

3.11 Prohibition and Prevention of Harassment/Sexual Harassment

Purpose of the Policy

The purpose of this policy is to prohibit and prevent sexual harassment and harassment based upon a person's protected status under the law by:

1. Prohibiting harassing conduct and making compliance with this policy a term and condition of employment;
2. Educating employees by clearly defining sexual harassment and other types of conduct that can be considered harassment in violation of this policy;
3. Providing a complaint procedure with multiple options for reporting harassment;
4. Prohibiting any type of retaliation against a person who makes a good faith report of harassment or who cooperates in the investigation of a harassment claim; and
5. Providing for disciplinary action up to and including termination for any employee who is found to have violated this policy.

Statement of Policy

The City does not tolerate and prohibits harassment or harassing conduct in the workplace and is affirmatively committed to preventing such conduct. This prohibition not only includes employee-on-employee harassment, but also any harassing conduct by or against individuals who do business with the City. This policy prohibits and addresses the issue of sexual harassment which is a form of discrimination under state and federal law. This policy is also applicable to harassment targeted at individuals based on their protected status under Title VII of the Civil Rights Act and/or the Illinois Human Rights Acts. To prevent harassment in the workplace, to sensitize employees to the issues, and to explain the policy and complaint procedure, the City provides mandatory training for its employees.

Harassment Defined

Harassment is defined as unwelcome conduct, whether verbal, physical, or visual, that is based upon a person's protected status under the law. This conduct includes engaging in unwelcome conduct toward another individual(s) based upon their age, race, color, national origin, ancestry, religion, sex, sexual orientation (including gender-related identity), pregnancy (including childbirth, lactation and related medical conditions), physical or mental disability, genetic information (including testing and characteristics), veteran status, uniformed service-member status, or marital status. Harassment occurs when such conduct affects an employee's tangible job benefits, interferes unreasonably with an individual's work performance, or creates an intimidating, hostile, or offensive working environment. Such harassment may include, for example, joking references about another person's protected status, kidding, teasing or practical jokes directed at a person based on his or her protected status.

Sexual Harassment Defined

This policy adopts the definition of sexual harassment as stated in the Illinois Human Rights Act, which defines sexual harassment as:

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;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. The purpose or effect of such conduct is to substantially interfere with an individual's work performance or create an intimidating, hostile, or offensive working 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 test used by courts to determine whether harassment has occurred is whether the conduct would offend a "reasonable person."

Expectation of Conduct

All employees have the right to expect that the City will maintain a place of employment that is free of employee or non-employee conduct which can be considered harassment. It is the expectation of the City and a condition of employment that employees conduct themselves appropriately within the workplace and consistent with this policy, and that appropriate conduct will continue outside of the workplace when interacting with other City employees and persons who do business with the City. The cooperation of all employees in preventing harassment is essential and expected.

Complaint Procedure

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

An employee experiencing what he/she believes to be harassment must not assume that the employer is aware of the conduct. If there are no witnesses and the employee who claims to have been harassed fails to properly notify a supervisor or other responsible officer, the City will not be presumed to have knowledge of the harassment.

Pertaining to the City – Employees can report harassment to their supervisor, their supervisor's superior, their Department Director, their Human Resources Representative, the Human Resources Director, the City Attorney, or the City Manager.

Reporting to a Government Agency – The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every report and incident of harassment so that problems can be identified and remedied by the City. Employees also have the right to report or file a charge of harassment to the Illinois Department of Human Rights ("IDHR") or the Equal Employment Opportunities Commission ("EEOC"). Strict time limits exist for filing such a charge.

Regardless of where an employee chooses to lodge a complaint, the City strongly urges that the employee inform the City of the complaint so that the City can take appropriate action to enforce this policy and immediate appropriate action can be taken to stop and to remedy any such conduct.

Investigatory Process

The City will immediately investigate any complaint of harassment as soon as it is made aware of the complaint. Under no circumstances will the investigation be conducted by the person(s) accused of harassment. The City's investigation will, at a minimum, include interviewing the reported victim of the harassment, the alleged harasser, and any other persons who are identified as having knowledge concerning the allegations of harassment. Depending on the circumstances of each case, further fact finding measures may be required.

In each instance in which an employee reports or complains of harassment, the City will make and maintain a record of the investigation. All information regarding any complaint of harassment and all information obtained during the investigation of any such complaint will be disclosed only on a need-to-know basis in order to effectively investigate and resolve the matter. No record of making a complaint of harassment, assisting someone in making a complaint or participating in an investigation will be placed in an employee's personnel file.

Retaliation Strictly Prohibited

The City strictly prohibits any type of retaliation against anyone for threatening to complain or making a complaint regarding sexual or any other type of harassment, for assisting someone else to make a complaint, for cooperating in the investigation of a complaint of harassment or for participating in a proceeding to enforce the policy. No individual making a report will be retaliated against even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation. Retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any employee that is taken in retaliation for his or her involvement in protected activity pursuant to this policy,

Employees who believe they have incurred retaliation have rights and protections under several laws.

Retaliation is a violation of the Illinois Human Rights Act and of the Title VII of the Civil Rights Act of 1964. Employees have the right to file a charge of retaliation with the IDHR and the EEOC to enforce their rights under these laws.

Retaliation protections also exist under the Illinois Whistleblowers Act (740 ILCS 174/15(a)) and the State Officials and Employees Ethics Act (5 ILCS 430/15-10) for participating in a state proceeding to enforce their rights or the rights of another person under this policy

Consequences of a Violation of this Policy

If, after investigation, the City or any other governmental agency finds that sexual or any other type of harassment has occurred, prompt and appropriate remedial action will be taken to stop the harassment and to prevent any recurrence. Any employee who has been found to have sexually or otherwise harassed another employee or individual doing business with the City will be subject to appropriate discipline, up to and including termination.

Consequences for Knowingly Making a False Report

A false report is not a report made in good faith which cannot be proven. A false report is a report of sexual or other type of harassment made by an accuser using the harassment report to accomplish some end other than stopping harassment or retaliation for reporting harassment. Given the seriousness of the consequences for the accused, a false report is a violation of this policy and can result in disciplinary action up to and including termination from employment.