

Hate Sponsored Rallies

Date: April 15, 2019

To: Executive Committee

From: Executive Director, People, Equity and Human Rights

Wards: All

SUMMARY

This report responds to 2019.EX3.3 and outlines the following:

- a) the Toronto Police Services Board's process for the referral to the Office of the Attorney General of allegations of hate activity on City property;
- b) the results of the consultation and survey conducted in response to 2018.EX35.6 related to the City's Hate Activity Policy and the feasibility of the City addressing non-permitted protests featuring hate speech, including the possibility of recovering costs; and
- c) the outcome of inquiries made to the Toronto Police Services Board and the Ministry of the Attorney General as directed in 2019.EX3.3.

RECOMMENDATIONS

The Executive Director, People, Equity and Human Rights recommends that:

- 1. Executive Committee receive this report for information.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of this report.

The Chief Financial Officer & Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

EX3.3 - Status Update - Hate Sponsored Rallies

On March 21, 2019, Executive Committee referred item 2019.EX3.3, to the City Manager with the request that the City Manager do the following:

1. a. consult with the Toronto Police Services Board on the process for the timely referral to the Office of the Attorney General of allegations of hate activity on City property;
- b. report back to the May 1, 2019 meeting of Executive Committee with the process identified in Recommendation 1.a. above; the consultation and survey results identified in the report (March 7, 2019) from the Executive Director, People, Equity and Human Rights; and the feasibility of the City addressing non-permitted protests featuring hate speech, including the possibility of recovering costs; and
- c. follow-up for a response to the City of Toronto letters to the Toronto Police Services Board and the Ministry of the Attorney General dated October 15, 2018.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX3.3>

See also: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX35.6>

See also: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX29.42>

COMMENTS

In order to respond to the Executive Committee decision 2019.EX3.3, Staff in the People, Equity & Human Rights division consulted with colleagues in Corporate Security, Municipal Licensing and Standards (MLS), Parks, Forestry and Recreation (PF&R), The Office of Emergency Management (OEM), Economic, Development and Culture (EDC), Legal Services, as well as a Superintendent from Toronto Police Service at 52 Division and a Staff Sergeant from the Toronto Police Service's Community Response Unit. This report reflects information obtained from all of those sources.

1. a. Process for the Timely Referral to the Office of the Attorney General of Allegations of Hate Activity on City Property

The Toronto Police Service, through 52 Division, have advised that the process for the timely referral to the Office of the Attorney General of allegations of hate activity on City property is as follows:

- There are established communication channels between the Toronto Police Service, the City's Corporate Security personnel and staff in the City's Municipal Licensing and Standards' By-law Enforcement division;
- When either Toronto Police Service or City staff become aware in advance of a rally, it is their normal practice to communicate with one another so that existing protocols (which are summarized in Addendum 1 - Corporate Security Flow Charts entitled

"Corporate Security Unplanned Hate Rallies Response Plan" and "Corporate Security Planned Hate Rallies Response Plan") can be activated;

- Those communication channels are also used to communicate about ongoing rallies;
- Toronto Police routinely attend rallies to monitor and keep the peace;
- When a hate activity complaint is received by the Toronto Police, the complaint is reviewed and assigned to the responsible Superintendent for follow up;
- Depending on the nature of the allegation, the Superintendent may engage the Hate Crime Coordinator and/or officers from the Community Response Unit, Crime Unit and/or Major Crime Unit within the Toronto Police Service;
- An internal Toronto Police Service investigation is then undertaken;
- The outcome of the investigation is communicated to the Superintendent of the relevant Toronto Police division who determines whether or not the matter should be referred to the Attorney General's office for review;
- The nature of the allegation determines the length of the investigation. City Staff were advised that the investigation process can be lengthy;
- Toronto Police confirmed that they have translation services available for any video or audio that is provided to them in a language other than English.

The internal City process for addressing complaints of hate activity at rallies on the City's Squares is detailed in the documents attached as Addendum 1. The process is also discussed in more detail below.

b. Consultation and Survey Results Identified in the March 7, 2019 Report

In 2017.EX29.42 staff were directed to consult with the following stakeholders:

- constitutional and Charter rights scholars,
- the Toronto Police Service,
- the City Solicitor,
- the Deputy City Manager, Internal Corporate Services,
- representatives of the Ministry of the Attorney General of Ontario,
- various human rights groups and
- other stakeholders.

with respect to the City's legal responsibility and options in the context of leveraging existing and developing new policies with respect to preventing public gatherings that promote hate and incite discrimination from taking place on the City's property.

After consultation with staff in Legal Services, City Clerks, Toronto Office of Partnerships, Strategic Communication and Corporate Services, staff determined that a survey would be an effective way to consult with the non-City stakeholders identified.

The survey questions were jointly developed by staff in the People, Equity and Human Rights Office and in the Legal Services Division.

The survey was made available to the public through the City's Public Consultation webpage, sent directly to all individuals and/or groups who had expressed an interest in this issue, including those who made deputations or submissions at any point related to

this matter, and was provided to six Constitutional and Charter scholars (chosen based on their contributions to this area of law and have been recognized by the Supreme Court of Canada) with a personalized covering email inviting them to participate.

The survey was open for a total of thirteen weeks (an initial 8 weeks and a 5 week extension). There were a total of fifty-five completed surveys. All but two respondents identified themselves as individuals. There were only two respondents that identified themselves as belonging to stakeholder groups. Additionally, none of the legal scholars chose to engage in the survey process. The only legal scholar who responded to the email invitation declined to participate in the survey.

Attached as Addendum 2, is a chart summarising the answers to each survey question. In addition, all survey responses are available on the City's open data website at: <https://www.toronto.ca/city-government/data-research-maps/open-data/open-data-catalogue>.

The fifty-three individual and two stakeholder group responses provided a range of opinions and input on the questions. Following a thorough review it was determined that the City's robust policies and procedures already reflect many of the opinions and/or suggestions provided in the consultation process. For instance, City policies already prohibit the promotion of hate or discriminatory behaviour on City property.

The City's Hate Activity Policy and Procedures

The City's current policies regarding hate activity are robust and adequately address the aim of preventing hate speech on public property. As outlined in the March 7, 2019 report to Council which the Executive Director of PEHR submitted in response to 2018.EX35.6, the City has identified ways of improving communication of this policy in order to ensure these goals are met. These opportunities for improvement will be discussed in more detail below.

The City's Hate Activity Policy and Procedures are in place to assist in the identification of a hate motivated crime or incident and identify appropriate responses. The goal of the Policy and Procedures is to establish and maintain a hate-free City as required under the City of Toronto Human Rights and Anti-Harassment/Discrimination Policy, the Ontario *Human Rights Code* and the *Criminal Code*. The City's Hate Activity Policy and Procedures have broad application and apply to all City of Toronto employees, volunteers, accountability officers and their staff, and elected officials and their staff. It also applies to citizen advisory committees/bodies, members of the public, service recipients, visitors to and users of City facilities/public space and individuals conducting business with, for or with support from the City of Toronto.

The City's Hate Activity Policy specifically states that the City of Toronto condemns the promotion of hatred and promotes an environment free of hate. The City's Hate Activity Procedures provide that a report should be made to management and/or the Human Rights Office if an incident and/or allegation of hate activity occurs. City staff are required to respond to these incidents/allegations by assessing the issue, and if it is an emergency, respond based on existing emergency guidelines, and by notifying the police. If it is not an emergency, staff are required to record and provide all details to the

Human Rights Office for consultation and response. Because of the legal issues and constitutional rights involved, staff in Legal Services are also typically involved in the assessment of the allegations and in decision making about appropriate responses to such incidents or allegations.

Upon review of the results from the Survey and a review of the existing Hate Activity Policy and Procedures, PEHR concluded that the existing policies were appropriate to prevent public gatherings that promote hate and incite discrimination from taking place on City property. To be clear, such activities are currently prohibited by the City's policies.

The City's policy is in line with policies of other public institutions such as the Toronto Public Library ("TPL"). In fact, in 2017, following an outcry about an event that was to take place at a public library, the TPL retained a constitutional law expert to review and make recommendations on amendments to their policy. Following that review, the TPL brought its policy more in line with the City's Hate Activity Policy. The City's policy was used to strengthen the TPL's policy. The following is an excerpt from the TPL's report regarding the changes to their policy.

"In administering any policy, judgement and interpretation are required, and the policy must be implementable. In the legal review of the policy, a number of opportunities were identified to strengthen the policy. As part of this process, the City of Toronto Hate Activity policy language about not tolerating discrimination, contempt and hatred in the use of its public facilities was considered and has been incorporated into the revised policy as well as the Terms and Conditions and the contracts for community and event space bookings."

As indicated, having reviewed the results of the consultation, PEHR staff consulted with Legal Services and conducted a thorough review of the City's Hate Activity policy and those of other public institutions. City staff believe that its current policies clearly condemn discrimination and prohibit hate activity in a manner which respects the freedoms of peaceful assembly and expression as contained in the Charter of Rights and Freedoms.

However, staff were able to identify areas to improve public communication about City expectations with respect to its Hate Activity Policy and Procedures when using public space, facilities and/or properties. Staff from the People, Equity & Human Rights Division will work with colleagues in relevant City divisions to establish an implementation and education plan to provide clarity on the Hate Activity Policy and Procedures. This may include changes to the permitting process whereby proposed users of public space, facilities and properties must sign the City's Declaration of Compliance with Anti-Harassment/Discrimination Legislation and City Policy Form (a form that requires all organizations and/or individuals that contract with the City to have and post policies, programs etc. to prevent, address and remedy discrimination, racism, harassment, hate and inaccessibility complaints under the applicable legislation and City policy) prior to obtaining a permit. This is important because the City's Declaration of Compliance requires potential users of public space to certify that they will not be conducting any business that violates the *Criminal Code* – hate propaganda laws, and the Ontario *Human Rights Code*.

Ensuring that potential users are informed of these expectations prior to obtaining a permit will provide clarity regarding the City's existing Hate Activity Policy and Procedures. This process modification will also allow more time for questions or concerns to be addressed during the application process and will raise awareness of the City's expectations in regards to the use of public spaces.

Rallies and Protests

The City of Toronto does not issue permits for rallies or protests. However, the City does have a comprehensive permitting process for a range of other events held on City property. As indicated above, as part of the permitting process, applicants must sign the City's Declaration of Compliance with Anti-Harassment/Discrimination Legislation and City Policy Form (which encompasses the Hate Activity Policy).

People wishing to hold a rally or protest in a public space are directed to complete the Toronto Police Notice of Demonstration. If the City is in receipt of such notice, it coordinates to ensure response protocols are put into place. The current process for responding to allegations of hate activity at such events is outlined below:

Nathan Phillips Square and/or other City Facilities

Special Event staff in EDC have confirmed, due to the public nature of Nathan Phillips Square (NPS), rallies, demonstrations and/or protests on Nathan Phillips Square (NPS) are events that do not require a City permit. However, if EDC receives information from a rally or demonstration organizer about an intention to demonstrate or gather on NPS, City staff will advise the group that they need to complete a Notice of Demonstration or Rally with the Toronto Police Service Special Events Unit.

Corporate Security is most often involved with addressing non-permitted (meaning protests or rallies without a permit) protests on NPS or at other City facilities. Corporate Security confirmed that there are occasions in which they become aware, in advance, of concerns that rallies, protests and/or demonstrations planned for NPS (or other City facilities), might involve hate activity. In such cases, the following procedure is generally followed:

1. Where Corporate Security becomes aware, in advance, that an event that could violate the City's Hate Activity Policy is scheduled to take place on City property, the police are immediately notified and arrangements are made to ensure appropriate monitoring of the event. Corporate Security also interfaces with Legal Services and they are requested to review the assessment findings and Corporate Security's suggested response. To facilitate that, where it is known or expected that speakers may make hateful statements in a language other than English, Corporate Security will make reasonable attempts to schedule guards who speak the relevant language.
2. Corporate Security then works with Toronto Police Service to develop a security plan for the protest. The process of developing the plan involves

considering many factors, with public safety always being of paramount concern, including the following:

- the positioning of Police and Corporate Security at the location where the rally or protest is taking place,
- how to ensure the security of the building (ex. locking entrance doors),
- the potential communication process, including who would communicate, to participants in the rally that they are not allowed onto the property, and
- finalizing an internal communication plan, including a designated security command post, incident commander and incident communicator.

3. City staff are made aware of the potential of a hate protest either through a briefing note or an email from Corporate Security. The note advises on who is attending, a risk assessment, a Corporate Security response and communication plan and confirmation of Toronto Police Service attendance on that day. Typically, the notice is provided to the following City staff: the City Manager, Strategic Communications, all Deputy City Managers, the Clerk (if there is a potential for impact), Facilities Management, and, where deemed necessary, staff at the applicable facility.

4. If Corporate Security becomes aware of a spontaneous unplanned protest that could involve hate activity, they immediately involve Toronto Police, evaluate and inquire as to whether a counter-protest is also involved, monitor closely for public safety, document the event by taking photos and video, and work with Toronto Police Service during the demonstration.

5. Corporate Security regularly documents protests using photos and video (depending on the size of the rally and content of the messages) as it progresses. Where there is evidence that activities during the protest could violate the Hate Activity Policy or Procedures, more evidence may be gathered. Corporate Security then documents the rally on incident reports and all relevant information, including photographic and video evidence, is provided to Toronto Police for review and further action as required.

6. Corporate Security staff debrief with other City and Toronto Police Service staff and document lessons learned in preparation for future events.

For further information, see the attached flow charts in Addendum 1 prepared by Corporate Security, outlining the process for responding to planned and unplanned non-permitted rallies.

City of Toronto Parks

Rallies and protests are not allowed in City of Toronto parks, therefore, Parks, Forestry and Recreation does not issue permits for rallies or protests that take place in any City park.

If Parks, Forestry and Recreation become aware of non-permitted unauthorized activities such as rallies and protests, staff advise Municipal Licensing and Standards (MLS) By-law Enforcement Officers and Toronto Police about the event.

If appropriate, MLS may issue fines under Toronto Municipal Code, Chapter 608-11, Parks for unauthorized gatherings of more than 25 persons. However, By-law Enforcement Officers would have to have sufficient evidence to accurately identify the organizers of the rally or protest to lay charges. If organizers are identified, an Offence Notice with a set fine of \$100 can be issued. Alternatively, the allegations may be presented in court where a Justice of the Peace could increase the fine to up to \$5000. Provisions within *The Provincial Offences Act*, allow an Enforcement Officer up to 6 months to issue a fine.

MLS Enforcement Officers also monitor social media for any events taking place in Parks such as rallies and protests. Once aware of such activities, MLS staff notify Toronto Police Service. Police may choose to be present at these activities and monitor for any criminal activity.

Addressing Non-Permitted Protests Featuring Hate Speech

The Canadian Charter of Rights and Freedoms identifies the following among the guaranteed fundamental freedoms:

- freedom of thought, belief, opinion and expression;
- freedom of peaceful assembly; and
- freedom of association.

The City is legally obligated to respect those rights. As such, City policies and practices must be designed to avoid infringing on those rights. The jurisprudence relating to those rights identify public spaces such as parks and public squares, as places in which those rights are frequently exercised.

At the same time, the City has a strong commitment to promoting human rights, celebrating diversity and condemning hate, in all its forms, and the City has a legitimate interest in ensuring that its spaces are not used to propagate hate against any group of people. To that end, the City's Hate Activity Policy and/or procedures and the practices that are utilised to address allegations of hate on City property are designed to reflect the City's values of inclusion and anti-discrimination without infringing on people's fundamental freedoms.

City staff will continue to utilize available resources to monitor these activities and when applicable, consult with Legal Services to determine the appropriate response. For example, the City may issue a trespass notice issued under the *Trespass to Property Act* to limit or bar future use of any City property after appropriate investigation and contextual review. The City may also deny the issuance of a permit to use public space, facilities and properties that require a permit, after an appropriate investigation and contextual review is completed.

As indicated above, the consultation with internal stakeholders in preparation of this report confirmed the information provided to the Executive Committee in the March 7, 2019 Staff Report, specifically, that the City's policies already prohibit public gatherings that promote hate and incite discrimination from taking place on City property.

Cost Recovery

The City of Toronto does not currently charge for any non-permitted rallies, protests or demonstrations that occur on its property. Parks, Forestry and Recreation may issue a fine for unauthorized use, however, they would need to know who the organizer of the event is to issue the fine. The Executive Committee has specifically asked about the feasibility of the City addressing non-permitted protests that feature hate speech, by seeking recovery of associated costs. Any cost recovery must not infringe the right to use public space for expression as protected by the Charter.

c. Response to the City of Toronto Letters to the Toronto Police Services Board and the Ministry of the Attorney General

As directed, on April 3, 2019, City Staff followed up with the office of the Chair of the Toronto Police Services Board, Mr. Andrew Pringle, in regards to the letter sent by the City Clerk's Office dated October 15, 2018 communicating that the Executive Committee has requested that they determine whether a Toronto Police Service General Occurrence (GO) was generated in response to incidents at the Al-Quds Day rally on Saturday June 9, 2018. Mr. Pringle's office confirmed verbally at that time, that the letter was received in his office on October 17, 2018 and also confirmed that it was forwarded to the Office of the Chief of Police on October 25, 2018.

On Wednesday April 17, 2019, Superintendent Barsky confirmed by email that a General Occurrence was created in regards to the June 9, 2018 Al-Quds Day rally, however, a review by his officers and himself of the words spoken during the rally, which were captured and posted to YouTube, did not fit the criteria of a Hate Crime.

City Staff also followed up on April 3, 2019, with the office of The Honourable Caroline Mulroney, Attorney General, in regards to the letter sent by the City Clerk's Office also dated October 15, 2018 communicating that the Executive Committee has requested that the Ministry of the Attorney General conduct an expedited review of the Hate Crimes Unit investigation of the Al-Quds Day rally on Saturday June 9, 2018, once and if it is submitted. City Staff have received a response to this request, which is attached at Addendum 3 that states they have not received any Toronto Police Service Hate Crime investigation report relating to the Al-Quds rally held on Saturday June 9, 2018.

CONTACT

Omo Akintan, Executive Director, People, Equity and Human Rights
omo.akintan@toronto.ca, 416-392-8703

SIGNATURE

Omo Akintan
Executive Director, People Equity and Human Rights

ATTACHMENTS

Addendum 1 - Corporate Security Flow Charts entitled "Corporate Security Unplanned Hate Rallies Response Plan" and "Corporate Security Planned Hate Rallies Response Plan"

Addendum 2 - Chart Summarizing Hate Activity Policy Survey Responses

Addendum 3 - Response from the Ministry of the Attorney General dated April 10, 2019