

**AGENDA ITEM EXECUTIVE SUMMARY**Agenda Item number: **6a**

Title: Adoption of an Amended Policy Prohibiting Sexual Harassment

Presenter: Jennifer McMahon, Director of Human Resources

Meeting: Government Operations Committee

Date: December 2, 2019

Proposed Cost: \$ 0

Budgeted Amount: N/A

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

On August 9, 2019, amendments to Article 70 – Governmental Entities of the State Officials and Employees Ethics Act were passed, with an effective date of January 1, 2020. These amendments require that each governmental unit that is not subject to the jurisdiction of a State or local Inspector General adopt an ordinance amending its sexual harassment policy to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit. This ordinance adopts an amended sexual harassment policy establishing such a mechanism. This policy has been reviewed and updated by the City’s labor attorney.

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

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

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

Human Resources Director McMahon recommends the ordinance be approved as presented.

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

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

**WHEREAS**, the Illinois General Assembly has recently amended Public Act 93-615 – State Officials and Employees Ethics Act, an Act concerning government, which becomes effective January 1, 2020;

**WHEREAS**, pursuant to the Act, each governmental unit shall adopt an ordinance amending its sexual harassment policy to provide for a mechanism for reporting and independent review of allegations of sexual harassment made against an elected official of the governmental unit by another elected official of a governmental unit;

**WHEREAS**, all prior existing sexual harassment policies of the City of St. Charles shall be superseded by the amended Policy Prohibiting Sexual Harassment adopted by this Ordinance; and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 amended 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 1, 2020.

**PRESENTED** to the City Council of the city of St. Charles, Illinois, this\_\_  
\_\_\_\_\_day December, 2019.

**PASSED** by the City Council of the city of St. Charles, Illinois, this \_\_\_\_\_ day of  
December, 2019.

**APPROVED** by the Mayor of the city of St. Charles, Illinois, this \_\_\_\_\_ day of  
December, 2019.

\_\_\_\_\_  
Mayor

ATTEST:

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

COUNCIL VOTE:

Ayes:

Nays:

Absent:

## **ANTI-HARASSMENT**

**APPLICABILITY:** All Elected Officials, Appointed Officials, and Employees

The City of St. Charles strives to create a healthy work environment in which all employees and non-employees within the City's work environment 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 or non-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 individual's actual or perceived 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 actual or perceived 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. 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 or non-worker within the City's work environment 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. The courts have found that organizations, as well as supervisors, can be held liable for damages related to harassment by a manager, supervisor, employee or third party.

Supervisors must act quickly and responsibly not only to minimize their own liability but also that of the City. Inform your staff that such behavior is unacceptable to you, as well as to the City. Make sure that all of your 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, take appropriate disciplinary action, and observe strict confidentiality. The supervisor must consult with the Director of Human Resources on the proper procedures to follow. This also applies to cases where an employee tells the supervisor about behavior considered harassment but does not want to make a formal complaint.

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 or 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 the supervisor, Director of Human Resources, and 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 process for making a complaint about harassment falls into several stages:

#### **Direct Communication**

If there is harassing behavior in the workplace, the harassed employee should directly and clearly express her/his 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 in a note or a memo.

### **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 the immediate supervisor or to the Director of Human Resources. If the 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, as explained immediately below. The City might also conclude, depending on the circumstances, either that no violation of the policy occurred or that the City cannot conclude whether or not a violation occurred.

The harassing employee will be subject to disciplinary action up to and including termination in accordance with City policy or a bargaining agreement, as appropriate.

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 human resources director will meet with the complainant and respondent separately to explain the City's findings and disciplinary or prevention action, if necessary.

Employees are encouraged to use the above complaint procedure(s) to report and resolve their complaints of harassment or retaliation. Our policy provides for immediate notice of problems to the City employees and officials listed above, so that we may address and resolve any problems without waiting for legal proceedings to run their course. However, employees may also file a charge of discrimination in writing with the Illinois Department of Human Rights (IDHR) within 300 days of the harassment and/or the Equal Employment Opportunity Commission (EEOC) within 300 days at:

Illinois Department of Human Rights (IDHR) <a href="http://www.state.il.us/dhr">http://www.state.il.us/dhr</a> 100 W. Randolph St., Ste. 10-100 Chicago, IL 60601 312/814-6200 Chicago 312/263-1579 TDD Chicago	Equal Employment Opportunity Commission (EEOC) <a href="http://www.eeoc.gov">http://www.eeoc.gov</a> 500 W. Madison St., Ste. 2800 Chicago, IL 60661-2511 312/353-2713 or 312/814-6269 Chicago 312/814-4760 TDD Chicago
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### **Policy Against Retaliation**

The City forbids that any employee treat any other employee or former employee or applicant adversely for reporting harassment, for assisting another employee or applicant in making a report, for cooperating in a harassment investigation, or for filing an administrative claim with the IDHR or EEOC. 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.

### **Resolution Outside the City**

It is hoped that most harassment complaints and incidents can be resolved within a department; however, any employee has the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) about filing a formal complaint. An IDHR complaint must be filed within 300 days of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must be filed within 300 days.

An employee who is suddenly transferred to a lower paying job or passed over for promotion, after filing a complaint with IDHR or EEOC may file a retaliation charge, also due within 300 days (IDHR or EEOC) of the alleged retaliation.

An employee who has been physically harassed or threatened while on the job may also have grounds for criminal charges of assault and battery.

### **False Complaints**

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.

### **Confidentiality**

In investigating and in imposing any discipline, the City will attempt to preserve confidentiality to the extent that the needs of the situation permit and in order to conduct an investigation. Confidentiality cannot be guaranteed.

### **Elected Official Complaint Process**

Because the City promotes civility and respectful interactions at all levels of the organization, it is critical that elected and appointed officials understand their responsibility to comply with this policy. Elected and appointed officials are also expected to treat each other in a manner consistent with this policy. Any elected or appointed official who believes they have experienced prohibited conduct by another elected or appointed official that is inconsistent with the City's policy against harassment may notify the Human Resources Director. After receiving the complaint, the City will initiate an investigation through the use of an independent investigator experienced in investigating workplace harassment complaints.