



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5a

Title:	Recommendation to approve an Ordinance Adopting a Policy Prohibiting Sexual Harassment for the City of St. Charles
Presenter:	Jennifer McMahon, Director of Human Resources

Meeting: Government Operations Committee

Date: December 18, 2017

Proposed Cost: \$ 0

Budgeted Amount: N/A

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

On November 16, 2017, Public Act 100-0554 became effective. This Act amends the State Officials and Employees Ethics Act mandating that all governmental units adopt - within 60 days after the effective date - an ordinance establishing a policy that prohibits sexual harassment. Included in the backup material is an ordinance based on the model ordinance drafted by the Illinois Municipal League. This ordinance adopts a policy prohibiting sexual harassment at the City of St. Charles. This policy has been reviewed and updated per Public Act 100-0554 by the City's labor attorney.

**Attachments** *(please list):*

Ordinance adopting a Policy Prohibiting Sexual Harassment for the City of St. Charles.

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to approve an Ordinance Adopting a Policy Prohibiting Sexual Harassment for the City of St. Charles

**AN ORDINANCE ADOPTING A POLICY  
PROHIBITING SEXUAL HARASSMENT  
FOR THE CITY OF ST. CHARLES**

**ORDINANCE NO:** \_\_\_\_\_

**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;

**WHEREAS**, all prior existing sexual harassment policies of the City of St. Charles shall be superseded by the Policy Prohibiting Sexual Harassment adopted by this Ordinance; and

**WHEREAS**, should any section or provision of this Ordinance or the adopted Policy Prohibiting Sexual Harassment be declared to be invalid, that decision shall not affect the validity of this Ordinance or adopted Policy Prohibiting Sexual Harassment as a whole or any part thereof, other than the part so declared to be invalid;

**NOW, THEREFORE**, be it ordained by the corporate authorities of the City of St. Charles the following:

Section 1. The Policy Prohibiting Sexual Harassment, included as Exhibit A to this Ordinance, is hereby adopted.

Section 2. That after the adoption and approval hereof the Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the Council, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles. This ordinance shall be effective as of January 15, 2018.

**PRESENTED** to the City Council of the city of St. Charles, Illinois, this \_\_\_\_  
\_\_\_\_\_day January, 2018.

**PASSED** by the City Council of the city of St. Charles, Illinois, this \_\_\_\_ day of  
January, 2018.

**APPROVED** by the Mayor of the city of St. Charles, Illinois, this \_\_\_\_\_ day of  
January, 2018.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

**ANTI-HARASSMENT**

The City of St. Charles strives to create a healthy work environment in which all employees are treated with dignity and respect. Also, any form of discrimination or harassment will not be tolerated. Harassment in the workplace is unacceptable conduct and will not be tolerated by anyone, including any employee, supervisor, elected official, vendor, customer, or any other third party. It is the responsibility of each individual employee to refrain from harassment or discrimination of other employees. It is the right of each individual employee to work in an environment free from harassment.

**Prohibited Conduct**

This policy prohibits harassment or other workplace discrimination based on an employee's protected status under state and federal law.

Harassment is defined as unwelcome conduct, whether verbal, physical, or visual, that denigrates or shows hostility or aversion toward an individual based upon that person's race, gender, sex, sexual orientation, age, color, religious affiliation, national origin, physical or mental disability, ancestry, marital status, military status, unfavorable discharge from military service, order of protected status, or other legally protected status. The City will not tolerate harassing conduct that has the purpose or effect of interfering unreasonably with an individual's work performance, affecting an individual's tangible job benefits, or creating an intimidating, hostile, or offensive work environment. Consensual sexual relationships between co-workers are strongly discouraged. Consensual sexual relationships between supervisors and their subordinate employees are strongly discouraged.

The conduct forbidden by this policy specifically includes, but is not limited to:

1. Epithets, slurs, negative stereotyping, or intimidating acts that are based on a person's protected status.
2. Jokes, kidding, teasing, or practical jokes directed at a person based on his or her protected status.
3. Written or graphic material circulated, available on the City's computer system, or posted or distributed within the workplace that shows hostility toward a person or persons because of their protected status.
4. Any employee mocking or belittling any other employee.
5. The City discourages any such conduct in the workplace, and this policy prohibits harassment based on an individual's protected status, even if it does not rise to the level of a legal violation.

**Sexual Harassment**

Sexual harassment is a serious offense and is often misunderstood. Sexual harassment includes any harassing conduct based on gender, regardless of whether the conduct is sexual in nature. Any unwelcome conduct based on gender is also forbidden by this policy regardless of whether

the individual engaged in harassment and the individual being harassed are of the same or different genders.

Unwelcome verbal, visual, or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work environment constitutes sexual harassment when:

- Submission to the conduct is an explicit or implicit term of employment,
  - Submission to or rejection of such conduct is used as a basis for an employment decision affecting an individual (tangible employment action), or
  - The conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- This policy forbids harassment based on gender regardless of whether it rises to the level of a legal violation.

The City considers the following conduct to represent, but are not limited to, some of the types of acts that violate this harassment policy:

1. Intentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, hugging, kissing, etc.
2. Physical assaults of a sexual nature, including, but not limited to, coerced sexual intercourse, sexual battery, sexual assault, or rape.
3. Unwanted sexual advances, propositions or other sexual comments, including, but not limited to, sexually oriented gestures, noises, leering, remarks, innuendo, jokes, or comments or verbal abuse of a sexual nature. Also included are preferential treatment and promises of a preferential treatment to an employee for submitting to sexual conduct.
4. Sexual or discriminatory displays or publications anywhere in the City workplace by City employees, including, but not limited to, pictures, posters, calendars, graffiti, objects, reading materials, computers, or other materials that are suggestive, demeaning, or pornographic.

### **Subtle Forms of Sexual Harassment**

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

### **Employee Responsibility**

Every employee is expected to avoid any behavior or conduct that could reasonably be interpreted as prohibited harassment under this policy. Employees should immediately report observed conduct that is unwelcome, offensive, inappropriate, or in poor taste. The employee should notify his or her supervisor or the Director of Human Resources with complaints about alleged problems or violations of this policy at any time. This policy does not require reporting harassment or discrimination to any individual who is creating the harassment or discrimination. Employees are expected to come forward promptly and report any problems pursuant to this policy before the alleged offending behavior becomes severe or pervasive. Complaints need not be limited to someone who was the target of the alleged offending conduct. Anyone who has

observed an alleged violation of the policy is required to report such conduct. An individual employee who harasses a fellow worker is liable for his/her individual conduct.

### **Supervisor Responsibility**

Each supervisor is responsible for maintaining a workplace free from all forms of harassment and set an example for your employees. This is accomplished by promoting a professional environment and by dealing with harassment like any other form of employee misconduct.

Supervisors must act quickly and responsibly not only to minimize their own liability but also that of the City. Supervisors should inform their staff that such behavior is unacceptable. Supervisors are responsible for ensuring that all of their employees know and understand the law, the harassment policy, and grievance procedures.

Specifically, a supervisor must immediately address an observed incident of harassment or a complaint with seriousness, appropriate disciplinary action, and observe strict confidentiality. Additionally, each supervisor must immediately report to the Director of Human Resources any complaint or observation of conduct which may violate this policy. This also applies to cases where an employee tells the supervisor about behavior considered harassment but does not want to make a formal complaint. A supervisor's failure to make such a report may constitute a violation of this policy.

Supervisors must ensure that no retaliation will result against an employee making a harassment complaint.

### **Complaints of Harassment**

If an employee experiences or witnesses any conduct that he/she believes is inconsistent with this policy, they should deal with the incident(s) as directly and firmly as possible by clearly communicating his/her position to a supervisor, the Director of Human Resources, and the offending employee. This may be done in writing or orally. Each supervisor must immediately report to Human Resources any complaint or observation of conduct which may violate this policy. The following options are available to employees for making a complaint about harassment:

#### *Direct Communication*

If there is harassing behavior in the workplace, the harassed employee should directly and clearly express his/her objection, that the conduct is unwelcome, and request the offending behavior stop. The initial message may be verbal. If subsequent messages are needed, they should be put in writing.

#### *Contact with Supervisory Personnel*

At the same time direct communication is undertaken, or in the event the employee feels threatened or intimidated by this situation, the problem must be promptly reported to a supervisor or to the Director of Human Resources. If the alleged harasser is the immediate

supervisor, the problem should be reported to the next level of supervision or the Director of Human Resources.

### *Formal Complaint*

An employee may also report incidents of harassment directly to the Director of Human Resources. The Director of Human Resources will counsel the reporting employee and be available to assist with filing a formal complaint. The City will fully investigate the complaint and advise the complainant and alleged harasser of the results of the investigation.

### **Confidentiality**

The City will protect confidentiality by every means legally possible, but confidentiality cannot be completely guaranteed.

### **City Response**

All reports describing conduct that is inconsistent with this policy will be investigated promptly. Employees who believe they have been subjected or exposed to discrimination or harassment prohibited by this policy have the right to have any such activity terminated immediately. The City may put reasonable interim measures in place, such as a leave of absence or a transfer, while the investigation takes place. The City will take further appropriate action once the report has been thoroughly investigated. That action may be a conclusion that a violation occurred. The City might also conclude, depending on the circumstances, that no violation of the policy occurred or that the City cannot conclude whether or not a violation occurred.

If an investigation reveals that a violation of this policy or other inappropriate conduct has occurred, then the City will take corrective action, including discipline up to and including dismissal, as is appropriate under the circumstances, regardless of the job positions of the parties involved. The City may discipline an employee for any inappropriate conduct discovered in investigation reports made under this policy, regardless of whether the conduct amounts to a violation of law or even a violation of policy. If the person who engaged in harassment is not employed by the City, then the City will take whatever corrective action is reasonable and appropriate under the circumstances.

After the investigation is finalized, the Department Director or their designee and the Director Human Resources will meet with the complainant and respondent separately to explain the City's findings and any mitigation to stop and prevent future harassment, if applicable.

Employees are encouraged to use the above complaint procedure(s) to report and resolve their complaints of harassment or retaliation. The City's policy provides for immediate notice of problems to the City employees and officials, so that problems may be addressed and resolved.

### **Policy Against Retaliation**

The City forbids that any employee treat any other employee or former employee or applicant adversely for making a good-faith complaint of harassment; assisting or cooperating in an investigation of a complaint by someone else, whether internally or with an external agency;

filing a charge of discrimination or harassment; or otherwise providing information in a proceeding, including in a court, administrative or legislative hearing, related to violations of discrimination or harassment laws. Examples of the types of retaliation that are prohibited include intimidation; discrimination; verbal or physical abuse; adverse actions with respect to pay, work assignments, and other terms of employment; termination of employment; or threats of any such actions. All employees who experience or witness any conduct they believe to be retaliatory should immediately follow the reporting procedures stated above. No one will be retaliated against, even if a complaint made in good faith is not substantiated.

### **False Complaints**

It is critical in establishing a workplace free of harassment that an individual who experiences or witnesses an incident perceived as being harassing has access to a mechanism for reporting such incidents. At the same time, the purposes of this policy are not furthered where a complaint is found to be false and frivolous and made to accomplish some other end than stopping harassment. False charges refer to cases where the accuser files a sexual harassment complaint that can be proven false. Given the seriousness of the consequence for the accused, a false charge is a severe offense that can itself result in disciplinary action. A false or frivolous complaint does not refer to complaints made in good faith that cannot be proven.