



LEGAL DIVISION
400 S. Vine Street
Urbana, IL 61801-0219
Phone: (217) 384-2464
Fax: (217) 384-2460

To: Mayor Diane Marlin; Urbana City Council Members

**From: Todd Rent, Human Resources Director
Michelle Brooks, Assistant City Attorney**

Re: Productive Work Environment Policy and Resolution

Date: December 5, 2017

MEMORANDUM

Summary: On November 16, 2017, Illinois Public Act 100-0554 became effective. Public Act 100-0554 (the Act) amends the State Officials and Employees Ethics Act. The Act mandates all governmental units adopt within 60 days a resolution or ordinance establishing a policy prohibiting sexual harassment. For the reasons discussed *infra*, the Human Resources Division and City Legal respectfully recommend that that City Council pass the attached resolution.

Discussion: Effective February 11, 1992, the City established Section No. 6.4 of its Policy and Procedure Manual, known then as the Discrimination and Harassment Policy. The policy, currently entitled the Productive Work Environment Policy, was revised October 17, 2011, a copy of which is attached. The Human Resources Division and Legal Division have revised the policy to comply with the requirements of the Act, while maintain conformance with best human resources practices, and to reaffirming the City's commitment to promoting a respectful productive, professional and diverse work environment.

Public Act 100-0554 states, in relevant part:

No later than 60 days after the effective date of this amendatory Act of the 100th General Assembly, each governmental unit shall adopt an ordinance or resolution establishing a policy to prohibit sexual harassment. The policy shall include, at a minimum: (i) a prohibition on sexual harassment; (ii) details on how an individual can report an

allegation of sexual harassment, including option for making a confidential report to a supervisor, ethics officer, Inspector General, or the Department of Human Rights; (iii) a prohibition on retaliation for reporting sexual harassment allegation, including availability of whistleblower protections under this Act, the Whistleblower Act, and the Illinois Human Rights Act; and (iv) the consequences of a violation of the prohibition on sexual harassment and the consequences for knowingly making a false report.
5 ILCS 430/70-5.

The City's previous policy established a prohibition on discrimination and harassment that is either sexual in nature or based upon a person's protected class status. The policy provided definitions and examples of harassing behaviors, indicated the range of possible sanctions for such behavior, advised as to the mechanism for reporting such behavior, prohibited retaliatory conduct, and provided contact information for the Illinois Department of Human Rights. However, the newly revised policy more expansively defines harassment, provides for both confidential and anonymous reporting, explicitly mandates that supervisors and management have an affirmative obligation to report to the Human Resources Director any potential harassment which they observe or which they become informed, and provides a range of penalties for any who interfere with reporting or the investigation, including, but not limited to, lying during the course of the investigation, be it as a potential perpetrator of the harassment, a witness, or a reporter (the last of which is explicit language required under the Act).

The Illinois Municipal League has provided a draft policy for municipalities to either adopt or use as a resource in developing their own policies, a copy of which is attached. However, the Human Resources Division, in consultation with both the Mayor (as head of the Executive Department), and the Legal Division, have elected to revise the City's existing policy rather than adopt the IML policy. This decision was made for several reasons: 1) the current policy has worked very effectively to investigate and address allegations of discrimination and/or sexual harassment; 2) the policy is written in a format consistent with other policies found in the City's Policy and Procedure Manual; 3) the IML policy meets the minimum legal requirements for prohibitions on harassment, while the City's policy is more comprehensive and also codifies the long-held mandate that management actively ensure their workplaces are productive and that they report any concerning behavior; 4) the City's policy establishes a prohibition and sanctions for lying during or interfering with an investigation; and, 5) the City's believes the language of its policy's prohibition of and sanctions for making a false allegation of harassment are much less chilling in nature than that of the IML policy.

This last point is one of critical import to the City. While the IML's policy correctly states all possible sanctions for false reporting of harassment, it lists sanctions which are not relevant or necessary to the City's policy. The IML policy speaks of false reporting as a possible Class A misdemeanor with a possible \$5,000 fine for any person who makes a "false, frivolous, or bad faith allegation." This is a possible consequence under the Act if intentional bad faith reports are made to "to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official". None of those circumstances apply in situations governed by this policy, and the City feels inclusion of that admonition may, without intention or justification, discourage individuals from reporting sexually harassing or discriminatory conduct. In light of the social, professional, and often emotional, barriers that already exist for reporters, adding yet another barrier that might deter a good-faith reporter is something that runs contrary to the goal and commitment of this City to foster a healthy, safe, and non-discriminatory work environment.

Recommendation: The Human Resources Division and City Legal respectfully recommend the City Council pass A Resolution Establishing City Policy on Sexual Harassment as Mandated by 5 ILCS 430/70-5.

CITY OF URBANA POLICY & PROCEDURE MANUAL

Section: Conduct & Discipline
Subject: Productive Work Environment
(f/k/a Discrimination and Harassment)

Section No: 6.4
Effective: February 11, 1992
Revised: October 17, 2011

Scope: All Employees

Purpose: To promote a respectful, productive, professional and diverse work environment that is free of all forms of unlawful discrimination, including discriminatory harassment, by adhering to all applicable federal, state, and local laws.

Policy: The City of Urbana will not tolerate verbal or physical conduct by any employee who harasses, disrupts, or interferes with another's work performance or who creates an intimidating, offensive, or hostile work environment.

Comment:

(1) Employees are expected to maintain a respectful and productive work environment that is free from harassing or disruptive conduct. No form of harassment will be tolerated, including harassment based on the following reasons: race, color, creed, class, national origin, religion, sex, age, marital status, physical or mental disability, personal appearance, sexual orientation/identity, family responsibilities, matriculation, political affiliation or any other legally protected group status. Special attention should be paid to the prohibition of sexual harassment.

(2) Each supervisor and manager has a responsibility to keep the workplace free of any form of harassment, particularly sexual harassment. No supervisor or manager is to threaten, promise or insinuate, either explicitly or implicitly, that an employee's refusal or willingness to submit to sexual advances will affect the employee's terms or conditions of employment. This prohibition shall apply to off-duty conduct to the extent that such conduct (1) arises out of the work relationship between the complainant and alleged harasser and (2) has a demonstrable effect on the workplace.

(3) Other sexually harassing or offensive conduct in the workplace, whether committed by supervisors, managers, non-supervisory employees, or non-employees, also is prohibited. This conduct includes:

- (a) Unwanted physical contact or conduct of any kind, including sexual flirtations, touching, advances, or propositions about, to or in the presence of another individual;
- (b) Verbal harassment of a sexual nature, such as lewd comments, sexual jokes or references, and offensive personal references;
- (c) Demeaning, insulting, intimidating, or sexually suggestive comments about, to or in the presence of an individual;
- (d) The display in the workplace of demeaning, insulting, intimidating, or sexually suggestive objects, pictures, or photographs;
- (e) Demeaning, insulting, intimidating, or sexually suggestive written, recorded, or electronic communications in any form (including but not limited to e-mail, instant messages, text messages, mobile phone images, tweets, podcasts and Internet materials).

(f) Any other conduct or words that are deemed to effectively create a hostile work environment for any employee based upon her/his actual or perceived classification as a member of a protected class.

Any of the above conduct, or other offensive conduct, directed at individuals because of their race, color, creed, class, national origin, religion, sex, age, marital status, physical or mental disability, personal appearance, sexual orientation/identity, family responsibilities, matriculation, political affiliation or any other legally protected group status is prohibited.

(4) Any employee who believes that a supervisor's, manager's, other employee's, or non-employee's actions or words constitute unwelcome harassment has a responsibility to report or complain about the situation as soon as possible. The report or complaint should be made to either the:

- (a) Employee's supervisor,
- (b) Department Head,
- (c) Human Resources Manager, or
- (d) Human Relations Officer.

(5) Upon receiving complaints of harassment, management staff shall immediately report such complaints to their Department Head, the Human Resources Manager and the Human Relations Officer. All complaints of harassment will be investigated promptly and in as impartial and confidential a manner as possible. The investigation will be conducted by the Human Relations Officer. Employees are required to cooperate in any investigation. A timely resolution of each complaint should be reached and communicated to the parties involved.

(6) Any employee, supervisor, or manager who is found to have violated the harassment policy will be subject to appropriate disciplinary action, up to and including termination.

Retaliation and Interference Prohibited: The City is committed to maintaining a culture that promotes the prevention, detection and elimination of any and all forms of harassment. As such, anyone who (1) retaliates against an employee who reports a possible violation of this policy, or (2) interferes with a harassment investigation in any way will be subject to appropriate disciplinary action, up to and including termination.

Training and Implementation: All employees will be trained on this policy within six (6) months of the implementation of this policy or the commencement of employment, whichever date is earlier. At the completion of training, all employees will be required to sign a document confirming their knowledge and understanding of the policy. The Human Relations Office shall conduct the required training.

External Reporting: An employee may elect to file an external complaint with the Illinois Department of Human Rights (IDHR) or the U.S. Equal Employment Opportunity Commission.

APPROVED BY:  DATE: 10/17/11
Laurel Prussing, Mayor

CITY OF URBANA POLICY & PROCEDURE MANUAL

Section: Conduct & Discipline Subject: Productive Work Environment (f/k/a Discrimination and Harassment)	Section No: 6.4 Effective: February 11, 1992 Revised: December 5, 2017
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Scope: All City Employees, Municipal Officers, Agents, and Officials

Purpose: The purpose of this policy is to promote a respectful, productive, professional, and diverse work environment that is free of all forms of unlawful discrimination and harassment, by adhering to all applicable federal, state, and local laws.

Policy: All persons have a right to work in a productive environment free from discrimination and harassment. The City of Urbana will not tolerate any form of conduct by any employee that harasses, disrupts, or interferes with another's work performance or creates an intimidating, offensive, or hostile work environment. The City of Urbana prohibits discrimination or harassment of any person by its employees, agents, or officials regardless of any employment relationship or lack thereof.

Comment: Employees are expected to maintain a respectful and productive work environment that is free from harassing or disruptive conduct. No form of discrimination or harassment will be tolerated, including discrimination or harassment based on the following reasons: race, color, creed, class, national origin, religion, sex, age, marital status, physical or mental disability, personal appearance, sexual orientation, gender identity, family responsibilities, matriculation, political affiliation or any other legally protected group status.

Special attention should be paid to the prohibition of sexual harassment. The Illinois Human Rights Act currently 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) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Please note: The Policy recognizes the above definition as a minimum legal standard. As the City is committed to ensuring a diverse, productive, and professional work environment, this Policy's expectations and standards are considerably higher.

Definitions: Discrimination or harassment under this Policy includes unwanted or unwelcomed conduct of either a sexual nature or related to an individual's actual or

perceived protected class status. Examples of such conduct include, but are not limited to:

- Physical Conduct: Unwanted physical contact or conduct of any kind, including sexual flirtations, touching, advances, or propositions about, to or in the presence of another individual;
- Verbal Conduct: Demeaning, insulting, intimidating, or sexually suggestive comments about, to or in the presence of an individual; suggestive comments, insults, humor, lewd comments and/or jokes about sex, anatomy or gender-specific traits; sexual propositions or requests for sexual acts; or repeated requests for dates.
- Written Conduct: Demeaning, insulting, intimidating, or sexually suggestive written, recorded, or electronic communications in any form (including but not limited to e-mail, instant messages, text messages, mobile phone images, tweets, podcasts and Internet materials).
- Non-verbal Conduct: Suggestive or insulting sounds (e.g. whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- Visual Conduct: Display in the workplace of demeaning, insulting, intimidating, or sexually suggestive objects, pictures, or photographs posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- Other sexually harassing or offensive conduct in the workplace, whether committed by supervisors, managers, non-supervisory employees, or non-employees, also is prohibited.

Management Staff: For purposes of this policy, "manager" or "management Staff" shall be defined as any person who is engaged in or responsible for directing or overseeing the work of City of Urbana employees, including, but not limited to, all supervisors, captains, sergeants, division heads, division chiefs, deputy chiefs, department heads, and City Administrators.

- All Management Staff, municipal officers, agents, and officials have an affirmative responsibility to keep the workplace free of any form of harassment, particularly sexual harassment.
- No manager, municipal officer, agent, or official is to threaten, promise or insinuate, either explicitly or implicitly, that an employee's refusal or willingness to submit to sexual advances will affect the employee's terms or conditions of employment. This prohibition shall apply to off-duty conduct to the extent that such conduct (1) arises out of the work relationship between the complainant and alleged harasser and (2) has a demonstrable effect on the workplace.
- Each manager, municipal officer, agent, and official has an affirmative responsibility to promptly report any conduct or situation which may constitute sexual harassment or discriminatory behavior directly to the Human Resources Director and the appropriate Department Head, whether that behavior is directly observed or knowledge of the behavior is gained by indirect means.
- If a manager, municipal officer, agent, or official is uncertain whether suspect behavior constitutes harassment or discrimination, the supervisor, manager,

municipal officer, agent, or official shall promptly contact the Human Resources Director to determine whether further investigation is warranted.

Reporting Procedure:

Any employee who believes that a manager's, officer's, agent's official's, other employee's, or non-employee's conduct could constitute a violation of this policy has a responsibility to report or complain about the situation as soon as possible. It is not necessary for the person making the report to be the subject of the harassment or discrimination. The report or complaint should be made to either the employee's department head or the Human Resources Director. Should the employee have concerns about privacy, confidentiality, potential retaliation, or for any other reasons the employee deems it necessary or appropriate, in all situations the employee may make a confidential report to the Human Resources Director.

All complaints of harassment and/or discrimination, including anonymous reports made via written, telephonic, or some other non-direct means of communication, will be investigated promptly and in as impartial and confidential a manner as possible. The investigation will be conducted by the Human Resources Director or his/her designee. Employees are required to cooperate in any investigation. A timely resolution of each complaint should be reached and communicated to the parties involved.

Retaliation and Interference Prohibited: The City is committed to maintaining a culture that promotes the prevention, detection and elimination of any and all forms of harassment. No individual making a report in good faith under this policy shall be subject to any negative employment consequences based upon that report, even if that report is not able to be substantiated. In addition, any witness will be protected from retaliation in accordance with the State Officials and Employees Ethics Act (5 ILCS 430/15-10), the Whistleblower Act (740 ILCS 174/15), and the Illinois Human Rights Act (775 ILCS 5/6-101).

For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or adverse change in the terms or conditions of employment of any municipal employee that is taken in response to a municipal employee's involvement in protected activity pursuant to this policy.

Discipline: Any employee or manager who is found to have violated the Productive Work Environment policy will be subject to appropriate disciplinary action, up to and including termination.

Any manager who fails to promptly report conduct which may constitute a violation of this policy will be subject to disciplinary action, up to and including termination.

Any employee or manager who (1) retaliates against an employee who reports a possible violation of this policy, or (2) interferes with a harassment investigation in any way will be subject to appropriate disciplinary action, up to and including termination.

Any employee, or manager who is found to have knowingly made an intentional misrepresentation during the course of an investigation, or who interferes with an investigation brought pursuant to this policy, will be subject to appropriate disciplinary action, up to and including termination.

Any person who knowingly and intentionally makes a false report of harassment or discrimination will be subject to appropriate disciplinary action, up to and including termination. If a report of harassment or discrimination is made in good faith, but is unable to be substantiated, it shall not be deemed a false report.

Training and Implementation: All employees, supervisors, managers, officers, agents, and officials will be trained on this policy within six (6) months of the implementation of this policy or the commencement of employment, whichever date is earlier. At the completion of training, all employees will be required to sign a document confirming their knowledge and understanding of the policy. Training shall reoccur on at least an annual basis. The Human Resources Division shall conduct the required training.

External Reporting: 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 municipality. However, all municipal 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.

APPROVED BY:  DATE: 6 December 2017
Diane Marlin, Mayor

RESOLUTION NO. 2017-12-077R

**A RESOLUTION ESTABLISHING POLICY ON SEXUAL HARASSMENT
AS MANDATED BY 5 ILCS 430/70-5**

WHEREAS, the City of Urbana (“City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, The State of Illinois enacted Public Act 100-0554 (codified at 5 ILCS 430/70-5) which amends the State Officials and Employees Ethics Act to require that local units of government adopt by ordinance or resolution a policy which prohibits sexual harassment; and

WHEREAS, the City has had a long-standing policy regarding discrimination and harassment in the workplace, Section 6.4 of the City of Urbana Policy and Procedure Manual (“Productive Work Environment”), a revised copy of which is appended hereto and made a part hereof; and

WHEREAS, the City Council seeks to adopt this Resolution in order to comply with 5 ILCS 430/70-5.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1. Pursuant to this Resolution and in accordance with 5 ILCS 430/70-5, the City Council adopts the City’s revised Productive Work Environment policy as provided for in Section 6.4 of the City of Urbana Policy & Procedure Manual, a copy of which is appended hereto.

Section 2. This Resolution shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Resolution; nor shall any right or remedy of any character be lost, impaired, or affected by this Resolution.

PASSED BY THE CITY COUNCIL this _____ day of _____, 2017.

AYES:

NAYS:

ABSTAINED:

Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this _____ day of _____, 2017.

Diane Wolfe Marlin, Mayor