

## **DISCRIMINATORY HARASSMENT POLICY**

### **Introduction**

Fort Collins aspires to be a city that addresses the needs of all members of our community and strives to ensure that everyone has the opportunity to thrive. As a community, we commit to building a healthy, equitable, and resilient city – for our families, for our neighbors, and for future generations.

The Fort Collins City Council is committed to providing and maintaining an environment that encourages mutual respect and promotes equality, dignity, and respect. This Policy embodies the City Council's commitment to prevent and address discrimination; harassment, including sexual harassment; and retaliation. Discrimination, harassment, and retaliation in the workplace are against the law and will not be tolerated.

Through adoption, implementation, and enforcement of this **Discriminatory Harassment** Policy ("Policy") and through continuing education and training provided by or through the City Clerk's Office, , the Fort Collins City Council will seek to prevent, address, and correct behavior that violates this Policy.

## Application

This policy applies to all members of the City of Fort Collins City Council and Appointed Officials in the performance of City governance operations, at City-sponsored activities, and in all interactions between members of City Council, Appointed Officials, and City employees and contractors (defined herein as “Related Interactions”). Appointed Officials include the City Manager, the City Attorney, the Chief Municipal Judge, any appointed employee including municipal judges, and any City board or commission member. Nothing in this Policy is intended or should be read to alter the terms and conditions of the at-will status of Appointed Officials.

**It is important for all to keep in mind that the Mayor and City Council are committed to providing an environment that exemplifies high standards of behavior, treats others with dignity and respect, and is known for its honesty, inclusivity and transparency. Conduct that does not clearly fall into the realm of conduct prohibited by this Policy but is inconsistent with these values may be a violation of the Council-adopted Code of Conduct.**

### I. Discrimination Strictly Prohibited

#### Policy

The City Council strictly prohibits discrimination based on protected characteristics and will take prompt and appropriate action in response to good-faith complaints or knowledge of an alleged violation of this Policy.

#### Definitions

- “Protected characteristics” means a person’s race, color, religion, creed, national origin or ancestry, sex, sexual orientation (including perceived sexual orientation), gender identity and expression, disability, age 40 years or older, pregnancy or related condition, genetic information, and, in certain specific circumstances, marriage to a coworker or any other status protected under federal, state, or local law.
- “Discrimination” occurs when a person covered by this policy experiences an

adverse official action based on one or more of that person's protected characteristic(s). Adverse official actions include, but are not limited to, termination, suspension, involuntary demotion, failure to promote, and opposition, rejection or failure to appoint to committee or leadership role. Adverse official actions that are taken for any reason other than the protected characteristic(s) of a person covered by this policy are not discrimination.

### Examples of Discrimination

- A Councilmember harshly criticizes City staff and the municipal clerk notes he disproportionately criticizes her and other women.
- A female candidate for city attorney, city manager or chief judge is selected for a position over a more qualified male candidate because she is a woman.
- A community member is not considered for a Board and Commission appointment because he is homosexual.

## II. Harassment, Including Sexual Harassment, Strictly Prohibited

### Policy

The City Council strictly prohibits harassment, including sexual harassment, and will take prompt and appropriate action in response to good faith complaints or knowledge of an alleged violation of this Policy. Please note that this Policy does not address conduct that could constitute a violation of criminal law. Any person who believes a violation of criminal law has occurred should report the conduct to Fort Collins Police Services or other appropriate law enforcement agency.

### Definitions

- "Harassment" means verbal or physical conduct that demeans, stereotypes, or shows hostility or aversion toward an individual or group because of the individual's or group's protected class. Harassment is conduct directed toward a member of a protected class where it creates a hostile work environment. A hostile work environment exists when:

- . The conduct was based on a protected status;

- . The conduct was unwelcomed by the employee (which is a subjective standard);
- . The conduct was offensive to a reasonable person (which is an objective standard); and
- . The conduct was severe or pervasive.

- “Sexual harassment” is a form of harassment, and can involve males or females or persons of any gender orientation being harassed by members of either sex or gender orientation. Sexual harassment can fall into the following two categories:

1) “Quid Pro Quo” or “this for that” means direct or implied requests for sexual favors in exchange for actual or promised job benefits, such as favorable reviews, salary increases, promotions, increased benefits, or support of legislation or other legislative processes. Quid pro quo harassment can also mean direct or implied requests for sexual favors with the threat of an adverse action for non-compliance.

Quid pro quo occurs when:

- . Submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly a term or condition of employment or appointment ;
- . It is used as a basis for employment or appointment decisions;
- . Submission to or rejection of such conduct by a person is used as the basis for decisions or actions related to the support or opposition of legislation or other legislative processes; or

2) “Hostile Work Environment” means sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment. A hostile work environment exists when:

- . The conduct was based on a protected status;
- . The conduct was unwelcomed by the employee, fellow Councilmember, or candidate for appointment (which is a subjective standard);
- . The conduct was offensive to a reasonable person (which is an objective

standard); and

. The conduct was severe or pervasive.

## Examples of Harassment

**No policy can provide an exhaustive list of behaviors that may rise to the level of harassment.** Harassment encompasses a broad range of conduct that may be verbal, visual, or physical in nature. Specifically prohibited conduct includes, but is not limited to:

- Verbal conduct such as epithets, derogatory comments, and slurs directed at someone because of their protected class;
- Insisting on giving hugs to all women encountered at a recurring meeting;
- Visual conduct such as derogatory posters, photographs, cartoons, drawings, or gestures directed at someone because of their protected class;
- Mocking someone's accent or disability;
- Acts or jokes that are hostile or demeaning toward a protected class;
- Racially offensive words or phrases;
- Written or graphic material that insults, stereotypes, or shows aversion or hostility to an individual or group because of a protected class that is placed on walls, bulletin boards, email, or elsewhere on the premises of the workplace;
- Displays of symbols, slogans, or items that are associated with hate or intolerance towards any select group, such as swastikas or nooses;
- Pranks or hazing someone because of their protected class; and
- Physical aggression or gestures based on someone's protected class.

In addition to the examples listed above, an aggregation of a series of incidents can constitute harassment, even if one of the incidents considered separately would not rise to the level of harassment. Harassing conduct does not have to rise to the level of an unlawful hostile work environment to warrant corrective action under this policy.

## Examples of Sexual Harassment

Examples of sexual harassment include, but are not limited to, the following conduct:

- Inappropriate commentary, such as sexual epithets, jokes, written or verbal references to sexual conduct, gossip regarding a person's sex life, comments regarding a person's body or sexual activity deficiencies or prowess;
- Sexually suggestive comments about a person's clothing, vocal activity like catcalls or whistles, leering or staring at a person or part of a person's body, obscene letters, emails, text messages, photographs, cartoons, or other written or pictorial materials of a sexual nature, or sexting or posting sexual messages or images on social media;
- Direct sexual propositions including persistent requests for dates, drinks, or other personal contact after being informed that the interest is unwelcome, inappropriate sexually themed communication in person, online or via mobile devices;
- Sexual coercion under threat of punishment including demotion, firing, negative reviews, opposition to legislative initiatives, blacklisting or otherwise interfering with someone's access to opportunities;
- Explicit or implicit requests for sexual activity in exchange for reward, position, or career advancement, support of legislative initiatives, introductions, special access invitations to exclusive events, support for candidacies, position stability, or any other such condition or potential benefit;
- Sexual contact including unwanted physical touching, blocking or impeding movements, groping, or kissing.

Inappropriate sexual conduct that could lead to a claim of sexual harassment is expressly prohibited by this policy. This policy prohibits opposite-sex and same-sex harassment.

Sexual harassment may be obvious or subtle. Some behavior that is appropriate in a social setting may not be appropriate in the performance of City governance, City operations, at City-sponsored activities, or in Related Interactions, particularly considering the Council's stated values noted above in the Introduction.

### III. Retaliation Strictly Prohibited

#### Policy

The City Council strictly prohibits retaliation. The City Council will take prompt and appropriate action in response to good faith complaints of retaliation or knowledge of a violation of this Policy.

#### Definitions

“Retaliation” means an act of punishment, reprisal, or revenge that is taken against a person because he or she reported a form of harassment prohibited under this Policy, prevented unlawful practices, or participated in an investigation of an alleged act of harassment. For purposes of retaliation, an action is materially adverse if it is harmful to the point that it would dissuade a reasonable employee from making a complaint of discrimination.

#### Examples

Retaliation can take place on **in City locations or elsewhere**. Harassing conduct does not have to rise to the level of an unlawful hostile work environment to warrant corrective action under this policy. Examples of retaliation after a person makes a complaint or raised a concern may include, but are not limited to:

- Granting access to that person differently in a manner that negatively affects the person’s business or ability to perform work (i.e., a Councilmember refusing to meet with a complaining party after **the party filed** a complaint);
- Removing that person from an assignment;
- Change in support for Council action proposed by, or supported by, that person in their professional capacity;
- Disparaging that person to colleagues or peers;

- Changing that person's role, responsibilities, supervisory or legislative authority;
- Newfound scrutiny of that person's work performance by a supervisor or Councilmember;
- Denial of a promotion for that person, or demoting, suspending, or terminating them, when such acts are not otherwise justified;
- Issuing that person warnings, reprimands, or poor performance evaluations that are not otherwise justified;
- Excluding that person from beneficial networking or other opportunities, or from team or coworker events;
- Encouraging shunning by other Councilmembers;
- Workplace or legislative sabotage;
- Assigning that person a disproportionate workload;
- Disparaging that person to others or in the media;
- Disparaging that person to potential new employers;
- Threatening that person with legal action;
- Threatening that person with immigration action; or
- Abusive verbal or physical behavior towards that person.

## **Formal Complaint and Resolution Process**

The City Council encourages the reporting of all perceived incidents of discrimination, harassment or retaliation, as described above, regardless of the position of the alleged offender. The following processes will be used when a reporting party reports a violation of this Policy. The formal resolution process will be used when someone makes a good faith report of discrimination, harassment, or retaliation in a manner that makes clear that the Reporting Party intends to make a complaint of a policy violation.

## **Definitions**

- "Reporting Party" means a person who has been subjected to or who has witnessed another person be subjected to behavior that violates this Policy. A



Reporting Party may be a member of the City Council, a City staff member, a member of the public, a City contractor or vendor, an Appointed Official, a contractor, or a person whose employment gives them access to or contact with the Fort Collins City Council.

• “Complaint Contact” means:

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- The Mayor;
- Any City Councilmember;
- A representative of Human Resources including the Human Resources Executive, the Human Resources Director, or a Human Resources Business Partner;
- The City Manager, Deputy City Manager, Assistant City Manager, Service Area Director, Service Unit Director
- The City Attorney, Deputy City Attorney
- Lead Specialist, Office of Equity & Inclusion.
- The staff liaison or attorney liaison to a board or commission

While the reporting party should contact anyone on this list, the following guidance is provided for “Complaint Contact:”

- For a complaint about the City Manager, City Attorney and Chief Judge, contact the Mayor or the Human Resources Executive.
  - For a complaint about a City Councilmember, contact the Human Resources Executive.
  - For a complaint about a Board and Commission member, contact the City Manager, Deputy City Manager, Assistant City Manager, Service Area Director, Service Unit Director, City Attorney, or Deputy City Attorney.
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- “Respondent” means a person who is alleged to have violated this Policy and includes members of the City Council, Appointed Officials, and persons who are under contract with the City of Fort Collins.

## **Confidentiality and Privacy Interests**

An essential duty of the City Council and Appointed Officials is to be accountable to the public they serve. Members of the public deserve to have access to some information about complaints and complaint trends, but this must be balanced with the needs of the parties to have a safe, fair, and impartial process with appropriate confidentiality. The complaint resolution process is a confidential process. Complaint contacts must ensure that reporting parties can communicate privately and confidentially with them in discussing their complaints. Complaints and information about the investigation must be kept confidential by all parties, witnesses, those who handle the complaints, and those who recommend discipline or remediation, to the fullest extent possible. The confidential investigation report or any records of complaints of sexual harassment, and any sexual harassment investigations shall not be disclosed pursuant to an open records request except in accordance with Colo.Rev.Stat. § 24-72-204.

### **Complaints Against a Member of the City Council**

#### **Reporting**

The Fort Collins City Council encourages any person who is the subject of or witness to a violation of this Policy by a City Council member to immediately bring the violation to the attention of the Fort Collins City Council, via the complaint contacts listed above, so it may take proper steps to investigate and address the issue. The report should contain all facts available to the Reporting Party regarding the alleged Policy violation.

#### **Action by Complaint Contact**

A Complaint Contact who receives a report from a Reporting Party must document the date, time, whether the complaint was in person or by phone, and nature of the conversation, as well as any steps taken. The Complaint Contact must transmit complaints that fall under the Policy to the Lead Specialist, Equity and Inclusion Office of the City and the City Attorney. A screening process will be

used to ensure that the alleged misconduct falls within the scope and purpose of this Policy, assuming the allegations are true. A Complaint Contact must take actions described in this Policy promptly upon becoming aware of a complaint.

### Screening Process

The Lead Specialist, Equity and Inclusion Office or their designee and the City Attorney or their designee will contact the Reporting Party and obtain a complete description of the conduct that allegedly violates this Policy. The Lead Specialist, Equity and Inclusion Office or their designee, the City Manager or their designee and the City Attorney or their designee will determine whether the alleged misconduct, if true, violates this Policy. Unless the alleged violation clearly does not fall within this Policy, the allegations will be referred for investigation. If the alleged violation clearly does not fall within this Policy, a confidential written summary of the basis for not referring the matter for investigation is placed in the file. If the allegations are not referred for full investigation, the complaining party will be notified both in person and in writing that the allegations were reviewed as a screening matter and determined not to fall within the scope of this Policy. If any of those involved in the screening the complaint believes the alleged misconduct, if true, violates this Policy, the allegations will be referred for investigation and the complaining party will be notified.

### Investigation

Complaints against a Councilmember that, if true, violate this Policy must promptly be referred to a third-party investigator retained by the City Attorney's Office. The City Attorney must inform the City Council that an investigation is underway and retain an independent outside investigator (preferably a lawyer that specializes in workplace investigations) to conduct interviews with the Reporting Party and other individuals with knowledge of relevant facts, and to perform such other actions as are necessary to ensure a complete investigation of all allegations and a fair process for all involved. Once the investigation is deemed complete by the investigator and the City Attorney, the investigator shall prepare

a written report indicating whether the allegations in the complaint are sustained or not sustained and shall provide such confidential investigation report to the City Attorney.

#### Timeline for Investigation

Every effort will be made to complete an investigation in 60 days.

#### Disciplinary and Remedial Action

Upon completion of the investigation by a third party investigator, the City Attorney will inform the Human Resources Executive, the City Manager, the Reporting Party and the Respondent of the pertinent findings. The City Attorney, the Human Resources Executive and the City Manager will send the confidential investigative report to each member of the City Council with a cover letter that contains recommendations to remedy the harassment, discrimination, or retaliation. Alternatively, the City Attorney shall present the investigator's written report to the City Council in executive session. Upon receipt, the Respondent must immediately endeavor to comply with recommendations.

The City Council may consider and direct any or all of the following actions in response to a finding that a complaint of harassment, discrimination or retaliation is sustained:

1. Adopt a resolution finding that an individual covered by this policy violated this policy;
2. Direct or encourage additional corrective training;
3. Such other action as is consistent with its authority under applicable state statutes, the City Charter, ordinances, resolutions, or rules and policies of the City Council.

Any Councilmember at any time may initiate a motion for censure of a Respondent Councilmember.

## **Complaints Against an Appointed Official**

### **Reporting**

The City Council encourages any person who is the subject of or witness to a violation of this Policy by an Appointed Official to bring the violation to the attention of the City Council immediately, so it may take proper steps to investigate and address the issue. The report should contain all facts available to the Reporting Party regarding the alleged Policy violation.

The Reporting Party is encouraged to take the following actions:

- If the Reporting Party is comfortable addressing the issue directly with the Respondent, the party may explain to the Respondent that the behavior is offensive to the Reporting Party, and request that such behavior be discontinued.
- If the behavior recurs, the Reporting Party is strongly encouraged to immediately report the behavior to a complaint contact listed above.
- If the Reporting Party is not comfortable addressing the issue directly with the Respondent, the Reporting Party should immediately report the offensive behavior to a Complaint Contact listed above.

### **Action by Complaint Contact**

A Complaint Contact who receives a report from a Reporting Party must document the date, time, whether the conversation was by phone or in person, and nature of the conversation, as well as any steps taken. The Complaint Contact must transmit complaints that fall under the Policy to the Human Resources Executive, the City Attorney, unless the City Attorney is the Respondent and the City Manager, unless the City Manager is the Respondent. If the Respondent is the City Attorney, the Complaint Contact must transmit complaints that fall under the Policy to the Human Resources Executive and the City Manager. A screening process will be used to ensure that the alleged misconduct falls within the scope and purpose of this Policy, assuming the allegations are true. A Complaint Contact

must take actions described in this Policy promptly upon becoming aware of a complaint.

### Screening Process

The Human Resources Executive or their designee and the City Attorney or their designee, if the City Attorney is not the Respondent, will contact the Reporting Party and obtain a complete description of the conduct that allegedly violates this Policy. The Human Resources Executive or their designee, the City Manager or their designee, if the City Manager is not the Respondent, and the City Attorney or their designee, if the City Attorney is not the Respondent, will determine whether the alleged misconduct, if true, violates this Policy. Unless the alleged violation clearly does not fall within this Policy, the allegations will be referred for investigation. If the alleged violation clearly does not fall within this Policy, a confidential written summary of the basis for not referring the matter for investigation is placed in the file. If the allegations are not referred for full investigation, the Reporting Party will be notified both in person and in writing that the allegations were reviewed as a screening matter and determined not to fall within the scope of this Policy. If any of those involved in the screening the complaint believe the alleged misconduct, if true, violates this Policy, the allegations will be referred for investigation. If the Respondent is the City Attorney, the City Council will use outside legal counsel to engage in the screening process as described herein. If the Respondent is the City Manager, the Human Resources Executive and City Attorney will engage in the screening process.

### Investigation

Complaints against an Appointed Official that warrant investigation must promptly be referred to a third party investigator retained the City Attorney's Office, unless the Respondent is the City Attorney. Unless the Respondent is the City Attorney, the City Attorney must inform the City Council that an investigation is underway and retain an independent outside investigator (preferably a lawyer that specializes in workplace investigations). If the Respondent is the City Attorney, the Human Resources Executive will retain the services of outside

counsel to retain an independent outside investigator (preferably a lawyer that specializes in workplace investigations) and the City Manager must inform the City Council that an investigation is underway. An outside investigator will conduct interviews with the Reporting Party and other individuals with knowledge of relevant facts, and to perform such other actions as are necessary to ensure a complete investigation of all allegations and a fair process for all involved. Once the investigation is deemed complete by the investigator and the City Attorney or outside counsel, the investigator shall prepare a written report indicating whether the allegations in the complaint are sustained or not sustained, and shall provide such confidential investigation report to the City Attorney, unless the Respondent is the City Attorney. If the Respondent is the City Attorney, the confidential investigation report will be provided to the outside counsel who will forward the report to the Human Resources Executive and the City Manager.

The confidential investigation report and findings, along with a recommendation, will be provided to the City Manager and the City Council.

#### Timeline for Investigation

Every effort will be made to complete an investigation in 60 days.

#### Disciplinary and Remedial Action

Any Respondent found to have engaged in harassment, discrimination, or retaliation prohibited by this Policy is subject to appropriate disciplinary action. The City Council shall consult with the Human Resources Executive and the City Attorney, if the City Attorney is not the Respondent, regarding disciplinary actions that are commensurate with the severity of the offense. If the City Attorney is the Respondent, the City Council shall consult with the Human Resources Executive and outside employment counsel about disciplinary actions that are commensurate with the severity of the offense. Disciplinary action can include, but is not limited to, demotion or termination. Other remedial measures may

include:

- Verbal or written direction to cease the offensive behavior;
- A written or verbal apology to the Reporting Party if the Reporting Party consents to the apology;
- Resources and support to Reporting Party; or
- Education and training for the Appointed Officials.

In any case, a written record of any action taken on the complaint, or any determination to take no further action on the complaint, shall be prepared in consultation with the City Attorney or such other legal counsel appointed by City Council in connection with a given complaint and kept with the report of investigation.

## **Training**

All members of City Council shall participate in training regarding harassment, discrimination and retaliation every two years and in conjunction with the orientation provided to new City Council members. All Appointed Officials shall participate in such training every two years.

## **Annual Reporting and Review**

The ~~Officer~~ Assistant City Manager will publicly report, on an annual basis, the total number of complaints under the Policy, and the resolution of each complaint, appropriately redacted to protect the confidential personnel decisions and party identities. The Assistant City Manager ~~Chief~~ will maintain a publicly available list of Councilmembers and Appointed Officials who have attended mandatory and voluntary trainings.