



City Council Memorandum

To: Mayor Manier & City Council
From: Jim Culotta, City Administrator
Date: January 8, 2018
Re: Ordinance Amending Personnel Manual, Sexual Harassment and Other Forms of Discrimination Policy

EXECUTIVE SUMMARY

Illinois Public Act 100-0554 mandates all governmental units adopt, within 60 days after the effective date of November 16, 2017, an ordinance or resolution establishing a policy prohibiting sexual harassment. In consultation with the City Attorney, the attached policy updates and replaces the city's existing harassment policy to meet the specific requirements of this state mandate.

All three labor unions were given the opportunity to review and comment on the proposed policy. Since 1st Reading of the ordinance on January 2nd, the Laborers' union has requested the insertion of the following under Section VIII. *Investigation Process*:

City employees who are represented by a labor union shall be entitled, upon request, to have a union representative present for any investigation meeting/interview attended by the employee without regard to whether the employee is the accuser, victim, witness and/or accused.

Staff recommends the inclusion of this language and it has been incorporated into the attached draft.

REQUESTED ACTION

Staff requests Council adoption of the proposed ordinance.

ATTACHED

1. Ordinance & Policy

ORDINANCE NO. _____

Synopsis: Adoption of this ordinance would adopt a new Sexual Harassment and Other Forms of Discrimination policy which expands upon our existing policy to comply with the new IL General Assembly Public Act 100-0554.

**AN ORDINANCE AMENDING THE PERSONNEL MANUAL OF THE CITY OF
WASHINGTON, ILLINOIS TO ESTABLISH A POLICY PROHIBITING SEXUAL
HARASSMENT AND OTHER FORMS OF DISCRIMINATION**

WHEREAS, the Illinois General Assembly has recently enacted Public Act 100-0554, an Act concerning government, which became effective immediately, dated November 16, 2017;

WHEREAS, pursuant to the Act, each governmental unit shall adopt an ordinance or resolution establishing a policy to prohibit sexual harassment, with the policy containing certain provisions specified by the Act; and

WHEREAS, the existing Personnel Manual does address sexual and other harassment by City employees, but the City wishes to expand upon its existing policy to comply with the Act; and

WHEREAS, the City Council of the City of Washington has determined that it is in the best interests of the City and its citizens to amend its Personnel Manual by adopting the Policy Prohibiting Sexual Harassment and Other Forms of Discrimination.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
WASHINGTON, TAZEWELL COUNTY, ILLINOIS**, as follows:

Section 1. That the Personnel Manual of the City of Washington be, and the same hereby is, amended by replacing the current Article XXIII entitled "Sexual and Other Forms of Harassment Policy" and with a new Article XXIII, entitled "Policy Prohibiting Sexual Harassment and Other Forms of Discrimination", which new Article XXIII shall read substantially in the form of the document attached hereto as Exhibit "A" and by reference expressly made a part hereof.

Section 2. That all Resolutions, Ordinances, or parts thereof in conflict herewith are hereby expressly repealed.

Section 3. That this Ordinance shall be in full force and effect from and after its passage and approval. The new Policy Prohibiting Sexual Harassment and Other Forms of Discrimination shall go into effect immediately upon the passage and approval of this ordinance, and shall be effective from and after that date.

PASSED AND APPROVED this _____ day of January, 2018.

AYES _____

NAYS _____

Mayor

ATTEST:

City Clerk

EXHIBIT A

POLICY PROHIBITING HARASSMENT AND OTHER FORMS OF DISCRIMINATION

The City is committed to providing a workplace and community free from all forms of illegal discrimination and harassment. Discrimination or harassment of any kind because of race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, disability, military status or any other legally protected characteristic/activity is prohibited.

I. PROHIBITION ON SEXUAL HARASSMENT

It is unlawful to harass a person because of that person's sex. All persons have a right to work and to conduct their activities within the City in an environment free from sexual harassment. Sexual harassment is unacceptable misconduct which affects individuals of all genders and sexual orientations. It is a policy of the City of Washington to prohibit harassment of any person by any City official, agent, employee or agency or office on the basis of sex.

II. DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or access to/use of a City service, or
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment or other City decisions affecting such individual, or
- (3) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working or other environment.

Conduct which may constitute sexual harassment includes:

- Verbal: sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
- Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- Textual/Electronic: "sexting" (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).

The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation.

III. *OTHER PROHIBITED HARASSMENT*

In addition to sexual harassment, harassment on the basis of any other legally protected characteristic/activity in employment or access/use of a City service is also a form of discrimination. Such harassment is prohibited and is a violation of this Policy.

Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of one or more legally protected characteristics/activities that: (1) has the purpose or effect of creating an intimidating, hostile or offensive working or other environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment or access/use of a City service.

Harassing conduct includes, but is not limited to, the following: (1) epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts that relate to a legally protected characteristic/activity; and (2) written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of a legally protected characteristic/activity.

IV. *REPORTING PROCEDURE*

An individual who either observes sexual or other harassment/discrimination, or believes herself/himself to be the object of sexual or other harassment/discrimination should deal with the incident(s) as directly and firmly as possible by clearly communicating her/his position to the offending individual, and her/his immediate supervisor. It is not necessary for sexual harassment or other harassment/discrimination to be directed at the person making the report.

Proper responses to conduct which is believed to be sexual harassment or other harassment/discrimination, include the following:

- *Electronic/Direct Communication.* The harassed/discriminated against individual should directly and clearly express her/his objection that the conduct is unwelcome and request that the offending behavior stop. The initial message may be verbal. If subsequent messages are needed, they should be put in writing in a note or a memo.
- *Contact with Supervisory Personnel.* At the same time direct communication is undertaken, or in the event the individual feels threatened or intimidated by the situation, the problem must be promptly reported to the immediate supervisor of the person making the report, the department head, the City Administrator, or the Mayor.

The individual experiencing what he or she believes to be sexual harassment or other harassment/discrimination must not assume that the City is aware of the conduct. If the individual fails to notify a supervisor or other responsible official, the City will not be presumed to have knowledge of the harassment/discrimination.

- *Resolution Outside the City.* The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every report and incident so that problems can be identified and remedied by the City. However, all City employees have the right to contact the

Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) for information regarding filing a formal complaint with those entities. An IDHR complaint must be filed within 180 days of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must be filed within 300 days.

Documentation of any incident may be submitted with any report (what was said or done, the date, the time and the place), including, but not limited to, written or electronic records such as letters, notes, memos and telephone messages.

All allegations, including anonymous reports, will be accepted and investigated regardless of how the matter comes to the attention of the City. However, because of the serious implications of sexual harassment and other harassment/discrimination charges, and the difficulties associated with their investigation and the questions of credibility involved, the complaining individual's willing cooperation is a vital component of an effective inquiry and an appropriate outcome. Statements made and information gathered during any investigation undertaken in response to a complaint will be kept confidential to the extent possible.

V. PROHIBITION ON RETALIATION FOR REPORTING HARASSMENT/DISCRIMINATION ALLEGATIONS

No City official, agent, employee or agency or office shall take any retaliatory action against any individual due to the individual's:

1. Disclosure or threatened disclosure of any violation of this Policy,
2. The provision of information related to or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy, or
3. Assistance or participation in any investigation or any proceeding to enforce the provisions of this Policy.

No individual making a report will be retaliated against even if a report made in good faith is not substantiated.

Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), the City may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. In addition, the City may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. (740 ILCS 174/15(b)). The State Officials and Employees Ethics Act (5 ILCS 430/15-10) may provide whistleblower protection from retaliatory action

According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act.

VI. CONSEQUENCES OF A VIOLATION OF THE PROHIBITION ON HARASSMENT/DISCRIMINATION AND RETALIATION

Any violation of this Policy shall result in disciplinary action up to and including discharge. Additionally, the City may take any other actions and seek any other remedies available to it under applicable law.

VII. CONSEQUENCES FOR KNOWINGLY MAKING A FALSE REPORT

False and frivolous charges refer to cases where the accuser is using a sexual harassment or harassment/discrimination complaint to accomplish some end other than stopping the harassment/discrimination. It does not refer to charges made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false and frivolous charge is a severe offense that can itself result in disciplinary action up to and including discharge.

VIII. INVESTIGATION PROCESS

Complaints of sexual harassment or other forms of harassment/discrimination should be thoroughly and impartially investigated and a determination rendered promptly. The investigation shall be conducted by the Chief of Police, unless the Chief of Police or another member of the City Police Department is the alleged harasser, or the City Administrator determines for any reason, that the Chief of Police should not conduct the investigation, in which case the investigation will be conducted by the City Administrator or his/her designee. To the extent practicable, the City endeavors to maintain confidentiality of complaints and any related investigation.

City employees who are represented by a labor union shall be entitled, upon request, to have a union representative present for any investigation meeting/interview attended by the employee without regard to whether the employee is the accuser, victim, witness and/or accused.

Unless the City Administrator is the alleged harasser, all information gathered by the City during the investigation process shall be reported to the City Administrator, and the City Administrator shall then make a determination on the merits of the harassment/discrimination complaint. If the City Administrator is the alleged harasser, or the City Administrator recuses himself/herself from the decision-making process, then the Controller shall be provided with all of the investigation information and shall make the determination.

If it is determined that harassment/discrimination has occurred, the City shall take prompt remedial and corrective action, including appropriate disciplinary action against the individual responsible for the harassment/discrimination.