chief Administrative Officer will notify the person subject to the Administrative Action of the date for their hearing.
3. Legislative Services will provide the person subject to the Administrative Action with copies of all materials that will be considered by the Chief Administrative Officer a minimum of 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 Administrative Action may attend the hearing with a representative of their choice, including legal counsel.
5. The Director will attend the hearing on behalf of District Staff.
6. The Chief Administrative Officer may request the attendance of any other person at the hearing, including a member of District Staff or District legal counsel.
7. At the hearing, the person subject to the Administrative Action will have 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 Administrative Action of their decision in writing within 10 business days of the hearing.
9. The decision of the Chief Administrative Officer with regard to an Administrative Action is final.
10. The Chief Administrative Officer will notify Mayor and Council of appeals of Administrative Actions.

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