

ARTICLE I. EMPLOYMENT, WORKPLACE AND EQUAL EMPLOYMENT OPPORTUNITY POLICIES

A. Purpose

These Personnel Policies and Procedures are to be used to supplement, interpret, and otherwise implement and uphold the merit system provisions of the Charter of the City of Independence, Missouri, and the standards for a merit system of personnel administration. Appointments and promotions in the classified service of the City will be made solely on the basis of merit and fitness. Disciplinary action will be in accordance with the standards and procedures set out in these Personnel Policies and Procedures.

Nothing in these Personnel Policies and Procedures will be construed as a contract between the City and any employee. These Personnel Policies and Procedures shall not be construed as a covenant by the City for employment of any individual for any specified term. They shall not limit the City's ability to hire, promote, demote, terminate, or discipline any employee in any manner consistent with the provisions of the above paragraph. The City reserves the right to unilaterally amend any provision of these Personnel Policies and Procedures. No technical violation by the City of any procedure set out herein shall form a basis for any court action for breach of contract.

B. Amendment and Adoption

Recommendations for amendment to these Personnel Policies and Procedures may be made by the Chief Human Resources Officer, City Manager, or the Personnel Board. Proposed amendments will be publicly posted on City bulletin boards for at least ten (10) consecutive calendar days, together with notice of the time and place of hearing by the Personnel Board. At the time of hearing, interested employees and their representatives may present written or oral requests or recommendations to the Board regarding the proposed amendments. The submission of such requests or recommendations will not prevent the adoption of the proposed amendments. Following the hearing, the Board shall forward the proposed amendments to the Council with its recommendations, including modifications made as a result of the comments made at the hearing. The Board may, but will not be required to, hold additional hearings on the proposed amendments or any modifications thereto. Amendments to these Personnel Policies and Procedures will become effective upon adoption by the Council.

C. Positions Covered

These Personnel Policies and Procedures will be applicable to all employees in the Classified and Unclassified Services, except as may be excluded herein.

D. Administration

The Chief Human Resources Officer, under the supervision of the City Manager, has responsibility for the administration of these Personnel Policies and Procedures.

E. Department Rules and Regulations

Department directors may formulate and enforce department rules governing working conditions, employee conduct and performance within their department, so long as such rules do not conflict with the provisions of these Personnel Policies and Procedures, any Work Agreement covering employees of the department, or any applicable law. Except as otherwise provided, these policies and procedures are controlling.

F. Working Agreements

Work agreements with bargaining units recognized by the City will be considered as addenda to the Personnel Policies and Procedures.

If a conflict exists between any agreement and the Personnel Policies and Procedures, the agreement will prevail. However, if there is no conflict the Personnel Policies and Procedures will prevail.

G. Non-Discrimination

General Policy. It is the policy of the City to assure equal employment opportunity to all persons regardless of race, color, sex (including sexual orientation and gender identity), religion, national origin/ancestry, age, disability, political affiliation, pregnancy, marital/familial status, veteran's status, or any other status that is protected by Federal, State or Local law. This policy applies to all aspects of city employment practice and policy development for all activity areas. The City assures that it will not discriminate in recruiting, hiring, training, placement, advancement, compensation, personnel action, termination, employee benefit programs, or in all other terms, conditions, and privileges of employment.

Discriminatory action on the part of any employee of the City either toward fellow workers or the general public will be grounds for disciplinary action up to and including termination.

If an employee believes that an employment decision has been made that does not conform with the City's commitment to equal employment, employee should follow the complaint procedure set forth in Article I, Section I.

H. Harassment

1. Harassment in the Workplace. The City is committed to providing a work environment that provides employees equality, respect, and dignity. In keeping with this commitment, the City has adopted a policy of "zero tolerance" with regard to employee harassment based on race, color, sex (including sexual orientation and gender identity), religion, national origin/ancestry, age, disability, political affiliation, pregnancy, marital/familial status, veteran's status, or any other status that is protected by Federal, State or Local law. Harassment of any other person, including, without limitation, fellow employees, visitors, clients or customers, whether at work or outside of work, is grounds for disciplinary action, up to and including termination. The City will make every reasonable effort to ensure that employees are familiar with this policy and that all employees are aware that every complaint received will be investigated pursuant to the procedures set forth in Section I below and resolved appropriately. Employees wishing to report claims of harassment shall follow the procedures set forth below in this Article I, Section I.
2. Sexual Harassment.
 - a. Sexual harassment is prohibited by federal, state and local laws, and applies equally to men and women. Federal law defines sexual harassment as unwelcome sexual advances, requests for sexual favor(s), or other verbal or physical conduct of a sexual nature when (1) submission to the conduct is made either explicitly or implicitly a term or condition of an employee's employment; (2) submission to or

rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

- b. These behaviors may include, but are not limited to, for example: subtle or overt pressure for sexual favors; inappropriate touching; lewd, sexually oriented comments or jokes; foul or obscene language; posting of suggestive or sexually explicit posters, calendars, photographs, graffiti, or cartoons; nonconsensual sharing of intimate images and videos online; harassing or pressuring someone online to share sexual images of themselves or engage in sexual behavior online; gossip, rumors or lies about sexual behavior posted online either naming someone directly or indirectly alluding to someone; sending someone sexual content (images, messages, etc.) or jokes of a sexual nature; and repeated requests for dates. City policy further prohibits harassment and discrimination based on Sex Stereotyping.
- c. The City encourages reporting of all perceived incidents of sexual harassment, regardless of who the offender may be. It is the responsibility of each employee, department director and supervisor to create an atmosphere free of sexual harassment. The City will make every reasonable effort to ensure that all employees are familiar with this policy on sexual harassment. Behavior that creates a hostile work environment will not be tolerated. In some situations, the victim of the sexual harassment feels unable to report the behavior to the employee's supervisor or someone in the Human Resources Department. If an employee witnesses what they think is sexual harassment committed against another employee or themselves they are encouraged to report it immediately to his or her supervisor, anyone within the employee's direct supervisory chain of command or with the Human Resources Department pursuant to the complaint procedure in Article I, Section I. The City will investigate every complaint received and resolve the issue appropriately.

3. Supervisors' Responsibilities

All supervisors are expected to ensure a work environment free from sexual and other harassment. They are responsible for the application and communication of this policy within their work area. Supervisors should:

- Encourage employees to report any violations of this policy.
- Verify that the Human Resources Department is made aware of any inappropriate behavior in the workplace.
- Create a work environment where sexual harassment is not permitted.

I. Complaint Procedure

Employees who believe they or someone they work with are or have experienced discrimination, sexual harassment, or any other form of harassment may file a complaint in accordance with the procedures set out below.

1. **Initiation of an Investigation:** An investigation may be initiated by any employee or someone they work with who believes he or she has been a victim of sexual harassment, harassment, or if the person has been discriminated against on the basis of race, color, religion, sex, sexual orientation, national origin, age, or disability. An investigation may also be initiated by the City Manager, the Chief Human Resources Officer, a department director, or supervisor when there is reasonable suspicion that harassment or discrimination may have occurred. A complaint form shall be provided to the complainant for completion. An employee shall have the option of filing the complaint with the supervisor, with anyone in the employee's direct supervisory chain of command, or the Human Resources Department.
2. **Scope of Investigation:** An investigation will be conducted by the Human Resources Department unless an appearance of a conflict of interest exists. The investigation will include but is not limited to:
 - a. learning the facts concerning the incident or activity in question by interviewing the employee who made the accusation;
 - b. asking the employee to write and sign a statement of all the incidents of harassment and all of the facts and witnesses who can establish that harassment occurred,
 - c. determining precisely who was involved; what occurred, when it took place; whether this was an isolated incident or a frequent behavior;
 - d. ascertaining what impact, if any, the harassment has had;
 - e. establishing the identities of all persons with whom the harassment has been discussed; and
 - f. obtaining any notes, recordings, photographs, physical evidence, or other documentation relevant to the incident.
3. **Questioning of Employees:** All employees must cooperate in an investigation of the alleged acts of sexual harassment, harassment, or discrimination. The investigator shall have access to all relevant City documents and any City employee who may have information regarding the facts of the complaints, subject to the following:
 - a. any individual sought for the investigation shall be given advance notice of the general nature of the information sought and the time and place of the meeting;
 - b. any employee whose participation in the investigation is sought shall have the right to have representation and shall be notified of that right;
 - c. the alleged harasser shall be informed of the specific allegations which have been made against him or her and the evidence which is obtained during the investigation, and shall be given an opportunity to respond to such allegations and evidence;
 - d. all employees questioned shall be informed that the investigation is confidential and any violation of confidentiality may be cause for disciplinary action; and
 - e. the department director and Chief Human Resources Officer shall be notified of any investigation being made and shall be kept informed of the progress of the investigation.

4. Action Taken as a Result of an Investigation: Any disciplinary action recommended as the result of an investigation must be in accordance with the City's Personnel Policies and Procedures Manual and any applicable work agreements. Possible actions include, but are not limited to:
 - a. Any level of progressive discipline up to and including termination, if the investigation substantiates violations of federal, or state regulations, or city policy. The level of disciplinary action shall consider the severity of the actions, any mitigating circumstances, the employee's employment record, including prior discipline, and related incidents.
 - b. A written reprimand to the alleged harasser, making clear that inexcusable judgment was used and any recurrence will not be tolerated.
 - c. Mandatory participation in an employee assistance program (counseling) in lieu of more severe disciplinary action may be offered.
 - d. Transferring one or both of the persons involved, to a different job or department in order to prevent any recurrence if practicable.

The employee bringing forth the complaint shall also be informed, by memorandum, of the outcome of the investigation, including the City's commitment to ensuring a workplace free from sexual harassment, harassment, and discrimination. The employee will be urged to come forward immediately if there is any recurrence of such activity.

5. Records of Investigation: All records of investigations shall be confidential. A summary of the investigation and findings will be prepared for the Human Resources Department's file. The City's file on the investigation will be retained by the Human Resources Department, regardless of whether any disciplinary or corrective action is recommended and may be used as history in future investigations. The City Manager, department director, the accused as well as the employee who initiated the investigation will have access to this summary.

J. Americans with Disabilities Act

1. The federal Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities in position application procedures, hiring, firing, advancement, compensation, fringe benefits, job training and other terms, conditions and privileges of employment. The City is committed to complying with the ADA and its amendments and accommodating the needs of any qualified individual who has a physical or mental impairment which substantially limits his or her ability to perform the essential duties of the job. Although the City cannot guarantee that a reasonable accommodation can be found, the City will review each situation on a case-by-case basis to determine if a disability exists, if it is covered by ADA guidelines, whether or not an accommodation can be made, and whether the individual is otherwise qualified for the job in question.
2. An applicant or employee is considered disabled if he or she (1) actually has a physical or mental impairment that substantially limits one or more major life activities, (2) has

a record or history of such an impairment, or (3) is regarded or perceived (correctly or incorrectly) as having such impairment.

3. A qualified employee or applicant with a disability is an individual who satisfies the skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.
4. Reasonable Accommodation.
 - a. A reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done during the hiring process. These modifications enable an individual with a disability to have an equal opportunity not only to get a job, but successfully perform their job tasks to the same extent as people without disabilities. Although it is not possible to make a comprehensive list of all possible accommodations that might be reasonable, the following are among the accommodations that might be reasonable depending on the circumstances:
 - i. modifications to the job application process;
 - ii. modifications to the work environment;
 - iii. modifications to the methods by which a job is performed;
 - iv. providing special equipment or devices to perform a job;
 - v. reassignment to an open job for which an employee is qualified and for which the employee can perform the essential job duties;
 - vi. providing a part-time modified work schedule;
 - vii. modifying training methods and materials;
 - viii. providing readers or interpreters;
 - ix. placing an employee on short-term leave of absence;
 - x. combinations of the listed items; or
 - xi. any other reasonable accommodation.
 - b. Please note that according to the ADA, the City does not have to provide the exact accommodation the employee or applicant wants, and if more than one accommodation works, the City may choose which one to provide. Furthermore, any accommodation that will impose undue hardship on the City is not considered reasonable.
 - c. If an applicant or employee is disabled and needs a reasonable accommodation, then the applicant or employee should contact the Human Resources Department. On receipt of the request for a reasonable accommodation, the Chief Human Resources Officer or his/her designee will meet with the applicant or employee to discuss the applicant's or employee's disability. The City may ask for information from the applicant's or employee's health care provider(s) regarding the nature of the disability and the nature of the applicant's or employee's limitations or take other steps necessary to help the City determine viable options for reasonable accommodation. The City will then work with the applicant or employee to determine whether the disability can be reasonably accommodated. The City endeavors to enter into an interactive process with the applicant or employee to implement a mutually agreeable accommodation.

- d. While a request for accommodation is being processed, an employee may be placed on paid or unpaid leave of absence, assigned to a different job, or provided with light or modified duty, as determined by the City. An employee's base rate of pay will not normally be changed while the employee's request for accommodation is being processed, but any form of supplemental compensation may be affected if appropriate.

K. Religious Accommodation Policy

1. City respects the religious beliefs and practices of all employees and will make, on request, an accommodation for such observances when a reasonable accommodation is available that does not create an undue hardship on the City's business.
2. An employee whose religious beliefs or practices conflict with the employee's job, work schedule, or with the City's policy or practice on dress and appearance, or with other aspects of employment, and who seeks a religious accommodation must submit a written request for the accommodation to his or her immediate supervisor. The written request will include the type of religious conflict that exists and the employee's suggested accommodation.
3. The immediate supervisor will evaluate the request considering whether a work conflict exists due to a sincerely held religious belief or practice and whether an accommodation is available that is reasonable and that would not create an undue hardship on the City's business. An accommodation may be a change in job, using paid leave or leave without pay, allowing an exception to the dress and appearance code that does not affect safety requirements, or for other aspects of employment. Depending on the type of conflict and suggested accommodation, the supervisor may confer with the Department Director and with the Human Resource Department.
4. The supervisor and employee will meet to discuss the request and decision on an accommodation. If the employee accepts the proposed religious accommodation, the supervisor will implement the decision. If the employee rejects the proposed accommodation, he or she may appeal following the City's general grievance policy and procedure set forth in Article VIII.

L. Whistleblower

1. In general, a whistleblower is anyone who has and reports insider knowledge of an improper governmental action occurring within the organization of the City. For the purposes of this Section, the following terms and words are hereby defined:
 - a. "Employee" means anyone employed by the City, whether in a permanent or temporary position, including full-time, part-time, and intermittent workers.
 - b. "Improper Governmental Action" means any action by a city employee, an appointed member of a board, commission, or committee, or an elected official of the city, that is undertaken during the performance of such person's duties to the city or were done while the employee, appointed member or elected official was purporting or pretending to act in the performance of official duties, and that

violates a federal, state, or local government law or rule; is an abuse of authority; is a misappropriation of public funds, willful discrimination, or fraud; is of substantial and specific danger to the public's health or safety; or is a gross waste of public funds. The action need not be within the scope of the employee's, elected official's, board member's, commission member's, or committee member's official duties to be subject to a claim of Improper Governmental Action. Improper Governmental Action does not include city personnel actions, including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands, or violations of collective bargaining agreements, except to the extent that such action amounts to retaliation as defined in Article I, Section M.

2. Reporting Procedures

- a. To invoke the protections of this Section, an employee shall make a written report of Improper Governmental Action to the employee's supervisor, with anyone in the employee's direct supervisory chain of command, or the Human Resources Department. The Chief Human Resource Officer shall investigate all reports of Improper Governmental Action in accordance with these processes and procedures.
- b. If the Chief Human Resource Officer concludes that an Improper Governmental Action has taken place, the Chief Human Resource Officer shall notify in writing the City Counselor and the City Manager of the findings. In addition, the Chief Human Resource Officer shall promptly provide a copy of that written notice to the employee who filed the report.
- c. The Chief Human Resources Officer may transfer a report of Improper Governmental Action to another for investigation if the Chief Human Resources Officer deems it appropriate.
- d. Employees who carry out the following upon a good faith, reasonable belief are entitled to the protections and remedies articulated in Sections 3 and 4 of this Section L.
 - i. Cooperating in an investigation by the Chief Human Resource Officer related to Improper Governmental Action; and/or
 - ii. Testifying in a proceeding or prosecution arising out of an Improper Governmental Action.
- e. It shall be unlawful for an employee to retaliate against another employee who proceeded or is proceeding in good faith in accordance with this Section L.

3. Protections. To the extent allowed by law, the identity of any employee reporting information about an Improper Governmental Action shall be kept confidential unless the employee waives confidentiality in writing. The Chief Human Resource Officer may take reasonable measures to protect employees who reasonably believe they may be subject to bodily harm for reporting Improper Government Action.

4. Remedies. The following remedies may be available to employees subjected to adverse actions for reporting Improper Government Action: restitution, reinstatement, reimbursement for lost wages or expenses incurred, promotion, or other forms of restitution. Nothing in this Section shall prohibit an employee from pursuing his or her

own private action to seek damages or other remedies beyond those awarded by the City.

M. Anti-Retaliation

1. The City prohibits retaliation against those who engage in protected activities.
2. Definitions:
 - a. “retaliate,” “retaliation” and “retaliatory action” mean any adverse change in an employee's employment status or the terms and conditions of employment that results from an employee’s protected activity. Adverse changes include, but are not limited to: verbal abuse; intimidation; creating a hostile work environment; denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion; transfer or reassignment; suspension or dismissal; or other disciplinary action made because of an employee’s protected activity. Conduct that would likely deter an individual from reporting or supporting a claim of harassment or discrimination may constitute retaliation. Retaliation can occur even if the underlying complaint is not substantiated.
 - b. “protected activity” may include but is not limited to the following: complaining or threatening to complain about alleged discrimination, racism or harassment against oneself or others; resisting sexual advances or intervening to protect others; testifying, assisting, or participating in any manner in an investigation, proceeding or hearing, regardless of the outcome of the complaint; and requesting reasonable accommodation for a disability.
3. Reporting Retaliation. An employee who believes he or she has been retaliated against in violation of the City’s Personnel Policies and Procedures Manual must submit a written complaint within sixty (60) days of gaining knowledge of the retaliatory action. The complaint can be submitted to employee’s supervisor, with anyone in the employee’s direct supervisory chain of command, or the Human Resources Department.
4. Penalties. Any employee of the City who engages in prohibited retaliatory action is subject to discipline by suspension without pay, demotion, discharge, or some combination thereof as appropriate up to and including termination.

N. Break Time for Nursing Mothers

City shall provide a reasonable break time for an employee to express breast milk for her nursing child for up to 1 year after the child’s birth each time such employee has need to express the milk. Further, the City will provide a place, other than a bathroom, which is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.