

ORDINANCE NO. 2024

AN ORDINANCE AMENDING AND RE-ENACTING SECTION 29.08.04040(1)-(2) OF THE CITY CODE OF THE CITY OF DICKINSON, NORTH DAKOTA, RELATING THE CITY'S HARRASSMENT POLICIES

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF DICKINSON, NORTH DAKOTA, AS FOLLOWS:

Section 1: Section 29.08.04040 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Section 29.08.04040 General Provisions

1. Equal Employment Opportunity

The City of Dickinson is an equal opportunity employer and complies with all applicable federal, state, and local fair employment practices laws. It is the policy of the City of Dickinson strictly prohibits and does not tolerate discrimination against employees, applicants, or any other covered individuals because of ~~to recruit, hire, train, promote, discipline and discharge all applicants and employees equally and without regard to~~ race, religion, creed, color, national origin or ancestry, sex (including gender, pregnancy, and sexual orientation), age, disability, political affiliation, genetic information, marital status, ~~or~~past, current, or prospective military service, ~~veteran status~~ participation in lawful off-duty conduct off the employer's premises which is not in direct conflict with the employer's essential business interest, or any other basis prohibited by ~~state or~~ federal, state, or local law. This policy applies to all terms and conditions of employment, including, but not limited to, hiring, training, promotion, discipline, compensation, benefits, and termination of employment.

Violations of this policy by any municipal employee may be cause for immediate disciplinary action, up to and including termination of employment. Any employee who feels they have~~he/she has~~ been discriminated against should bring this concern to his/her~~their~~ supervisor or higher authority according to the appeals procedure specified in Section 29.08.04.140 of this manual.

2. Sexual and Other Anti-Harassment Policy

The City of Dickinson is committed to providing a work environment that is free from discrimination and harassment. To maintain this commitment, the municipality will not tolerate any form of unlawful harassment, including sexual harassment against employees or any other covered individuals because of race, religion, creed, color, national origin or ancestry, sex (including gender, pregnancy, and sexual orientation), age, disability, political affiliation, genetic information, marital status, past, current, or prospective military service, participation in lawful off-duty conduct off the employer's premises which is not in direct conflict with the employer's essential business interest, or any other basis prohibited by federal, state, or local law.

2.1 Statement of No Tolerance

~~Sexual or any other form of h~~Harassment based on any protected characteristic in the work-place is prohibited by ~~Ffederal, and Sstate, and local~~ law, whether committed by supervisory or non-supervisory employees, and will not be tolerated. Retaliation or intimidation directed toward an individual who complains about harassment in good faith or who participates in an investigation into a harassment allegation ~~complaining party or a witness in an investigation~~ is also prohibited by law. Such misconduct ~~and~~ will not be tolerated by the City ~~under any circumstances~~ and is grounds for disciplinary action, up to and including termination of employment. The City will endeavor to take prompt remedial measures to immediately take appropriate action to address harassment allegations. ~~end the offending action.~~

2.2 Harassment by Non-Employees

The City will address and attempt to eliminate unlawful sexual or any other form of harassment based on a protected characteristic of or by ~~any~~ non-employees, such as customers or, visitors, ~~or others~~, including by referring the referral of appropriate matters to the appropriate law enforcement authority when appropriate.

2.3 Employment Protections to Complaining Party

The City strictly prohibits retaliation against an individual who, in good faith, reports unlawful harassment or participates in an investigation of harassment. This policy extends to all ~~A true complaint of sexual or any other form of harassment will not have any bearing on the~~ terms and conditions of employment, ~~of the complaining party,~~ including, but not limited to, wages, advancement, evaluations, assigned duties, shift assignments, and career development.

2.4 Definition of Behavior Constituting Sexual Harassment

The City prohibits harassment of employees and other covered persons based on an individual's sex (including pregnancy, sexual orientation, and gender), regardless of the harasser's sex or gender.

Sexual harassment means any harassment based on someone's sex or gender. It includes harassment that is not sexual in nature (for example, offensive remarks about an individual's sex or gender), as well as any unwelcome sexual advances or requests for sexual favors or any other conduct of a sexual nature, when any of the following is true: Under this policy, sexual harassment is defined as behavior of a sexual nature which is unwelcome and personally offensive to its recipient. It is a form of employee misconduct which is demeaning to another person and undermines the integrity of the employment relationship.

~~Sexual Harassment is specifically defined as unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:~~

~~2.4.1 By threat or insinuation, either explicitly or implicitly, an employee's refusal to submit to sexual advances or refusal to tolerate or participate in unwanted conduct or communication of a sexual nature will adversely affect the employee's~~Submission to the advance, request, or conduct is either explicitly or implicitly made a term or condition of employment —terms and conditions of employment, including, but not limited to, as it relates to wages, advancement, evaluation, assigned duties, shift assignment, and career development.

~~2.4.12.4.2~~ Submission to or rejection of the advance, request, or conduct is used as a basis for employment decisions.

~~2.4.22.4.3~~ Such advances, requests, or ~~Any conduct or communication of a sexual nature that has~~ave the purpose or effect of substantially interfering with work performance ~~by or of~~ creating a hostile, intimidating, or offensive employment environment that may be considered offensive to another employee, including, but not limited to:

- repeated sexual flirtations, advances, or propositions;
- continual or repeated verbal abuse of a sexual nature;
- foul language;
- unwanted physical contact;
- graphic verbal commentaries about an individual's body or manner;
- sexually degrading words used to describe the individual;
- the display of sexually explicit pictures, cartoons, or other materials.

2.5 Definition of Other Harassment

The City's Anti-Harassment Policy applies equally to harassment based on other protected characteristics, such as race, religion, creed, national origin, ancestry, age, physical or mental disability, citizenship, genetic information, military service, or any other characteristic protected under federal, state, or local law.

Such harassment often takes a similar form to sexual harassment and includes harassment that is (a) verbal (e.g., epithets, slurs, derogatory comments, or jokes, (b) physical (e.g., assault or inappropriate contact), and (c) visual (e.g., derogatory drawings or gestures). These examples are illustrative only and not exhaustive. No form of harassment will be tolerated.

~~Under this policy, other harassment is defined as behavior of a nature, which is unwelcome and personally offensive to its recipient. It is a form of employee misconduct, which is demeaning to another person and undermines the integrity of~~

~~the employment relationship. Other Harassment includes action(s) by another person which in the opinion of the employee violate his/her personal rights. This includes one person bullying another person or persons through actions which demean the other employee through repeated use of demands, language, threats to control the other person's behavior or attitude.~~

2.6 Method of Filing a Complaint

Any employee who ~~believes-feels he/she has~~ they have been ~~subjected to or witnessed conduct that violates this Anti-Harassment Policy must sexually harassed or that his/her personal rights have been violated through some other form of harassment, should~~ immediately report the matter to one of the following in order of preference: the City Attorney; the Human Resource Coordinator; the City Administrator; or to a Department Head. Any Supervisor, who becomes aware directly or indirectly, of a potential harassment issue ~~will~~ **must** immediately contact the City Attorney, the Human Resource Coordinator, or the City Administrator, who will initiate an investigation. A Supervisor's failure to timely report The obligation to report the potential harassment issue may result in discipline, up to and including termination of employment. The reporting obligation is absolute and not discretionary.

If the City Administrator is the offending party, the exempt employee should immediately notify the president of the City Commission, who will assign a qualified investigator(s) to perform an investigation.

2.7 Complaint Investigation Process

Upon becoming aware of ~~a situation of possible sexual or any other form potentially unlawful~~ harassment, the City Attorney and the City Administrator, or a designee, will assign a qualified investigator(s) to perform an investigation. The person or persons tasked with investigating the complaint will make a thorough and impartial investigation of the complaint, which will include the following:

- Interview of Complaining Party
- Interview of Offending Party
- Interview of Other Parties as necessary

All employees must cooperate with any such investigation. If the person or persons tasked with investigating the complaint finds through investigation that the complaint has grounds, the City Administrator will decide the appropriate disciplinary action for the offending party, keeping in mind the serious nature of this type of offense and will detail the findings of the investigation and outcome in a written notice, which will include the investigator's report. The City will maintain confidentiality in the investigative process to the extent possible without jeopardizing the effectiveness of the investigation and in compliance with open records laws.

2.8 Process If the City Administrator is the Offending Party

If the City Administrator is the offending party, the appropriate qualified investigator will turn his/her findings over to the President of the City Commission. It will be the City Commission's responsibility to take appropriate actions.

If at any time criminal charges may become applicable, the appropriate law enforcement authority will take the lead in the investigation.

2.9 Rights of Offending Party

The person about whom any sexual or any other harassment complaint has been filed will receive notice and an opportunity to appeal as described in Section 29.08.04.120 of this manual.

2.10 Violence Prevention

The City endeavors to provide a safe workplace for all employees. To ensure a safe workplace and to reduce the risk of violence, all employees should review and understand all provisions of this workplace violence policy.

2.10.1 Prohibited Conduct

We do not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities. This list of behaviors provides examples of conduct that is prohibited:

- Causing physical injury to another person.
- Making threatening remarks.
- Displaying aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress.
- Intentionally damaging employer property or property of another employee.
- Possessing an unauthorized weapon while on City property or while on City business.
- Committing acts motivated by, or related to, sexual harassment or domestic violence.

2.10.2 Reporting Violent Situations

Any potentially dangerous situations must be immediately reported to a supervisor or the human resource (HR) department. Reports can be made anonymously, and all reported incidents will be investigated. Reports or incidents warranting confidentiality will be handled appropriately, and information will be disclosed to others only on a need-to-know basis. All parties involved in a situation will be counseled, and the results of investigations will be discussed with them. The City will actively intervene at any indication of a possibly hostile or violent situation.

2.10.3 Risk Reduction Measures

Hiring

The City takes reasonable measures to conduct background investigations to review candidates' backgrounds and to reduce the risk of hiring individuals with a history of violent behavior.

Inspection The City may conduct periodic inspections of the premises to evaluate and determine any vulnerabilities to workplace violence or hazards and will endeavor to take corrective action to reduce known risks.

Individual Situations

Although we do not expect all employees to be skilled at identifying potentially dangerous persons, employees are expected to exercise good judgment and to inform the HR department if any employee exhibits behavior that could be a sign of a potentially dangerous situation. Such behavior includes:

- Discussing weapons in a threatening way, or bringing them to the workplace (exceptions for public safety or other authorized personnel in the course of their official duties).
- Displaying overt signs of extreme stress, resentment, hostility or anger.
- Making threatening remarks.
- Showing sudden or significant deterioration of performance.
- Displaying irrational or inappropriate behavior.

Threatening conduct, or any other acts of aggression or violence in the workplace will not be tolerated. Any employee determined to have committed such acts will be subject to disciplinary action, up to and including termination. Non-employees engaged in violent acts on the employer's premises will be reported to the proper authorities and fully prosecuted.

Section 2: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 3: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

Section 4: Effective Date: This Ordinance shall be in full force and effect from and after final passage.

Scott Decker, President
Board of City Commissioners

ATTEST

Dustin Dassinger, City Administrator

First Reading:

Second Reading:
Final Passage: