



CITY of NOVI CITY COUNCIL

Agenda Item J
May 7, 2018

SUBJECT: Approval of City of Novi Anti-Discrimination and Anti-Harassment Policy.

SUBMITTING DEPARTMENT: Human Resources *[Signature]*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

The City's Policy prohibiting and condemning discrimination and harassment in the workplace was last updated on October 18, 1999. This revised Policy brings the language in compliance with the amended Title VII of the Civil Rights Act of 1964. Recently, City staff was directed to provide additional language to the City's Policy. The changes requested were to include protected classifications that are outside the provisions of Title VII. In collaboration with the City's labor counsel, the enclosed revisions are being brought to City Council for action.

RECOMMENDED ACTION: Approval of City of Novi Anti-Discrimination and Anti-Harassment Policy.

MEMORANDUM



TO: PETE AUGER, CITY MANAGER
CC: VICTOR CARDENAS, ASSISTANT CITY MANAGER
FROM: TIA GRONLUND-FOX, DIRECTOR OF HUMAN RESOURCES
SUBJECT: CITY'S DISCRIMINATION AND HARASSMENT POLICY
DATE: APRIL 30, 2018

Attached please find the City's revised Anti-Discrimination and Anti-Harassment Policy which will be on Monday evening's Consent Agenda for Council approval. The Policy was last updated in 1999.

The Policy is in compliance with Title VII of the Civil Rights Act. Due to a request to add additional protected classifications outside of Title VII, we have been advised by the City's legal counsel to bring this Policy before City Council for action.



Anti-Discrimination and Anti-Harassment Policy

Objective

The City of Novi strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The environment of the City should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. Employees should be able to work, learn and serve the public in a safe atmosphere. The City of Novi will not tolerate unlawful discrimination or harassment of any kind.

All employees, regardless of their positions, are covered by and expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee, vendor, contractor or anyone doing business with the City who violates this policy. Based on the seriousness of the offense, disciplinary action, up to and including termination will be taken.

Prohibited Conduct

The City of Novi, in compliance with all applicable federal, state and local anti-discrimination and harassment laws and regulations, enforces this policy in accordance with the following definitions and guidelines:

Discrimination: It is a violation of the City of Novi's policy to discriminate in the areas of employment opportunities, promotion opportunities, disciplinary decisions, benefits or other employment decisions; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, related to: the person's sex, race, color, national origin, age, religion, disability status, sexual orientation, gender identity, genetic information, marital status, weight, height, or membership in any other protected category.

Discrimination of this kind may also be strictly prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, the Elliott-Larsen Civil Rights Act and the Michigan Persons with Disabilities Civil Rights Act. This policy is intended to comply with the prohibitions stated in all applicable anti-discrimination laws.

Persons in violation of this policy will be subject to disciplinary measures up to and including termination.

Harassment: The City of Novi prohibits harassment based on protected status of any kind, including sexual harassment, and will take appropriate and immediate action in response to complaints or knowledge of violations of this policy. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate or coerce an employee, co-worker or any person working for or on behalf of the City of Novi due to that person's sex, race, color, national origin, age, religion, disability status, genetic information, height, weight, marital status or other protected status. Verbal taunting (including racial and ethnic slurs) that, impairs an employee's ability to perform his or her job is included in the definition of harassment.

The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal harassment includes demeaning or hostile verbal communications, including comments, epithets, jokes, slurs or negative stereotyping directed at any individual because of or regarding that individual's national origin, race, color, religion, gender, sexual orientation, gender identity, age, height, weight, or disability or hostile, intimidating or threatening conduct directed at an individual because of that individual's protected status.
- Nonverbal harassment includes distribution, display or discussion of any written or graphic material, including emails, photos, and videos, that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of national origin, race, color, religion, age, gender, sexual orientation, gender identify, pregnancy, appearance height, weight, disability, sexual identity, marital or other protected status.

Sexual harassment: Sexual harassment is a form of unlawful employment discrimination under Title VII of the Civil Rights Act of 1964 and is prohibited under the City of Novi's anti-harassment policy. The definition of sexual harassment includes many forms of offensive behavior and can include gender-based harassment of a person of the same sex as the harasser. According to the Equal Employment Opportunity Commission (EEOC), 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."

There are two types of sexual harassment:

- "Quid pro quo" harassment, where submission to harassment is used as the basis for employment decisions. Employee benefits such as raises, promotions and better working hours are directly linked to compliance with sexual advances. Therefore, only someone in a supervisory capacity (with the authority to grant such benefits) can engage in quid pro quo harassment. Examples: A supervisor promising an employee a raise if she goes on a date with him; a manager telling an employee she will fire him if he does not have sex with her.

- “Hostile work environment,” where unwelcome, severe or pervasive harassment based on protected category creates a work environment that a reasonable person would consider intimidating, hostile, or abusive. A hostile work environment can be created by anyone in the work environment, whether it be supervisors, other employees, contractors, or customers. Hostile environment sexual harassment consists of verbiage of a sexual nature, unwelcome sexual materials or even unwelcome physical contact as a regular part of the work environment. Texts, e-mails, cartoons or posters of a sexual nature; vulgar or lewd comments or jokes; or unwanted touching or fondling all fall into this category.

Sexual harassment occurs when unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature:

- Is made explicitly or implicitly a term or condition of employment.
- Is used as a basis for an employment decision.
- Unreasonably interferes with an employee’s work performance or creates an intimidating, hostile or otherwise offensive environment.

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 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 and notes, facsimiles, e-mail, photos, text messages, tweets and Internet postings; or other form of communication that is sexual in nature and offensive.
- Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing and fondling and forced sexual intercourse or assault.

Responsibilities of Employees and Managers and Complaint Procedure

The City of Novi encourages individuals who feel they are being, or have been, harassed in violation of this policy, to communicate to the offending party that such conduct is harassing and to ask that the conduct stop. However, employees are not required to do so.

Any employee or applicant who believes he or she has suffered discrimination or harassment, or who has reason to believe that another employee or applicant may have suffered discrimination or harassment, shall report the incident(s), in writing if

possible, to the Assistant City Manager or the Human Resources Director. If, for any reason, the employee or applicant feels that he or she cannot report the incident(s) to the Assistant City Manager or Human Resources Director, the employee or applicant shall report the incident(s), in writing if possible, to the City Manager. If, for any reason, the employee or applicant feels that he or she cannot report the incident(s) to the Assistant City Manager, Human Resources Director or the City Manager, the employee or applicant shall report the incident, in writing if possible, to any member of City Council, who shall take steps to insure that an investigation is conducted.

Managers have additional responsibilities to prevent discrimination and harassment in the workplace. If any individual in management witnesses or is notified of an actual or suspected violation of this policy, he or she must immediately report this to the Assistant City Manager, the Human Resources Director, the City Manager or a member of City Council. Failure of supervisory employees to report such conduct may result in disciplinary action.

Confidentiality

During the complaint and investigation process, the confidentiality of the information received, the privacy of the individuals involved and the wishes of the complaining person will be protected to as great a degree as is possible. The expressed wishes of the complaining person for confidentiality will be considered in the context of the City's legal obligation to act on the charge and the right of the charged party to obtain information. In addition, any notes or documents written by or received by the person(s) conducting the investigation will be kept confidential to the extent possible and according to any existing state or federal law.

Complaint procedure

The City has the responsibility of investigating and resolving complaints of discrimination and harassment. In determining whether the alleged conduct constitutes discrimination or harassment in violation of this policy, the totality of the circumstances, the nature of the discrimination or harassment and the context in which the alleged incident(s) occurred will be investigated. If the complaint is substantiated, prompt and effective remedial action will be taken as warranted. This may include a verbal or written warning, suspension, or termination of employment. When the investigation is complete, the complaining party will be advised that the investigation is complete; however, due to privacy concerns, the City may not be able to provide the complaining party information regarding the corrective action taken. The accused will also be advised that the investigation has been completed.

The City considers discrimination or harassment on the basis of religion, race, color, national origin, age, sex, sexual orientation, gender identify, height, weight, marital status or disability to be a major offense which may result in disciplinary action against the offender, regardless of the offender's position with the City.

Retaliation

The City of Novi prohibits retaliation against any individual for:

- Filing or responding in good faith to complaint of discrimination or harassment.
- Appearing as a witness or otherwise providing information in the investigation of a complaint.
- Serving as an investigator of a complaint.

Retaliation may include any adverse employment action that is caused by the employee's complaint or participation in an investigation. For example, this anti-retaliation policy may prohibit a supervisor from disciplining, demoting or discharging an employee for making a good faith complaint of harassment or discrimination. Retaliation or attempted retaliation in response to lodging a complaint or invoking the complaint process is a violation of this policy. Any person who believes that he or she has been subject to retaliation for making a good faith complaint of harassment or discrimination or providing information about such a complaint should bring this to the immediate attention of the Assistant City Manager, Human Resources Director or City Manager. All such complaints of retaliation will be promptly and fairly investigated. Any person found to have retaliated against an employee for making a good faith complaint of harassment or discrimination or providing information during an investigation will be subject to corrective or disciplinary action, up to and including termination of employment.

Revised: May 7, 2018