

**ORDINANCE No. 1704
CITY OF WEST LINN, OREGON**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST LINN SETTING
FORTH THE POLICY AND PROCEDURE FOR REPORTING AND INVESTIGATION
OF WORKPLACE HARASSMENT.**

WHEREAS, on June 20, 2019, Governor Kate Brown signed Senate Bill 479 relating to workplace harassment; and

WHEREAS, the newly enacted legislation requires public employers to establish and adopt a written policy that seeks to prevent workplace harassment, and that applies to all employees, as well as board and commission members, elected officials, and volunteers, in the workplace or at work-related events that are coordinated by or through the employer, or between an employer and an employee off the employment premises; and

WHEREAS, the newly enacted legislation requires public employers to develop written policies and procedures for the prompt investigation of a report of workplace harassment; and

WHEREAS, the City of West Linn believes all employees, and others protected by the newly enacted legislation, have the right to work in an environment free from discrimination, harassment, workplace intimidation; and

WHEREAS, the City of West Linn desires to comply with the newly enacted legislation requiring the adoption of written policies and procedures for the reporting and investigation of allegations of workplace harassment; and

WHEREAS, the policies and procedures for reporting and investigation of allegations of workplace harassment apply to all employees of the City of West Linn, including limited duration/temporary employees and interns, through the City of West Linn Personnel Policies; and

WHEREAS, the City Council wishes to apply the newly enacted legislation to board and commission members, elected officials, and volunteers by ordinance.

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

Section 1: The Council enacts Exhibit A, Policy Statement, as an ordinance of the City of West Linn.

Section 2: The Council declares an emergency exists because the City of West Linn must establish and adopt written policies and procedures seeking to prevent workplace harassment and prompt investigation of reports of workplace harassment prior to January 1, 2020, as required by Senate Bill 479. Therefore, this

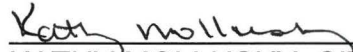
ordinance shall be in full force and effect on January 1, 2020 after its passage by the Council.

ADOPTED this 9th day of December, 2019.



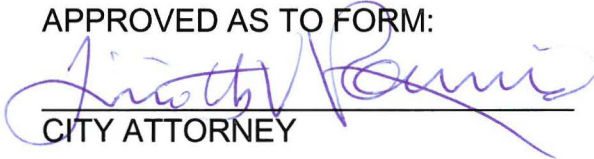
RUSSELL B. AXELROD, MAYOR

ATTEST:



KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:



CITY ATTORNEY

EXHIBIT "A"

Section 1. Applicability.

Through this Ordinance, Section 2 Definitions, Section 3 Policy Statement and Section 4 Compliance and Reporting apply to and are enforceable against board and commission members, elected officials and volunteers. Similar provisions apply to employees through the City of West Linn Personnel Policies, however, employees are not subject to this Ordinance.

Section 2. Definitions.

Complainant: A person (or persons) allegedly subjected to, or who witnessed or observed, discrimination, workplace harassment or sexual harassment and who files a complaint.

Discrimination: Making decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, and other terms and conditions of employment, based on or because of a person's protected class status. (*See also Workplace Harassment.*)

Non-disclosure agreement: An agreement not to disclose information related to complaints or personnel actions related to violations of this ordinance.

Non-disparagement agreement: An agreement not to make negative statements related to complaints or personnel actions related to violations of this ordinance.

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy- related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses military leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

Protected Class Under Oregon State Law: All federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act; marital status; family relationship; sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

Sexual Harassment: Unwelcome, unwanted or offensive sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or

- (2) such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment include but are not limited to: unwelcome, unwanted or offensive touching or physical contact of a sexual nature, such as closeness, impeding or blocking movement, assaulting or pinching; gestures; innuendoes; teasing, jokes, and other sexual talk; intimate inquiries; persistent unwanted courting; sexist put-downs or insults; epithets; slurs; or derogatory comments. (*See also Workplace Harassment.*)

Sexual assault: Unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation; or a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525. (*See also Workplace Harassment.*)

Workplace: A location where people work, such as an office or factory.

Workplace Harassment: Conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that is prohibited by ORS 659A.082 or 659A.112.

Workplace Intimidation: Unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status.

Workplace intimidation may occur between a manager/supervisor and a subordinate, between employees, and among non-employees who have business contact with employees. A complainant does not have to be the person harassed, but could be a person affected by the offensive conduct.

Examples of intimidation include, but are not limited to, derogatory remarks, slurs and jokes about a person's protected class status.

Volunteer: Any individual who is performing work on behalf of the City and is not paid for their service. This may include board and commission members and elected officials.

Section 3. Policy Statement.

The City of West Linn believes that all volunteers have the right to work in an environment free from discrimination, harassment, workplace intimidation based on or because of volunteer's protected class, and sexual harassment and assault (collectively identified hereinafter as "workplace harassment"). All volunteers are expected to conduct themselves in a business-like and professional manner at all times with concern for the well-being of their co-workers.

Policy Objective

The objective of this policy is to define workplace harassment and to outline procedures for filing complaints, investigating workplace harassment claims and issuing appropriate disciplinary measures in the case of violations.

Policy Scope

This policy applies to all volunteers of the City of West Linn, including board and commission members and elected officials.

This policy seeks to prevent discrimination and harassment that occurs in the workplace or at City-related events that are off the workplace premises and coordinated by or through the City.

This policy shall be made available to all volunteers in the workplace. This policy shall be included in any orientation materials that are provided to new volunteers at the time of appointment or other commencement of service to the City.

All volunteers shall be required to complete discrimination and harassment training upon their initial appointment or other commencement of service to the City, and annually thereafter. All volunteers must sign an acknowledgement indicating they have read the policy and have had an opportunity to ask questions relating to the policy. The City shall maintain signed acknowledgements, including electronic signatures, on file.

Defining Workplace Harassment

Workplace harassment of volunteers, as defined by that conduct prohibited by ORS 659A.030, 659A.082 and 659A.112, is not permitted regardless of their working relationship or supervisory status. Volunteers who engage in this behavior are subject to disciplinary action, up to and including dismissal.

Specifically forbidden is unwelcome, unwanted or offensive conduct related to a person's race, color, religion, national origin, age, sex, marital status, mental or physical disability, sexual orientation, gender identity or expression, whistleblower, expunged juvenile record, injured worker or any other protected class as defined by applicable federal, state or local laws. This includes, and is not limited to, the following examples:

- sexual advances, gestures or innuendos;
- requests for dates;
- touching (other than handshakes);
- making jokes or derogatory comments related to sexual issues, or related to the gender, race, ethnicity, religion, age, etc., of a particular person or group;
- displaying sexual pictures or images in the workplace;
- using abusive or profane language;

- using City equipment or communication systems to access, send, receive or store sexual or derogatory material;
- making fun of a person's mental or physical limitations, religious beliefs or sexual orientation; or
- engaging in any other verbal, graphic, electronic or physical conduct of a sexual or derogatory nature which has the purpose or effect of creating an offensive work environment or interferes with a volunteer's performance of his or her job.

Volunteers should assume that conduct of this nature is unwelcome and will offend other volunteers. Therefore, volunteers will refrain from engaging in this type of conduct at all times, regardless of the circumstances. It is not an acceptable excuse that others participated in the conduct or did not appear to be offended.

Inappropriate conduct by business visitors, vendors, suppliers, and other members of the public is also prohibited if it creates an offensive environment for City volunteers. Likewise, it is also prohibited for volunteers to subject business visitors, vendors or suppliers, or members of the public to conduct that is prohibited by this policy.

No one should suggest or threaten a volunteer's cooperation, tolerance or objections to conduct of this nature will have any effect on a volunteer's continued association with the City. The City strictly prohibits managers and supervisors from making voluntary service decisions based on a volunteer's tolerance or resistance to harassment. This type of conduct is considered to be a violation of the City's harassment policy.

Section 4. Compliance and Reporting

The City identifies and designates its Human Resources Director as the Designated Individual responsible for receiving reports of workplace harassment. The City Council shall also identify an Alternate Individual to receive such reports.

Any volunteer who is subjected to or aware of incidents of workplace harassment should report the incidents to the Human Resources Director or Alternate.

Upon receipt of a report of workplace harassment, the Human Resources Director or Alternate shall provide a copy of the City's workplace harassment policy to the volunteer. All records of workplace harassment must be maintained.

A complaint, whether oral or written, by a volunteer shall:

- identify the name of the complainant and the name(s) of the person(s) subjected to the alleged workplace harassment, if they are not the same person;
- identify the names of all parties involved, including any and all witnesses to the alleged workplace harassment;
- set forth a specific and detailed description of the alleged workplace harassment, including date and time; and
- request a desired remedy.

Any complaint for workplace harassment must be filed with the Human Resources Director or Alternate within five (5) years from the date on which the alleged workplace harassment occurred; however, failure to file a complaint within the stated time period does not remove the City's obligation for conducting an investigation.

Other Reporting Options

A volunteer may first discuss an issue with the Human Resources Director as a manner of notifying the City that harassment may have occurred, to acquire information and obtain options, while allowing the volunteer the opportunity to consider whether they wish to pursue a formal complaint.

Nothing in this policy prevents a volunteer from filing a formal grievance with the Bureau of Labor and Industries ("BOLI") or the Equal Employment Opportunity Commission ("EEOC"); or, if applicable, the United States Department of Labor ("USDOL") Civil Rights Center.

A complaint filed with BOLI alleging an unlawful practice as described in ORS 659A.030, 659A.082 to 659A.865, 659A.112 or section 2 of Senate Bill 726 (2019) must be filed no later than five (5) years after the occurrence of the alleged unlawful practice.

Nothing in this policy prevents any person from seeking remedy under any other available law, whether civil or criminal.

A claimant must provide advance notice of claim against the City as required by ORS 30.275.

Investigation of Complaints

The City will coordinate and conduct, or delegate the responsibility for coordinating and conducting, an investigation of the alleged workplace harassment.

All complaints will be taken seriously and handled in a discreet and confidential manner, to the extent possible.

The City will provide information to connect a victim of workplace harassment with legal resources and counseling and support services, including any available assistance services.

The City will take, if necessary, appropriate steps to ensure volunteers are protected from further potential workplace harassment, including notifying the accused and witnesses that any retaliation against the reporting volunteer will not be tolerated.

All volunteers are expected to cooperate with the investigation and maintain all information regarding the investigation confidential.

The City Council shall adopt standards and criteria for the selection of an independent investigator unaffiliated with the City of West Linn. The City shall maintain a list of potential independent investigators who meet the standards and criteria.

The City Manager may enter into one or more contracts with investigators who meet the standards and criteria.

All investigations shall be conducted promptly and shall be completed as soon as is practicable.

The City shall provide notice to the complainant and the accused that an investigation has commenced.

The City will follow up with the victim of alleged workplace harassment, unless the victim objects to such action in writing, once every three (3) months for the calendar year following the date on which the City received a report of workplace harassment, to determine whether alleged workplace harassment has stopped or if the victim has experienced retaliation.

If an investigation does not substantiate the behavior alleged to be workplace harassment, then the investigator shall notify the Human Resources Director, or Alternate, the complainant and the accused of the results of the investigation and that no further action will be taken.

If an investigation does substantiate the behavior alleged to be workplace harassment, then the investigator shall provide a report of findings to the Human Resources Director, or Alternate, the complainant and the accused. The report shall set forth the facts as determined through the investigation and the investigator's determination that such facts result in a violation of the City's workplace harassment policy.

Upon receipt of the investigator's findings that a violation of the City's workplace harassment policy has occurred by a volunteer, the Council shall impose a remedy that is sufficient and appropriate to reprimand the member and deter future conduct that violates the policy. Such remedies may include public reprimand, censure, or other remedy the Council deems appropriate, including removal from an appointed position.

When an investigation is regarding a member of the City Council or a person in an appointed position and the person resigns at any time after the complaint is made, the investigation shall nevertheless take place, including the imposition of remedial measures, if appropriate.

The City will notify the complainant and the accused when the investigation has concluded and whether the alleged workplace harassment has been substantiated. If the investigation substantiates the alleged workplace harassment, the City will take

immediate and appropriate action against the accused. The City will not, however, provide the details of the action to the complainant.

The City will follow up with the victim of alleged workplace harassment, unless the victim objects to such action in writing, once every three (3) months for the calendar year following the date on which the employer received a report of the workplace harassment, to determine whether alleged workplace harassment has stopped or if the victim has experienced retaliation.

A victim of workplace harassment may voluntarily disclose information regarding an incident of workplace harassment that involves the victim.

Conduct in violation of this policy will not be tolerated. Volunteers engaging in conduct that violates this policy may be subject to termination of their working or volunteer relationship with the City.

Retaliation Prohibited

The City respects the rights of its volunteers to raise harassment and discrimination concerns and to participate in investigations. Retaliation against any volunteer for making a complaint or for providing information in an investigation is prohibited, and any such action may be subject to disciplinary action, up to and including dismissal.

“Retaliation” is broadly construed and can include any adverse action against a volunteer for opposing harassment or discrimination. It may include any on-duty or off-duty conduct, whether related to employment or not, that could discourage a volunteer from making a complaint of discrimination or harassment, or from testifying, assisting or participating in an investigation, proceeding or hearing. It can include obvious conduct such as changing a person’s job duties, giving a negative employment reference, or refusing to work with a person. It can also include more subtle conduct such as “cold shoulder” treatment.

If a volunteer believes they have been subjected to retaliation for making a complaint or participating in an investigation, the volunteer should immediately report their concerns to the Human Resources Director. If the volunteer is not comfortable reporting the concerns to the Human Resources Director, then the volunteer should report the concerns to the City Manager. If the complaint of retaliation is directed towards the City Manager, then the volunteer should report their concerns to the Human Resources Director, who will refer the complaint to the City Attorney.

Non-Disclosure Agreements and Non-Disparagement Agreements

It is an unlawful employment practice under ORS Chapter 659A for the City to enter into an agreement with a volunteer or prospective volunteer, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a non-disparagement provision or any other provision that has

the purpose or effect of preventing the volunteer from disclosing or discussing workplace harassment:

- a) that occurred between volunteers or between an employer and volunteer in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer; or
- b) that occurred between an employer and a volunteer off the employment premises.

The City may enter into a settlement, separation or severance agreement with a volunteer only when a volunteer claiming to be aggrieved by workplace harassment requests to enter into such agreement. The agreement must include:

- a) the provision described above;
- b) a provision that prevents the disclosure of factual information relating to the claim of discrimination or conduct that constitutes sexual assault; or
- c) a no-rehire provision that prohibits the volunteer from seeking reemployment with the employer as a term or condition of the agreement.

Any such agreement must provide the volunteer with at least seven (7) days after executing the agreement to revoke the agreement. Any such agreement may not become effective until after the revocation period has expired.

The City may enter into a settlement, separation or severance agreement after a good faith determination has been made that a volunteer has engaged in workplace harassment. The agreement must include:

- a) the provision described above;
- b) a provision that prevents the disclosure of factual information that relates to the workplace harassment; or
- c) a no-rehire provision that prohibits the volunteer from seeking reemployment with the employer as a term or condition of the agreement.