

## COUNCIL POLICY 3-3

**SUBJECT:** Harassment Policy

**PURPOSE:** To put forth in writing the Mayor/City Council and the City Manager's long-standing position on all types of harassment.

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

**SCOPE:** This policy shall apply to all City of Lawton Elected Officials and Employees.

**DEFINITIONS:** Terms used in this policy are defined as follows:

- **Harassment:** The unwelcomed conduct that is based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, or genetic information (including family medical history).
- **Bullying:** A persistent pattern of mistreatment from others in the workplace that causes either physical or emotional harm. Bullying may include verbal, nonverbal, psychological and physical abuse.
- **Harassing Conduct:** Unwelcomed conduct, verbal or physical, including intimidation, ridicule, insult, comments, or physical conduct, that is based on an individual's protected status, as listed under Harassment, or protected activities when the behavior can reasonably be considered to adversely affect the work environment, or an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

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## POLICY/PROCEDURES:

### Harassment Policy

- A. All employees have a duty to report prohibited harassment whether they feel they are a victim of harassment or they believe they have observed harassment. It is the policy of the City of Lawton to maintain a working environment for employees free from harassment because of an employee's color, religious belief, sex, age, race, national origin, disability, sexual orientation, pregnancy, gender identity, genetic information or other prohibited

criteria. ~~This type of h~~Harassment in any form or manner is expressly prohibited. All reported or suspected occurrences of harassment will be promptly and thoroughly investigated. If harassment in violation of this policy has occurred, this city will take appropriate corrective action, including discipline or discharge of the offending employee. Further discussion of action for violation of this policy is contained later in this policy. Sexual Harassment is dealt with in City Council Policy 3-1.

B. Harassment becomes unlawful where:

1. Enduring the offensive conduct becomes a condition of continued employment, or
2. The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

C. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets, or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

D. Bullying is a form of harassment, however, this may occur when the action, or conduct, is not based on a protected status.

1. All employees have the same duty to report bullying as harassment.
2. Bullying will be investigated in the same manner as harassment.

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**Coverage and Distribution of Policy**

This harassment policy applies to all officials, ~~and~~ employees, clients, customers, casual workers, contractors or visitors of the City of Lawton. It is designed to address harassment of employees by other employees, ~~or~~ officials, or other persons doing business with or on the property or work location of the City of Lawton, 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 acknowledgement shall be kept on permanent file in the Human Resources Department. Department heads and supervisors shall also be responsible for insuring that all employees under their current direction are familiar with this policy.

**Making Harassment Complaints**

- A. Any employee who feels he or she is being subjected to harassment of any type should immediately contact one of the persons below with whom the employee feels the most comfortable. While written is preferred, Complaints may be made orally or in writing to:
1. The employee's immediate supervisor
  2. **Any supervisor the employee feels comfortable reporting the complaint to**
  3. The employee's department head

4. The City's Human Resources ~~Director~~ Department
  5. The City Manager
  6. The City Attorney or Deputy/Assistant City Attorneys
  7. The Mayor (only in the case of a complaint against a Council Member, other City officials or employees hired by the Council).
- B. Employees have the right to circumvent the employee chain of command in selecting which person to whom to make a complaint of harassment.
- C. Regardless of to which of the above persons the employee makes a complaint of harassment, the employee ~~should~~ shall be prepared to provide the following information if known:
1. Employees name, department and position title
  2. The name of the person or persons committing the harassment, including their title/s, if known.
  3. The specific nature of the 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.
  4. Witnesses to the harassment.
  5. Whether you have previously reported such harassment and, if so, and to whom.

#### **Reporting and Investigation of 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 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 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 harassment, witnesses interviewed during the investigation, the person against whom the complaint of 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.~~

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Based upon the report the City Manager shall, within a reasonable time, determine whether the conduct of the person against whom a complaint of harassment has been made constitutes 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 harassment. The determination of whether harassment occurred will be made on a case-by-case basis.

If the City Manager determines that the complaint of harassment is founded, he shall take immediate steps to impose appropriate disciplinary action against the employee guilty of 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, termination, 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 harassment has been made shall be warned not to retaliate in any way against the person making the complaint of harassment, witnesses or any other person connected with the investigation of the complaint of 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.

**Reporting and Investigation of 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 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 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 harassment, witnesses interviewed during the investigation, the person against whom the complaint of 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 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.

#### **Resolution of Complaints Against Employees Hired by the Council**

Upon completion of a report on the investigation of a complaint of 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 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 harassment has been made shall be warned not to retaliate in any way against the person making the complaint of harassment, witnesses or any other person connected with the investigation of the complaint of 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.

#### **Resolution of Complaints Against the Mayor or Council Members**

Upon completion of a report on the investigation of a complaint of 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 setting.

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 harassment has been made shall be warned not to retaliate in any way against the person making the complaint of harassment, witnesses or any other person connected with the investigation of the complaint of harassment.

#### **Resolution of Complaints Against Appointed Officials**

Upon completion of a report on the investigation of a complaint of 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 harassment has been made shall be warned not to retaliate in any way against the person making the complaint of harassment, witnesses or any other person connected with the investigation of the complaint of harassment.

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

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

### **Obligation of Employees**

Employees are not only encouraged to report instances of harassment; they are obligated to report instances of harassment. 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 harassment, including, but not necessarily limited to, coming forward with evidence, both favorable and unfavorable, to a person accused of 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 harassment.

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

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

### **Interactions with Citizens**

This policy shall also cover any interaction at a work site between city employees and non-employees or citizens. Any employee that either verbally or non-verbally harasses a citizen or non-employee at any work site, while on city property, or in the performance of their official duties, shall be subject to disciplinary action should a complaint be filed and the employee is found to have violated this policy.

Should any employee feel that they are being harassed by any non-employee or citizen while they are attempting to do their job, the employee is to notify their supervisor immediately and the supervisor will make a report of the incident.

**Confidentiality and Open Records**

To the extent permitted by law, including the Oklahoma Open Records Act, complaints of 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:** October 1, 2023

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**RESCISSION:** This policy rescinds Council Harassment Policy 3-3, is dated September 13, 2005, and will remain in effect until rescinded.

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**RESPONSIBLE DEPARTMENT:** Human Resources.

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

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John Andrew, City Attorney

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Stanley Booker

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MAYOR

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Dated this        day of        , 2024. ~~September 13, 2005~~

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