

ARTICLE IV. - SEXUAL HARASSMENT¹³¹

Footnotes:

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Editor's note—Ord. No. 00-3908, adopted April 13, 2000, repealed in their entirety the provisions of §§ 15-71—15-84 and replaced them with the similar provisions of § 15-71 and Appendix A which accompanies it. Former §§ 15-71—15-84 pertained to sexual harassment and derived from Ord. No. 98-3821, adopted Jan. 8, 1998.

Sec. 15-71. - Discrimination and harassment in the work place.

The City of Bastrop hereby adopts the "City of Bastrop Harassment and Employment Discrimination Policy" prohibiting harassment, discrimination and such other unlawful employment practices that are prohibited by Title VII of the Civil Rights Act of 1964, and which provides procedures and methods for pursuing and maintaining a work environment free from harassment and discrimination. The text of the City of Bastrop Harassment and Employment Discrimination Policy shall be as set forth in Appendix A of this Code of Ordinances.

(Ord. No. 00-3908, 4-13-00)

APPENDIX A. - SEXUAL HARASSMENT AND EMPLOYMENT DISCRIMINATION POLICY

Sec. I. - Purpose.

This policy establishes procedures and methods for department heads, managers, supervisors, and employees to individually pursue a work environment free from sexual harassment and employment discrimination.

Sec. II. - Scope.

The City of Bastrop recognizes that sexual harassment/employment discrimination is an unlawful employment practice in violation of Title VII of the Civil Rights Act of 1964. Therefore, this policy shall apply to all departments, including contractors, vendors, consultants, and others who conduct business with the city.

Sec. III. - Definitions.

(a) *Sexual harassment.* Sexual harassment is a form of sex discrimination which is a violation of Title VII of the Civil Rights Act of 1964. Sexual harassment is defined by the Equal Employment Opportunity Commission (EEOC) as: unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature. [This behavior] constitutes sexual harassment when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating hostile or offensive working environment.

Simply put, "sexual harassment" is unwelcome behavior of a sexual nature. The EEOC's guidelines define two (2) types of sexual harassment: "quid pro quo" and "hostile environment."

- (1) *Quid Pro Quo*: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute "quid pro quo" sexual harassment when:
 - a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; or
 - b. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual.
 - (2) *Hostile environment*: Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute "hostile environment" sexual harassment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (b) *Victim of sexual harassment*. The victim may be a woman or a man. The victim does not have to be of the opposite sex. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
 - (c) *Sexual harasser*: The harasser may be a woman or a man. He or she can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
 - (d) *Third party harassment*: In some cases, people may engage in off-color remarks and joking that they do not find offensive. This behavior may be offensive to others who are not directly involved in the conversation. This type of harassment is called third party harassment, and is considered a form of sexual harassment.
 - (e) *Other work-related activities*: Sexual harassment can occur outside the work site and still be work-related. Incidents that occur at retirement parties and office socials, in-training sessions, at conventions, or on temporary duty are some of the situations where work-related sexual harassment can occur.
 - (f) *Between contractor, city employees, and the public*: Sexual harassment policies and definitions apply to our employees in their interactions with any contract employees, the public, or other city employees. In cases involving contract employees, you may have to work through the company's human resource department to conduct an inquiry or to report allegations of sexual harassment. Contact the EEO office for additional guidance.
 - (g) *Employment discrimination*: Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin.
 - (h) *Zero tolerance*: The city will not condone sexual harassment. By taking appropriate disciplinary action not only for the harasser but for employees who witnessed it and did not report the incident. Employment discrimination likewise will not be condoned.

Sec. IV. - Responsibilities.

- (a) *Mayor* shall hold each department head accountable for the conduct of their employees. If situations should arise that are not covered in this policy, the mayor will convene a meeting with the appropriate personnel to determine the course of action to be taken.
- (b) *City clerk* shall perform responsibilities outlined in this policy and other duties delegated by the mayor.
- (c) *City attorney* shall review complaints and provide and/or assist rendering a decision regarding what action, if any, should be taken.
- (d) *Department heads* shall ensure this policy is fully implemented and that each employee understands the meaning of zero tolerance.
- (e) *Supervisors* shall take allegations seriously and conduct an inquiry promptly. Find out what happened, when it happened, names of witnesses, and document findings. Notify the department head and human resources director immediately of the allegation.

- (f) *Human resources director* shall be the primary investigator for sexual harassment/employment discrimination complaints. This responsibility may be delegated to another qualified investigator with the approval of the mayor or city clerk.

Sec. V. - Prohibited conduct.

The management of the City of Bastrop considers sexual harassment/employment discrimination to include, but not limited to, the following:

- (a) Physical assaults of a physical nature, such as:
 - (1) Rape, sexual molestation, or attempts to commit these assaults; and
 - (2) Intentional physical conduct that is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employee's body.
- (b) Unwanted sexual advances, propositions, or other sexual comments such as:
 - (1) Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience directed at, or made in the presence of, any employee who indicates or has indicated in any way that such conduct in his or her presence is unwelcome;
 - (2) Preferential treatment or promises of preferential treatment to any employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and
 - (3) Subjecting or making threats of subjecting an employee to unwelcome sexual attention or conduct, or intentionally making performance of the employee's job more difficult because of that employee's sex to include uninvited letters and telephone calls.
- (c) Sexual or discriminatory displays or publications anywhere in the work place by employees, such as:
 - (1) Displaying pictures, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning or pornographic, or bringing into the work environment or possessing any such material to read, display, or view at work;
 - (2) Reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning, or pornographic; and
 - (3) Displaying signs or other materials purporting to segregate an employee by sex in any area of the work place, (other than restrooms and other semi-private locker/changing rooms.)
- (d) Employment discrimination such as:
 - (1) Failure or refusal to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin; and
 - (2) Limit, segregate or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or adversely affect the employee's/applicant's status as an employee because of individual's race, color, religion, sex, or national origin.

Sec. VI. - Procedures for sexual harassment/employment discrimination complaints.

- (a) The human resources director shall coordinate and direct the investigation and review all complaints. The following procedures shall apply to the receipt, review, and conclusion of such complaints:
 - (1) Any employee who believes that he or she has been the subject of sexual harassment/employment discrimination must report the alleged charge immediately, but not later than ninety (90) calendar days, to the human resources office, providing the following information:

- a. Employee's name, department, and position title.
- b. The name of the person or persons committing the sexual harassment/employment discrimination.
- c. The specific nature of the sexual harassment/employment discrimination, how long it has gone on, and any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against him or her as a result of the harassment/discrimination, or any other threats made against him or her as a result of the harassment/discrimination.
- d. Witnesses, if any.
- e. Whether he or she has previously reported such harassment/discrimination and, if so, when and to whom.

All information disclosed will be held in strict confidence and will only be disclosed on a need-to-know basis in order to investigate and resolve the complaint.

- (2) Upon notification of a complaint, the human resources director, or a qualified delegate, shall immediately notify the individual's supervisor and department head of the sexual harassment/employment discrimination complaint.
- (3) The individual alleging the complaint will be interviewed by the human resources director, or his or her designate, on the nature of the allegations. During the interview, the individual will be informed that in order to ensure an effective investigation, he or she must complete the complaint form, providing the information listed in subsection (a)(1) of this section. If for some reason the individual alleging the complaint is unable to complete the form, the information may be provided by means of a tape recorder during the interview with approval of the complainant.
- (4) Within two (2) working days after receiving the complaint in writing/recording, the accused harasser will be called to the human resources office to review a copy of the completed complaint form or hear the recording, and will be informed of the seriousness of the allegation.
- (5) The accused harasser will have the opportunity to refute the allegation by responding on the complaint form or recording his or her response immediately, or within two (2) working days. The response must be made in the presence of the interviewer. Forms/tapes are confidential and shall be retained by the interviewer.
- (6) After interviewing the complainant and accused harasser, the human resources director will meet with the department head(s) of both individuals and discuss the seriousness of the allegation. If the evidence warrants, disciplinary action shall be taken as outlined in this policy.
- (7) A complainant may withdraw a complaint at any time. However, the city may still pursue an investigation and determine that disciplinary action is warranted, either on the basis of a validated complaint or falsification of a complaint, even though withdrawn.

NOTE: Employment discrimination complaints shall be reported and investigated, using the procedures for sexual harassment complaints and investigations. Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and Section 501 of the Rehabilitation Act of 1973 shall be used to determine employment discrimination complaints.

Sec. VII. - Obligation of employees.

- (a) Employees are not only encouraged to report instances of sexual harassment/employment discrimination, they are obligated to report instances of sexual harassment/employment discrimination.
- (b) Employees are obligated to cooperate in every investigation, including coming forward with evidence, both favorable and unfavorable, to a person accused of sexual harassment/employment discrimination, 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.

- (c) Employees are also obligated to refrain from filing bad faith complaints of sexual harassment/employment discrimination.
- (d) Disciplinary action may also be taken against any employee who fails to report instances of sexual harassment/employment discrimination, who fails or refuses to cooperate in the investigation of a complaint, or who files a complaint in bad faith.
- (e) No employee shall be subject to retaliation in any form as a result of bringing a complaint or testifying or assisting in a grievance brought pursuant to this procedure. A complaint of such retaliation should be directed to the human resources director.

Sec. VIII. - Investigation of complaint.

- (a) The human resources director shall conduct a fact-finding investigation of the complaint when the accused has rejected the charges.
- (b) The investigator shall make and keep a written record of the investigation, including notes of verbal responses made to the investigator by the person complaining of sexual harassment/employment discrimination, witnesses interviewed during the investigation, the person against whom the complaint was made, and any other person contacted by the investigator in connection with the investigation. The notes shall be made at the time the verbal interview is in progress.
- (c) Based upon the report, the human resources director shall determine whether the conduct of the person against whom a complaint of sexual harassment/employment discrimination has been made constitutes sexual harassment/employment discrimination. In making that determination, the human resources director shall look at the record as a whole and at the totality of circumstances, including the nature of the conduct in question, and the context in which the conduct, if any, occurred. The determination of whether sexual harassment occurred will be made on a case-by-case basis. Investigation procedures are as follows:
 - (1) The investigation will include testimony from the complainant, the accused, and such other parties as the human resources director may deem essential to reaching a decision on the validity of the accusation.
 - (2) The complainant has the responsibility to demonstrate, by a preponderance of the evidence, that the accusation is valid.
 - (3) No testimony will be received in the absence of the complainant or the accused, unless either willfully absents himself or herself from the proceedings.
 - (4) The right of cross-examination of any testifying party is guaranteed to both the complainant and the accused, assuming the presence of the same at the hearing.
 - (5) The complainant and the accused each have the right to bring an advisor to the hearing. The advisor may not act as a participant in the hearing, but may render consultation to the complainant and or the accused.
- (d) Within five (5) working days of the conclusion of a fact-finding hearing, the human resources director and city attorney will provide to the accused's department head a conclusion regarding the validity, or lack of validity, of the complainant's allegations.
- (e) In cases where the accused admits to the charges, and upon the opinion of the human resources director and city attorney, the information available substantiates the description of events by the complainant and accused, a fact-finding hearing may be waived.

Sec. IX. - Disciplinary action.

- (a) After reviewing the initial complaint, and if warranted, the accused shall be suspended, with pay, for a period not to exceed two (2) weeks (unless extended with approval of the mayor) pending a complete investigation.

- (b) Within five (5) working days after receiving the determination of validity from the human resources director and city attorney, the department head will consult with the human resources director and city attorney and render a decision regarding the action to be taken. Such actions include:
 - (1) If the allegations prove not to constitute sexual harassment/employment discrimination, the accused can return to work.
 - (2) If an offense is validated:
 - a. Require counseling of the accused and/or transfer the complainant and/or accused; or
 - b. If the offense is severe, recommend termination or terminate the accused.
 - (3) If the accusation was false, apply discipline to the complainant, up to and including termination.
 - (4) If the validity or falsification of the offense cannot be satisfactorily established, the department head shall execute the action(s) which:
 - a. Is in the best interest of the city;
 - b. Minimizes interference of divisional/departmental operations; and/or
 - c. Allows for the accused and complainant to continue their work routines with feasible and minimal personal consequence.
- (c) The decision of the department head will be sent by registered mail, return receipt requested, to the complainant and the accused, with copies to the mayor, city clerk, and human resources director, as appropriate.
- (d) If the department head is the accused, these actions shall be carried out by the mayor or city clerk in coordination with the city attorney.

In all cases, the disciplinary action shall be consistent with the nature and severity of the offense, whether a supervisory relationship exists, and any other factors the investigator believes relate to fair and efficient administration of the city, including the effect of the offense on employee morale and public perception of the city. The disciplinary action may include demotion, suspension, dismissal, verbal warning, or written reprimand. A determination of the level of disciplinary action shall also be made on a case-by-case basis.

Sec. X. - Appeal of the decision.

- (a) Within ten (10) working days of the postmark of the written notification to the employee of the department head's decision, the complainant or accused may make a written request for a final review of the record or a final meeting with the mayor or department head, as appropriate.

The human resources director, in response to a timely appeal, will:

- (1) Schedule a meeting with the appealing party to hear his or her appeal, within ten (10) days following the receipt of the appeal.
 - a. The meeting date can be scheduled on any date convenient to all parties, with mutual consent (including beyond the ten-day period).
 - b. Within three (3) working days after the meeting, a decision will be provided to the appealing party by the city clerk.
 - c. Copies of the decision shall be sent to the complainant and accused by registered mail, return receipt requested, and copies given to the human resources director, city attorney, and respective department heads.

Sec. XI. - Records of complaints.

- (a) All records, except those affected by civil service statutes concerning a sexual harassment/employment discrimination complaint, shall be kept in a separate, locked file in the

human resources director's office. Access shall be only with the human resources director's approval to parties who have a direct and relevant need to know.

- (b) The records maintained with respect to each complainant of sexual harassment/employment discrimination shall contain:
 - (1) The written/recorded complaint.
 - (2) The written/recorded response from the accused.
 - (3) Witness statements—Written or recorded.
 - (4) Any written statements produced by the investigation.
 - (5) The investigation report produced by the investigator.
 - (6) Records of appeals.
 - (7) Record of disciplinary action.
- (c) Records shall be maintained for the duration of employment and for five (5) years after termination.

Sec. XII. - Training.

- (a) The elimination and prevention of sexual harassment/employment discrimination are premier goals of the City of Bastrop. It is incumbent upon everyone not to engage in conduct which could undermine the integrity of the employee and/or interfere with the work productivity of the city or the services provided to the public. To assist that our work environments are free of sexual harassment/employment discrimination, the prevention of sexual harassment training shall be attended by all employees.
- (b) All employees shall attend Session 1, a 4-hour session that covers the law and the nature of sexual harassment/employment discrimination, conduct to avoid, liability issues, guidance from the EEOC, and expectations of both the employees and the city, including the city's written policy.
- (c) Supervisory personnel shall attend Session 1 and Session 2 for supervisors.
- (d) Investigators shall attend Session 1, Session 2, and Session 3 for investigators.
- (e) All training shall be documented, indicating training date, employee name, session attended, and certified by the instructor. Training records shall be maintained for the duration of employment and for five (5) years after termination.

CONFIDENTIAL

**SEXUAL HARASSMENT/EMPLOYEE DISCRIMINATION
COMPLAINT FORM**

Employee Name: _____	Title: _____
Date: _____	Dept.: _____

Complaint Information

<input type="checkbox"/> Sexual Harassment	<input type="checkbox"/> Employment Discrimination
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Name of person/persons who harassed/discriminated against you:
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Nature of the harassment/discrimination. Explain what they did:

When did it happen? List dates/time. How long it has gone on:

Where did it happen? List place/places:

List names of individuals you told about the harassment/discrimination:

List witnesses:

Who else has been harassed/discriminated by this person?

Have you previously reported such harassment/discrimination? If yes, list to whom and when:

What did you do in response?

--

What do you want done?

--

Do you have other information? If so, explain:

--

Are you planning to enroll in an Employee Assistance Program?

--

Yes No Undecided at this time

The information provided is true and correct to the best of my knowledge. I fully understand that my complaint will be investigated and false allegations are grounds for termination.

_____ Complainant Signature	_____ Date
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_____ Accused Signature	_____ Date
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_____ Investigator Signature	_____ Date	_____ Time