

ORDINANCE NO. O-2018-03

**AN ORDINANCE AMENDING PORTIONS OF CITY OF WHEATON
EMPLOYEE RULES AND REGULATIONS**

WHEREAS, the City of Wheaton, Illinois, is a home rule municipality pursuant to the provisions of Article VII, Section 6 of the Illinois Constitution, 1970; and, as such, the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City of Wheaton has determined that the employment, performance and conduct of its employees is related to its government and affairs; and

WHEREAS, Governor Rauner recently signed into law, an amendment to Section 5 ILCS 430/70-5 (the "Act") of the Illinois Revised Statutes, requiring municipalities to adopt a sexual harassment policy containing, at a minimum:

- A. A prohibition on sexual harassment;
- B. Details on how an individual can report an allegation of sexual harassment, including options for making a confidential report to a supervisor, ethics officer, inspector general or the Department of Human Rights;
- C. A prohibition on retaliating for reporting sexual harassment allegations, including the availability of whistle blower protections under the Act, the Whistle Blower Act and the Illinois Human Rights Act; and
- D. The consequences of a violation of the prohibition on sexual harassment and the consequences for knowingly making a false report.

WHEREAS, the Employee Manual of the City of Wheaton dated May 1, 2017 and adopted by Ordinance No. 2016, (hereinafter "Employee Manual") which is incorporated in this Ordinance by reference as if fully set forth, contains the employee rules and regulations of the City; and

WHEREAS, the City of Wheaton has determined that it is necessary to amend a portion of the Employee Manual to reflect changes required by law.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule power as follows:

SECTION 1: The Employee Manual, is hereby amended by the adoption of Exhibit 1 which is attached hereto and incorporated herein as if fully set forth. The section of the Employee Manual referenced in Exhibit 1 shall be the employee rules and regulations related to the matters set forth therein and shall fully supplant and replace those sections of the Employee Manual existing prior to the adoption of this Ordinance which hereby are rescinded. In all other respect the Employee Manual is reaffirmed.

SECTION 2: That all ordinances or parts of ordinances in conflict with these provisions are repealed.

SECTION 3: That this ordinance shall become effective January 17, 2018, after its passage, approval and publication in the form and manner prescribed by law.



Mayor

Attest:



City Clerk

Ayes:

Roll Call Vote:

Councilman Prendiville
Mayor Gresk
Councilman Rutledge
Councilman Scalzo
Councilman Suess
Councilman Barbier
Councilwoman Fitch

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: January 16, 2018

Published: January 17, 2018

**CHAPTER 1
NON-DISCRIMINATION POLICIES**

B. Policy Against Harassment:

1. Prohibited Conduct

- A. The City strictly prohibits unlawful harassment, including unlawful sexual harassment and other defined inappropriate conduct by its employees, visitors, customers, vendors, and contractors, whether on City premises, at job sites or in connection with the City's business (including by telephonic, electronic, or paper-based communication). It is not the purpose of this policy to provide legal advice or an exhaustive explanation of all forms of unlawful harassment.

Unlawful harassment is defined as unwelcome conduct (verbal, visual or physical) that is based upon a person's gender, color, race, ancestry, religion, national origin, age, disability, or other characteristic protected by law. The City will not tolerate unlawful harassment that interferes with an individual's work performance, creates an intimidating, hostile, or offensive working environment for any person. All employees have a personal responsibility to keep the workplace free of any such of unlawful harassment on behalf of themselves and others. No one including a manager, department head, supervisor or employee has the authority to request or require an employee or applicant to submit to unlawful harassment as a condition of receiving any job benefit (such as a raise or a promotion) or avoiding any job detriment (such as a pay cut or a demotion).

B. Sexual Harassment

The City's prohibition against unlawful harassment includes sexual harassment. The courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991. All persons have a right to work in an environment free from unlawful sexual harassment. Unlawful sexual harassment is misconduct which may affect individuals of all genders and sexual orientations. It is a policy of the City of Wheaton to prohibit sexual harassment of any person by any municipal official, municipal agent, municipal employee or municipal agency or office. All municipal officials, municipal agents, municipal employees and municipal agencies or offices are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.

This policy adopts the definition of sexual harassment as stated in the Illinois Human Rights Act, which 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.

Conduct which may constitute sexual harassment includes:

- 1) Verbal: sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
- 2) Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- 3) Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- 4) Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- 5) Textual/Electronic: "sexting" (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).

The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. The courts assess sexual harassment by a standard of what would offend a "reasonable person."

2. Complaint Procedure

If an employee has experienced or witnessed an incident of harassment, sexual or otherwise, discrimination, or retaliation the employee has the right to file a complaint. Initially, this may be done in writing or orally. Regardless if a written statement is submitted, the City will initiate an investigation for any complaint.

- A. The reporting employee and/or affected employee(s) are encouraged to complete a written statement to include all relevant facts surrounding the incident such as date(s), time(s), location(s), statements or materials from witnesses, identification of the offending person, and a detailed description of incidents. The report may be completed during work hours without loss of pay or benefits.

- B. Any such complaint should be filed with the reporting employee's Department Head, Director of Human Resources or City Manager. Any complaint against a Department Head shall be reported to the Director of Human Resources or City Manager, and cases of alleged harassment by the City Manager shall be reported to the Mayor for both investigation and discipline. This Policy does not require the harassment to be directed at the person making the complaint. An employee may bring a complaint to any of the designated individuals with whom they would feel most comfortable discussing the matter.
- C. Any complaint for harassment against an elected official of the City or members of City Boards and Commissions should be filed with the Illinois Department of Human Rights, 100 West Randolph Street, 10th Floor, Chicago, IL 60601; phone: 312-814-6200; email: IDHR.webmail@illinois.gov.
- D. Supervisors shall immediately report any conduct that may violate this policy of which they become aware of to their Department Head, who will then forward it to the Director of Human Resources.
- E. All reported violations of this policy will be investigated. The investigation will be conducted thoroughly and promptly. It may include interviews with the person making the complaint; the person against whom the complaint is made, any potential witnesses identified by either person, as well as with others whom the City believes may have relevant information. Employees are expected to cooperate in this process. The investigation may also include review of pertinent documents and other materials. In most circumstances, the person making the complaint will be requested to put their complaint in writing, honestly setting forth full particulars (such as the date, time, location, presence of any witnesses, etc.) to ensure that all possible violations of this policy are properly investigated. It shall be a violation of this policy for any person to engage in retaliatory behaviors against a complainant.
 - 1) The investigation will be conducted in a manner that protects the confidentiality of those involved to the extent reasonably possible. Employees involved in an investigation may be instructed to or instructed not to discuss the investigation with other employees depending upon the specific circumstances of the investigation. The City will use the criteria set forth in rulings of the National Labor Relations Board in making these determinations.
 - 2) The results of the investigation will be discussed with the person making the complaint and the person against whom the complaint is made.

This complaint procedure is a critical part of the City's efforts to eliminate unlawful workplace harassment. Persons who believe they have been unlawfully harassed or who receive reports of unlawful harassment of others are required to use it.

A request not to investigate a reported violation of this policy cannot be honored.

3. Prohibition on Retaliation for Reporting Harassment Allegations

- a. No municipal official, municipal agents, municipal employee or municipal agency or office shall take any retaliatory action against any municipal employee due to a municipal employee's:
 - 1) Disclosure or threatened disclosure of any violation of this policy,
 - 2) Provision of information related to or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy, or
 - 3) Assistance or participation in a proceeding to enforce the provisions of this policy.
- b. For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any municipal employee that is taken in retaliation for a municipal employee's involvement in protected activity pursuant to this policy.
- c. No individual making a report will be retaliated against even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation.
- d. Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (5 ILCS 430/15-10) provides whistleblower protection from retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:
 - i. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation,
 - ii. Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any officer, member, State agency or other State employee, or
 - iii. Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act.
- e. Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. In addition, an employer may not retaliate against an employee for disclosing

information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. (740 ILCS 174/15(b)).

- f. According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act.
- g. An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge – due within 180 days (IDHR) or 300 days (EEOC) of the alleged retaliation.

4. Consequences of a Violation of the Prohibition on Harassment

- a. In addition to any and all other discipline that may be applicable pursuant to municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreement, any person who violates this policy or the Prohibition on Sexual Harassment contained in 5 ILCS 430/5-65, may be subject to external consequences. Each violation may constitute a separate offense.
- b. Any discipline imposed by the City shall be separate and distinct from any penalty imposed by an ethics commission and any fines or penalties imposed by a court of law or a State or Federal agency.
- c. If warranted, appropriate disciplinary action will be taken, up to and including immediate termination.

5. Consequences for Knowingly Making a False Report

- a. A false report is a report of harassment made by an accuser using the harassment report to accomplish some end other than stopping harassment or retaliation for reporting harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report is a severe offense that can itself result in disciplinary action, up to and including termination. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to discipline or discharge pursuant to applicable municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements.
- b. An employee making a false sexual harassment claim is subject to penalties ranging from: counseling, suspension without pay and up to and including

termination depending on the severity of the violation, as well as any penalty provided by State or Federal law.

- c. Any employee who violates this sexual harassment policy or makes a false report of sexual harassment, if not discharged, may be subject to mandatory remedial training.