



## Personnel and Administrative Policy and Procedure

<b>SUBJECT: Equal Employment and Anti-Harassment</b>	<b>EFFECTIVE DATE: December 2020</b> <b>ESTABLISHED:</b> <b>REVIEWED:</b> <b>REVISED: April 11, 2022</b> <b>NEW: (combines two prior policies : Equal Employment Opportunity and Affirmative Action and Discrimination and Harassment</b>
<b>CATEGORY: 200</b> <b>POLICY NUMBER: 200.15</b>	<b>CROSS REFERENCE:</b>

### **EQUAL EMPLOYMENT OPPORTUNITY POLICY**

The City of Milwaukie takes its commitment to providing Equal Employment Opportunities in the workplace seriously. These policies and expectations apply to all employees, volunteers, interns and public officials for The City in accordance with applicable law.

### **POLICY AGAINST HARASSMENT and DISCRIMINATION**

It is also The City's policy that its employees, volunteers, interns and public officials should work in an environment where individual dignity is respected. The City strictly prohibits Workplace Harassment, including sexual assault.

“Workplace Harassment” is defined by statute under Oregon law, and includes:

- Conduct that constitutes discrimination prohibited by ORS 659A.030 (i.e. discrimination because of race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, or age of employee or person associated with employee, or employee's expunged juvenile record), including conduct that constitutes sexual assault.
- Conduct that is prohibited by ORS 659A.082 (i.e. discrimination against an individual based on uniformed service); or
- Conduct that is prohibited by 659A.112 (i.e. employment discrimination against persons with disabilities).

“Sexual Assault”: Sexual assault means unwanted conduct of a sexual nature that is inflicted upon a person or compelled using physical force, manipulation, threat or intimidation.

The City expects all employees and other people covered by this policy to accomplish their work in a business-like manner with concern for their coworkers and others they encounter through their jobs. Any conduct that could reasonably be viewed as Workplace Harassment or other forms of harassment of employees, volunteers, interns, public officials, community members, vendors, etc. by employees or others covered by this policy is prohibited, regardless of working relationship or



## Personnel and Administrative Policy and Procedure

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supervisory status. Likewise, The City does not permit others on our worksites to engage in any conduct that could reasonably be viewed as harassment of our employees, volunteers, interns and public officials.

Specifically prohibited is conduct related to an individual's race, color, national origin, ancestry or ethnic background, religion, sex, sexual orientation, gender identity, mental or physical disability, age, veteran status, marital status, or other legally protected status or activity, whether the conduct is intentional, knowing or engaged in with reckless disregard. Employees are expected to use common sense in their day to day interactions with others and avoid inferences or questionable actions that border on a knew or should have known standard.

Prohibited conduct of a sexual and gender-based nature includes conduct such as:

- Sexual advances; innuendoes;
- Unwelcome requests for dates
- Unwelcome touching or sexual assault
- Unwelcome conduct, such as leering or making sexual gestures
- Telling dirty jokes
- Making offensive or derogatory comments about a person's gender (including gender identity) or sexual orientation, including inappropriate comments about individuals who are gay, lesbian, transgender, etc.
- Talking about your sex life or asking about other people's sex lives
- Spreading rumors or telling stories about other people's (such as a coworker's) sex life
- Displaying sexually suggestive objects, pictures, cartoons or posters
- Use of the City computers or other communication systems to access, send, receive or store material of a sexual/gender-based nature, etc. without a legitimate work purpose.
- Any other verbal, graphic, electronic or physical conduct of a sexual or gender-based nature, which has the purpose or the effect of creating a hostile or offensive work environment or otherwise unreasonably interfering with another employee's or other covered individual's work.

Prohibited conduct of a racial, ethnic, religious, age or disability, etc. based nature includes conduct such as the following:

- Making racial slurs or offensive ethnic comments
- Telling racial or ethnic jokes
- Displaying cartoons, printed material or other objects which are racially or ethnically offensive
- Displaying racist symbols as known or should be known as.
- Making derogatory comments or jokes about, or mimicking a person's physical or mental characteristics as defined by the Americans with Disabilities Act



## Personnel and Administrative Policy and Procedure

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- Unwelcome assertive expression of your religious beliefs on others
- Criticizing or making fun of another person's religious beliefs
- Making derogatory age-based comments or jokes
- Using City computers or communications systems to access, send, receive or store racially, ethnically, age-related, disability related or religiously, etc. offensive material; and
- Other verbal, graphic, electronic, physical or other conduct of a racial, religious, ethnic, age or disability related nature, which creates a hostile or offensive work environment or unreasonably interferes with another employee's or other covered individual's work.

These are just examples of conduct that is prohibited by this policy. Employees and other covered individuals are expected to exercise common sense and refrain from other similar kinds of conduct. Conduct of this nature is prohibited, even if it occurs off-duty, if it creates an offensive work environment or unreasonably interferes with another employee's or covered individual's work. You should assume that conduct of this nature is unwelcome and will offend others. Therefore, you are expected to refrain from engaging in such conduct, regardless of the circumstances. It is not an acceptable excuse that others participated in the conduct or did not appear to be offended. Managers and supervisor are also expected to take immediate action to stop and prevent conduct prohibited by this policy, where they know or have reason to know that it is occurring. Tacit approval of conduct that violates this policy by supervisors, managers or others, for example, laughing and treating a situation as a joke, failing to take action, or advising an employee not to complain is prohibited.

In addition, no one should suggest or threaten that an individual's cooperation with or tolerance of conduct of this nature will have any effect on that person's employment or status as a volunteer, intern or Public Official. The City does not make decisions on that basis.

### **POLICY AGAINST RETALIATION**

The City expects our employees and other covered individuals to report violations of these policies and to cooperate with investigations. The City does not permit employees or others to retaliate against individual(s) who report harassment or discrimination, cooperate with investigations, testify in harassment proceedings or assist in enforcement of our policies against discrimination and harassment.

"Retaliation" is broadly construed and may include on-duty or off-duty conduct, that could discourage an employee or other covered individual from making a complaint of discrimination, harassment or retaliation, or from testifying, assisting or participating in an investigation, proceeding or hearing. Retaliation includes treating another employee or covered individual differently because they or someone close to them reported harassment, complained about discrimination or engaged in any of these types of activities.



## Personnel and Administrative Policy and Procedure

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It also includes shunning employees or treating an employee or covered individual rudely because they or someone close to them reported harassment, withholding information or cooperation necessary for them to do their job, changing work assignments or hours, because of their complaint or participation in enforcement of this policy etc. are examples of retaliation. Retaliation also includes discouraging an employee or other covered individual from reporting harassment or criticizing an employee or other covered individual who reports harassment or cooperates in an investigation. Examples of this kind of retaliation include telling someone not to “rat” on another employee or covered individual who is committing harassment.

### **REPORTING PROCEDURES**

If you believe you have been subjected to conduct in violation of these policies, including:

- Discrimination in violation of the City’s policy or equal employment opportunity laws;
- Any type of Workplace Harassment or other conduct prohibited by the Policy Against Harassment, whether by an employee, volunteer, intern, Public Official or by anyone else you come into contact with through your job (vendors, community members, or other business visitors, etc.);
- Retaliation for the reporting of discrimination or harassment, opposing discrimination or harassment or cooperating with investigations; or
- If you have observed behavior or overheard comments that raise concerns regarding compliance with the City’s Non-Discrimination Policy, Anti-Harassment Policy, or Policy Against Retaliation toward others You should promptly contact your manager, the Human Resources Director (X7506) or the City Manager (X7501) or whomever you are most comfortable reporting to. If your concern involves one of the people listed above, you are expected to report the concern to a different person on this list.

Any supervisor or manager who receives information about conduct that may violate these policies is required to immediately notify the Human Resources Director or City Manager, and to provide the employee (or other covered individual) with a copy of this policy. When the Human Resources Director or City Manager receives a report of alleged discrimination, harassment or retaliation, they must document what is reported and provide the employee with a copy of this policy. All employees and covered individuals who believe that they have been subject to or witnessed conduct in violation of The City’s Equal Employment Opportunity and Anti-Harassment Policies are also advised to document those incidents.

We encourage our employees, volunteers, interns and public officials to report complaints and work with us to voluntarily disclose and report information regarding incidents of workplace harassment and informally resolve problems involving violations of our Equal Employment Opportunity policies.



## Personnel and Administrative Policy and Procedure

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Covered individuals have a legal right to report Workplace Harassment for up to four (4) years from the date on which the alleged harassment occurred. However, *we* do not place any time limits on the ability to report violations through the City's internal complaint procedures. Regardless, all covered individuals are expected to report these incidents at the earliest opportunity, in order to maximize the City's ability to conduct a thorough investigation and prevent further occurrences of prohibited conduct.

Our ability to resolve these kinds of problems is dependent on your cooperation in reporting incidents that create an offensive or hostile work environment for you. We believe that all our employees, volunteers, interns and public officials have an affirmative obligation to promptly report violations of our policy and cooperate with investigations. We encourage our employees, volunteers, interns and public officials to report complaints and work with us to voluntarily disclose and report information regarding incidents of workplace harassment and informally resolve problems involving violations of our Equal Employment Opportunity policies.

### **INVESTIGATIONS AND VIOLATIONS**

All complaints of violations of the City's Equal Employment Opportunity policies are promptly investigated by a member of the Human Resources Department, the City's legal counsel or other person designated by the Human Resources Director, such as a contracted outside investigator. The goal of the investigation is to determine the facts related to the complaint. Consistent with applicable law, the name of the complainant will remain confidential through the investigatory process. Other witnesses and information related to the investigation is kept confidential to the extent we determine confidentiality can be maintained while allowing us to comply with our responsibility to conduct a thorough investigation and maintain a workplace free of the types of unwelcome conduct prohibited above.

The City prides itself on its commitment to equal employment opportunities and restricts the types of behavior outlined in its policies, above, regardless of whether that conduct constitutes a legal violation. If the City finds that an employee or other covered individual has violated its policy, appropriate disciplinary action, up to and including discharge (or discontinuation of internship, volunteer service, etc.), will be taken. The level of disciplinary actions depends on the circumstances of the offense, including severity, pattern or frequency and may include verbal counseling, written reprimand, suspension without pay, demotion or discharge.

In addition, other corrective action, such as individualized training and other steps may be taken as the City determines appropriate.

### **FOLLOW UP WITH COVERED INDIVIDUALS**

Consistent with applicable law and best practices, it is our policy to follow up with the victim of alleged harassment at least once every three months for the calendar year following the date on which we received the report to ensure that any harassment or other policy violations have stopped,



## Personnel and Administrative Policy and Procedure

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and that the victim is not subject to retaliation. These follow-up contacts will occur unless the victim objects in writing to this practice.

The City may, in its discretion, also follow up with witnesses and others who cooperated in an investigation, including employees and other covered individuals who reported conduct that was not determined to be a violation of this policy, for the purpose of enforcing anti-retaliation prohibitions. Employees, volunteers, interns and public officials who have questions or concerns about our Equal Employment Opportunity Policies are encouraged to contact the Human Resources Director or follow the Reporting Procedures outlined in these policies.

For employees and others whose legal rights are determined to have been violated, additional remedies, such as back pay, counseling or medical costs; attorney fees, pain and suffering, and punitive damages may be available.

### **RECORDS RELATING TO HARASSMENT**

Notices of leave pending investigation, notice of interviews, due process notices and disciplinary notices are generally maintained in Department files. If documents are removed from a personnel file as required by an applicable collective bargaining agreement or any other reason, they will nevertheless be retained by the City as required by other applicable law(s).

Other documents related to complaints and investigations are maintained in confidential files for a *minimum* period of the 5-year statute of limitations or the minimum retention period required under Oregon law, whichever is longer. Such records are generally released only as the City determines appropriate to defend against legal claims, establish consistency and lack of discrimination, to establish that an employee or covered individual received notice of standards of conduct required under this policy, and when otherwise required by applicable law.

### **NONDISCLOSURE OR NON-DISPARAGEMENT AGREEMENTS**

The City will not require or coerce any employee or covered individual to enter into any non-disclosure or non-disparagement agreement that would prohibit them from discussing alleged discrimination, harassment (including sexual assault) in the workplace. This includes any conduct that occurs between employees/covered individuals, between an employer and the employee/covered individual in the workplace or at a work-related event coordinated by the City, or that occurs between an employee/covered individual and the employer off of the City property.

However, an employee or other covered individual claiming to be aggrieved by Workplace Harassment (including sexual assault) may voluntarily request to enter into an agreement (e.g. separation, severance or settlement agreements) containing a confidentiality, non-disparagement and/or no-rehire provision. Although the City is not obligated to offer or agree to any such separation, severance or settlement agreement, an employee or other covered individual who enters



## Personnel and Administrative Policy and Procedure

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into such an agreement on or after October 1, 2020 will also have the option to revoke the agreement within seven days after they sign it.

Under this policy, a nondisclosure agreement is any agreement by which one or more parties agree not to discuss or disclose information regarding any complaint of Workplace Harassment, discrimination, or sexual assault.

A non-disparagement agreement is any agreement by which one or more parties agree not to discredit or make negative or disparaging written or oral statements about any other party.

### **EMPLOYEE RESOURCES**

Employees and other covered individuals who believe they need counseling or other support services are encouraged to use the City's Employee Assistance Program (EAP). Additional information on the EAP can be found in the Employee Benefits Handbook. The City's health insurance also provides some coverage for mental health treatment. You are encouraged to review the summary plan documents or contact the carrier for your plan for more information. The Oregon Health Authority or the Oregon Board of Licensed Professional Counselors and Therapists may also have additional information to help connect you with counseling and other support services. More information can be found at: <https://www.oregon.gov/oha/pages/index.aspx> and <https://www.oregon.gov/oblpc/Pages/Websites.aspx>.

### **COMPLAINT AND ENFORCEMENT OPTIONS**

All employees and other individuals covered by these policies should also be aware that they have the right make complaints to and seek remedies through the Oregon Bureau of Labor and Industries' ("BOLI")'s complaint resolution process or by filing claims in court as well as to pursue their rights under other available laws, whether civil or criminal. The City respects the rights of victims of Workplace Harassment to voluntarily disclose information regarding incidents of harassment.

The City does not provide any employee or other covered individual with legal advice. However, all employees and covered individuals should be aware that time limits apply to the ability to pursue civil and criminal complaints. For example, claims made with BOLI alleging Workplace Harassment under Oregon law must generally be filed within 5 years from the date of the alleged unlawful practice if the conduct occurred on or after October 1, 2019. Conduct that occurred prior to that date is generally subject to a shorter (1 year) statute of limitations. The same time limitations apply to complaints filed in court without first going through BOLI. Please also be aware that Oregon law requires that individuals bringing claims against a public officer, employee or agent of a public body or a public body (e.g. the City) must first provide a notice of claims (often referred to as a Tort Claims Notice). Except as otherwise provided by ORS 30.275, the Tort Claims Notice must generally be provided within 180 days of the alleged loss or injury.



## Personnel and Administrative Policy and Procedure

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Different time limitations apply under federal law (*generally* claims must be filed within 180 days with the federal EEOC or within 300 days if state or local law prohibits the same conduct and a state or local agency enforces a law that prohibits employment discrimination on the same basis). The statute of limitations for criminal complaints vary based on the nature and degree of the conduct.

Individuals who want more information may contact BOLI (<https://www.oregon.gov/boli>), local law enforcement, or contact an attorney of their choosing. The Oregon State Bar provides a referral service through which employees may be connected with attorneys. Information regarding this service can be found at: <https://www.osbar.org/public/ris/>. For employees and others whose legal rights are determined to have been violated, additional remedies, such as back pay, counseling or medical costs; attorney fees, pain and suffering, and punitive damages may be available.

### **DISABILITY ACCOMMODATION**

The City is also committed to complying fully with state and federal pregnancy and disability accommodation laws for its employees who are covered by these laws. If you require workplace modifications or other assistance to accommodate your pregnancy (including but not limited to pregnancy, childbirth or a related medical condition, such as lactation) or disability, it is your responsibility to contact Human Resources to make sure we are aware of not only your pregnancy or disability, but also your need for accommodation. Reasonable accommodations may include obtaining or modifying equipment or devices, schedule modifications, and other job modifications that are intended to enable a pregnant or disabled employee to perform his/her essential job duties.

When you advise us of a condition that you believe requires accommodation, we work with you to review your medical restrictions/job limitations, etc., and discuss with you to determine what, if any, reasonable accommodations can be made to enable you to perform your job duties in a safe and satisfactory manner. All employees are expected to cooperate with this process, including our requests for medical confirmation of the nature and extent of any job-related restrictions or limitations.

The City does not create positions that do not exist to accommodate employees. If, even after any required reasonable accommodation, an employee is unable to perform their essential job duties, we then explore opportunities to place disabled employees in other existing and available positions that are, with or without reasonable accommodation, suited to their skills and limitations. If you have been provided an accommodation that you feel is not effective for any reason, you should promptly notify Human Resources.

### **RELIGIOUS ACCOMMODATION**

The City is also committed to complying fully with its reasonable accommodation obligations for the religious beliefs and practices of its employees. If you require workplace adjustments or





## **Personnel and Administrative Policy and Procedure**

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modifications for your religious beliefs and practices, please contact the Director of Human Resources.