

## **Council Policy 3-1 Sexual Harassment**

**SUBJECT:** Sexual Harassment

**PURPOSE:** The City of Lawton is committed to providing a safe environment for all its employees, free from discrimination on any ground and from harassment at work including sexual harassment. The City of Lawton will operate a zero tolerance policy for any form of sexual harassment in the workplace, treat all incidents seriously and promptly investigate all allegations of sexual harassment.

**BACKGROUND:** The Mayor/City Council and the City Manager have a long-standing policy against sexual harassment. Supreme Court decisions and EEOC Guidelines have made it clear that Employers should establish written policies and procedures concerning this subject.

**POLICY/ PROCEDURES:** Sexual Harassment is Absolutely Prohibited

The sexual harassment of any employee of the City of Lawton by any other employee or City official is demeaning to both the victim of the harassment and to the city. It can result in high turnover, absenteeism, low morale, and uncomfortable work environment. Some forms of sexual harassment, including certain kinds of unwelcome physical contact, may also be criminal offenses. The city will not tolerate the sexual harassment of any of its employees, and will take immediate, positive steps to stop it when it occurs.

### **A. Sexual Harassment is Illegal and Expensive**

Sexual harassment is a violation of Title VII of the Civil Rights Act of 1964 and may constitute a violation of the victim's constitutional rights. In Oklahoma it has been held to be a violation of state statutory and common law. Successful sexual harassment suits can result in large money judgments and possibly attorney's fees being awarded the victim. Even in sexual harassment suits in which municipalities are successful, the costs of defense are extremely high.

### **B. What is Sexual Harassment**

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of such conduct is used as the basis for employment decisions, or such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment. When submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, it is called "hostile work environment" sexual harassment. "Quid pro quo harassment" occurs when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

Sexual harassment may take different forms. The following examples of sexual harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal sexual harassment includes innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks, lewd sexual language and threats; requests for any type of sexual favor (this includes repeated, unwelcome requests for dates); and verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sexual in nature and unwelcome.
- Nonverbal sexual harassment includes the distribution, display or discussion of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds; leering;

staring; whistling; obscene gestures; content in letters, notes, facsimiles, e-mails, photos, text messages, tweets and Internet postings; or other forms of communication that are sexual in nature and offensive.

- Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, and forced sexual intercourse or assault.

Anyone can be a victim of sexual harassment, regardless of their sex and of the sex of the harasser. The City of Lawton recognizes that sexual harassment can include conduct directed by men toward women, conduct directed by men toward men, conduct directed by women toward men, and conduct directed by women toward women. The City of Lawton also recognizes that sexual harassment is a manifestation of power relationships and often occur within unequal relationships in the workplace, for example, between manager or supervisor and employee.

Anyone, including employees of the City of Lawton, clients, customers, casual workers, contractors or visitors who sexually harasses another will be disciplined in accordance with applicable city code(s) or state statutes.

### **C. Coverage and Distribution of Policy**

This sexual harassment policy applies to all officials, employees, and other persons doing business on behalf of or with the City of Lawton. It is designed to address sexual harassment of employees by other employees or officials, whether occurring within or outside the workplace as long as the conduct is made a term or condition of employment.

This policy will be distributed to all officials and employees of the City. Every new employee will be required to acknowledge his or her receipt of this policy. A copy of that acknowledgment shall be kept on permanent file in the Personnel Department. Department heads and supervisors shall also be responsible for insuring that all employees under their direction are familiar with this policy.

### **D. Making Sexual Harassment Complaints**

Anyone who is subject to sexual harassment should, if possible, inform the alleged harasser that the conduct is unwanted and unwelcome. The City of Lawton recognizes that sexual harassment may occur in unequal relationships (i.e. between a supervisor and his/her employee) and that it may not be possible for the victim to inform the alleged harasser.

Any employee who feels he or she is being subjected to sexual harassment should immediately contact one of the persons below with whom the employee feels the most comfortable. Complaints may be made orally or in writing to:

- The employee's immediate supervisor.
- The employee's department head.
- The City's Human Resources Director.
- The City Manager.
- The City Attorney or Deputy/Assistant City Attorneys.
- The Mayor (only in case of a complaint against a Council Member, other City officials or employees hired by the Council).

Employees have the right to circumvent the employee chain of command in selecting which person to whom to make a complaint of sexual harassment.

Regardless of to which of the above persons the employee makes a complaint of sexual harassment, the employee should be prepared to provide the following information:

- Employees name, department and position title.
- The name of the person or persons committing the sexual harassment, including their title/s, if known.
- The specific nature of the sexual harassment, how long it has gone on, where it has occurred, and any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against you as a result of the harassment, or any other threats made against you in connection with the harassment.
- Witnesses to the harassment.
- Whether you have previously reported such harassment and, if so, when, and to whom.

#### **E. Reporting and Investigation of Sexual Harassment Complaints Against an Employee Hired by the City Manager**

The City Manager is the person designated by the City to be the investigator of complaints of sexual harassment against his or her subordinate employees. The City Manager may delegate the investigation to another City employee at his or her discretion.

When an allegation of sexual harassment is made by an employee, the person to whom the complaint is made shall immediately prepare a report of the complaint according to the preceding section and submit it to the City Manager.

Upon receiving the report of the complaint, the City Manager or assigned investigator shall begin the investigation as soon as practicable. The investigator shall prepare and submit a confidential written record of the investigation, including statements made to the investigator by the person complaining of sexual harassment, witnesses interviewed during the investigation, the person against whom the complaint of sexual harassment was made, and any other person contacted by the investigator in connection with the investigation. Notes or other recording of the interviews shall be made at the time the interviews are conducted. Upon completion of their written statements, persons interviewed will be requested to review their statements, make any necessary changes and sign their statements.

Unwillingness to sign a written statement shall be noted by the investigator in the report.

Based upon the report the City Manager shall, within a reasonable time, determine whether the conduct of the person against whom a complaint of sexual harassment has been made constitutes sexual harassment. In making that determination, the City Manager shall look at the record as a whole and at the totality of circumstances, including the nature of the conduct in question, the context in which the conduct, if any, occurred, and the conduct of the person complaining of sexual harassment. The determination of whether sexual harassment occurred will be made on a case-by-case basis.

If the City Manager determines that the complaint of sexual harassment is founded, he shall take immediate steps to impose appropriate disciplinary action against the employee guilty of sexual harassment, consistent with his or her authority under the municipal charter, ordinances, rules or regulations pertaining to employee discipline.

The disciplinary action shall be consistent with the nature and severity of the conduct, the rank of the employee, and any other factors the City Manager believes relate to fair and efficient administration of the

City, including, but not limited to, the effect of the offense on employee morale, public perception of the offense, and the light in which it casts the City. The disciplinary action may include demotion, suspension, dismissal, warning or reprimand. A determination of the level of disciplinary action shall also be made on a case-by-case basis.

A written record of disciplinary action taken shall be kept, including verbal warnings or reprimands.

In all events, an employee against whom a complaint of sexual harassment has been made shall be warned not to retaliate in any way against the person making the complaint of sexual harassment, witnesses or any other person connected with the investigation of the complaint of sexual harassment. If necessary to prevent retaliation or the appearance thereof, the City Manager may temporarily reassign an employee against whom a complaint has been made pending the completion of the investigation and resolution of the complaint.

**F. Reporting and Investigation of Sexual Harassment Complaints Against the Mayor, Council Members, Appointed City Officials, or Employees Hired by the Council**

The Mayor is the person designated by the City to be the investigator of complaints of sexual harassment against council members, appointed city officials, or employees hired by the Council. In the event of a complaint against the Mayor, the Mayor Pro Tem is the person so designated. The Mayor may retain, at his or her discretion, an investigator who is not an official or employee of the City to conduct the investigation. The Mayor is hereby authorized to enter into a contract to retain the services of an investigator without the advance approval of the Council. The existence of a contract shall remain confidential to the extent necessary to preserve the integrity and confidentiality of the investigation.

When an allegation of sexual harassment is made by an employee, a report of the complaint shall immediately be prepared as required for a complaint against an employee hired by the City Manager. The report shall include the same or similar information and be submitted to the Mayor.

Upon receiving the report of the complaint, the Mayor or retained investigator shall begin the investigation as soon as practicable. The investigator shall prepare and submit a confidential written record of the investigation, including statements made to the investigator by the person complaining of sexual harassment, witnesses interviewed during the investigation, the person against whom the complaint of sexual harassment was made, and any other person contacted by the investigator in connection with the investigation. Notes or other recording of the interviews shall be made at the time the interviews are conducted. Upon completion of their written statements, persons interviewed will be requested to review their statements, make any necessary changes and sign their statements. Unwillingness to sign a written statement shall be noted by the investigator in the report.

The determination of whether the conduct of an elected or appointed official or employee hired by the Council constitutes sexual harassment will be made on a case-by-case basis, taking into consideration the totality of the circumstances as described for determinations made in the case of employees hired by the City Manager.

**1. Resolution of Complaints Against Employees Hired by the Council**

Upon completion of a report on the investigation of a complaint of sexual harassment against an employee hired by the Council, the Mayor shall review the report as necessary and

determine whether the allegation is supported by any credible evidence. In the event the Mayor determines the evidence warrants consideration by the Council, he or she shall present the report to the Council in executive session. If the Council determines that sexual harassment has occurred, it will take appropriate action against its employee consistent with its authority under state statutes, the municipal charter, ordinances, resolutions and rules of the council, and the contract between the Council and employee.

In the event the Mayor decides not to present the investigative report to the Council in executive session, the Council will be confidentially informed of the existence of the completed report and its availability for their review on an individual basis. Any council member who reviews the report and desires that it be placed on the agenda for consideration by the Council in executive session shall so inform the Mayor in a confidential setting.

A written record of any action taken against the employee of the Council shall be prepared and kept with the report of investigation. Likewise, a determination by the Mayor or the Council to take no further action on the complaint shall be documented and kept with the report of investigation.

In all events, an employee of the Council against whom a complaint of sexual harassment has been made shall be warned not to retaliate in any way against the person making the complaint of sexual harassment, witnesses or any other person connected with the investigation of the complaint of sexual harassment. If necessary to prevent retaliation or the appearance thereof, the Mayor will request the Council suspend the employee, who may be suspended with pay pending the completion of the investigation and resolution of the complaint.

## 2. Resolution of Complaints Against the Mayor or Council Members

Upon completion of a report on the investigation of a complaint of sexual harassment against the Mayor or a council member, the Mayor (or Mayor Pro Tem in the event of a complaint against the Mayor) shall review the report as necessary and determine whether the allegation is supported by any credible evidence. In the event the Mayor determines the evidence warrants consideration by the Council, he or she shall present the report to the Council in executive session. The Council will give direction on further processing and action, if any, to be taken on the complaint consistent with its authority under state statutes, the municipal charter, ordinances, resolutions and rules of the Council, including rules governing discipline of its own membership.

In the event the Mayor decides not to present the investigative report to the Council in executive session, the Council will be confidentially informed of the existence of the completed report and its availability for their review on an individual basis. Any council member who reviews the report and desires that it be placed on the agenda for consideration by the Council in executive session shall so inform the Mayor in a confidential A written record of any action taken on the complaint shall be prepared and kept with the report of investigation. Likewise, a determination by the Mayor or Council to take no further action on the complaint shall be documented and kept with the report of investigation.

In all events, an official against whom a complaint of sexual harassment has been made shall be requested not to retaliate in any way against the person making the complaint of sexual harassment, witnesses or any other person connected with the investigation of the complaint

of sexual harassment.

### 3. Resolution of Complaints Against Appointed Officials

Upon completion of a report on the investigation of a complaint of sexual harassment against an appointed official, the Mayor will direct that the report be submitted to the City Attorney for review and presentation by the City Attorney to the Council in executive session. In the event the Office of the City Attorney provides legal representation to a City entity that would create a conflict of interest if the City Attorney were to advise the Council on a complaint against a particular appointed official, an independent attorney approved by the Council will be retained to review and present the report to the Council in executive session. The Council will give direction on further processing and action, if any, to be taken on the complaint consistent with its authority under state statutes, the municipal charter, ordinances, resolutions and rules of the Council.

A written record of any action taken on the complaint shall be prepared and kept with the report of investigation. Likewise, a determination by the Council to take no further action on the complaint shall be documented and kept with the report of investigation.

In all events, an official against whom a complaint of sexual harassment has been made shall be requested not to retaliate in any way against the person making the complaint of sexual harassment, witnesses or any other person connected with the investigation of the complaint of sexual harassment.

### **G. Sexual Harassment Committed by Persons Who are not City Employees or Officials**

In cases of sexual harassment committed by persons who are not City employees or officials against a City employee in the workplace, the City Manager or, if necessary, the Mayor shall take all lawful steps to insure that the sexual harassment is brought to an immediate end.

### **H. Obligation of Employees**

Employees are not only encouraged to report instances of sexual harassment, they are obligated to report instances of sexual harassment. Sexual harassment exposes the City to liability, and a part of each employee's job is to reduce the City's exposure to liability.

Employees are obligated to cooperate in every investigation of sexual harassment, including, but not necessarily limited to, coming forward with evidence, both favorable and unfavorable, to a person accused of sexual harassment, fully and truthfully making a written report or verbally answering questions when required to do so by an investigator during the course of an investigation of sexual harassment.

Employees are also obligated to refrain from filing bad faith complaints of sexual harassment.

Disciplinary action may also be taken against any employee who fails to report instances of sexual harassment, or who fails or refuses to cooperate in the investigation of a complaint of sexual harassment, or who files a complaint of sexual harassment in bad faith.

### **I. Interactions with Citizens**

While sexual harassment deals with employment issues relating to employment, actions taken by employees may be viewed and speech may be overheard or witnessed by non-employees or citizens. Any

employee that takes any action, either verbal, non-verbal or physical, that is listed under Section B of this policy, in front of any non-employee and that person subsequently files a complaint with the city, an investigation shall be performed. Should the findings of the investigation justify, disciplinary action may be taken against the employee.

**J. Confidentiality and Open Records**

To the extent permitted by law, including the Oklahoma Open Records Act, complaints of sexual harassment, reports of investigation on such complaints and any action taken thereon shall remain confidential. The City will do everything within the bounds of the law to protect this information. It must be understood, however, that some or all of the information may eventually have to be disclosed depending on the action taken on the complaint and any appeal of that action to an administrative tribunal or Court.

REFERENCES: None.

EFFECTIVE DATE/ RESCISSION: This policy originally became effective February 14, 1989 as Council Policy No. 50 and was updated and renumbered as Council Policy 3-1 on November 17, 1995. This revision supersedes previous versions of the Council Policy on Sexual Harassment and shall go into effect as of the effective date below.

RESPONSIBLE DEPARTMENT: Human Resources

Approved as to form and legality this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
John Andrew, City Attorney

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Stanley Booker, Mayor

Effective this \_\_\_\_ day of \_\_\_\_\_, 2024.