



**LANE TRANSIT DISTRICT
POLICIES AND GUIDELINES**

BOARD HARASSMENT, DISCRIMINATION AND RETALIATION POLICY

Policy Number: 100.20

Tier I: Board of Directors

Revision Date: August 3, 2022

Effective Date: December 16, 2020

File Location / Name:

Scope: Defines discrimination, harassment, workplace bullying, and retaliation and the process for addressing any issues that arise.

Tier *	Affected Divisions / Departments/ Groups
Tier I:	Lane Transit District Board of Directors
Tier II:	All (LTD) - All LTD employees, temporary employees; contractors, and vendors.
	All Administrative Employees.
	All ATU Employees.
Tier III:	Multiple Divisions and/or Departments:
Tier IV:	Division or Department:

** Tier – Tier I Board of Directors governance policies; Tier II operational policies are organizationally supported, governed, and enforced; Tier III standards and procedures are developed, governed, and enforced between specific divisions/departments and must adhere to Tier I requirements; Tier IV methods and instructions are developed, governed, and enforced within divisions/departments, but must adhere to Tier II and III requirements.*

Revision History:

Revision	Author / Editor	Description
00	Camille Gandolfi, Clerk of the Board; Andrea Coit, General Council	Amended & restated in collaboration with Interim General Manager, General Counsel and the Ad Hoc Board Bylaw Review Committee

APPROVAL: Approved by the Board at its December 16, 2020, Board meeting, Resolution No. 2020-12-16-071; Revision 01: adopted at the August 3, 2022, Board meeting by Resolution No. 2022-08-03-036

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100.20.1 PURPOSE AND POLICY STATEMENT

Lane Transit District (LTD) and the LTD Board of Directors are committed to providing and maintaining a work environment that is free from discrimination, harassment, workplace bullying, and retaliation. These procedural rules outline types of prohibited conduct and procedures for reporting and investigating prohibited conduct involving the LTD Board of Directors.

100.20.2 APPLICABILITY

These rules apply to members of the LTD Board of Directors only. LTD shall make this policy available to all LTD employees and members of the LTD Board of Directors.

100.20.3 AUTHORITY

The authority for these rules includes ORS 267.540 (4); 174.100; 243.319; ORS Chapter 659A; Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; the Americans with Disabilities Act; the Rehabilitation Act; and accompanying rules and regulations.

100.20.4 DEFINITIONS

Constructive knowledge

“Constructive knowledge” is knowledge that a supervisor, manager or Director is presumed to have with the exercise of reasonable care.

Director

“Director” means a member of the LTD Board of Directors

Discrimination

“Discrimination” means treating an LTD employee or another Director negatively or less favorably based on or because of a protected class status.

Legitimate, nondiscriminatory reasons for different treatment of an employee or Director that are not based on or motivated in any part by a protected class status do not violate these rules unless the treatment otherwise constitutes Workplace Bullying.

Employee

“Employee” means an individual hired by LTD to perform work, under the supervision and control of LTD, in exchange for an hourly wage or salary. For the purpose of these rules, volunteers, interns, and similar unpaid workers shall also be considered employees. The term Employee does not include independent contractors.

Gender Identity and Gender Expression

- (a) **Gender identity** is the personal sense of one’s own gender. One’s present gender identity may be the same or different from the sex assigned at birth. Gender identity may be expressed or described as cisgender (i.e., male, female), transgender, gender fluid, gender-neutral, and by other terms or phrases indicating a gender identity other than the binary male or female. Gender identity does not imply any specific sexual orientation.
- (b) **Gender expression** refers to the external appearance of one’s gender identity, usually expressed through behavior, clothing, haircut, or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

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Harassment

“Harassment” is unwelcome verbal, nonverbal, or physical conduct, based on a person’s protected class status that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating, or offensive working environment. Protection against harassment extends to the person harassed, as well as other people affected by the offensive conduct.

Harassment includes Sexual Harassment (defined below), as well as other forms of protected class harassment. Examples of conduct based on protected class status that is prohibited by this policy, regardless of whether sexual or non-sexual in nature, include:

- (a) Unwelcome intentional touching of another person or other unwanted intentional physical contact (including patting, pinching, rubbing, brushing against, etc.).
- (b) Unwelcome questions or comments about another person’s sexual activities, dating, personal or intimate relationships, appearance, race, religion, age, disability, or any other category protected by law.
- (c) Whistling, staring, or leering at another person. Unwelcome sexually suggestive or flirtatious gifts, letters, notes, e-mail, text messages or other form of instant messaging, or voice mail. Unwelcome sexual advances or flirtations.
- (d) Conduct or remarks that are sexually suggestive or demeanor that demonstrates hostility toward another person (regardless of whether sexual in nature) based on any protected class status (e.g., jokes, taunts, stereotyping, and threats).
- (e) Displaying or circulating pictures, objects, or written materials (e.g., graffiti, cartoons, photographs, pinups, calendars, magazines, figurines, etc.) that are sexually suggestive, demeaning, or otherwise demonstrate hostility toward another person (regardless of whether sexual in nature) based on any protected class status.
- (f) Slandering, libeling, ridiculing, maligning, or spreading negative and derogatory information about a person or that person’s family or spreading rumors and gossip about individuals based on any protected class status.
- (g) Expressing or communicating sentiments of hate towards a person or protected class group of people that is intended to disparage, demean or denigrate another person or group of people based on their protected class status.
- (h) Any other unwelcome gestures, symbols, comments, name-calling, or behavior that is directed towards another person, relates to another person, or that negatively impacts another employee’s or Director’s ability to work productively and efficiently that is based on their protected class status.

Although this policy provides examples of harassment, it is not intended to be a complete list.

Preponderance of Evidence

A “preponderance of evidence” is sufficient evidence to convince a fact-finder or investigator that it is more likely than not that a violation occurred, and, therefore, that the allegation is substantiated.

Protected Class

“Protected class” means a class protected by federal law, ORS Chapter 659A, and any other state or local law designating protections for an identified group of persons or demographic, and includes race, color, national origin, religion, gender, gender identity (including gender expression), sex, sexual orientation, pregnancy, age, disability, injured worker status, family leave status, protected medical or veterans’ leave, marital status, familial status, veteran’s status, genetic information or history, opposition to unlawful employment practices, good faith

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reports of safety violations, good faith reports of harassment, discrimination or retaliation, whistleblower, or any other status not listed here but protected by local, state or federal law.

Retaliation

“Retaliation” occurs when there is found to be a causal connection between an opposition to prohibited conduct under Section 100.20.05 and subsequent adverse treatment that is reasonably likely to deter future opposition to prohibited conduct, including reports of a violation of this policy, participation in an investigation into the alleged conduct, testimony regarding the alleged conduct (regardless of forum), or other protected conduct. Retaliation may take the form of overt, direct, or indirect acts toward, or adverse treatment of, an individual that serves to punish, demean, discredit, intimidate, or otherwise harm an individual because of their opposition to prohibited conduct.

Sexual Assault

A “sexual assault” is unwanted touching of a sexual nature that is inflicted upon a person or compelled using physical force, manipulation, threat, or intimidation.

Sexual Harassment

Sexual harassment is a form of workplace harassment and includes, but is not limited to, the following types of conduct:

- (a) Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of employment or board-related activity; or submission to or rejection of such conduct is used as the basis for employment or board related decisions affecting that individual.
- (b) Unwelcome verbal, non-verbal or physical conduct that is directed toward an individual because of that individual's sex, sexual orientation, gender or gender identity and that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating, or offensive working environment.

Sexual Orientation

"Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, other sexuality, or gender identity, regardless of whether the individual's gender identity, appearance, expression, or behavior differs from that traditionally associated with the individual's sex at birth.

Violence

“Violence” includes physically harming another person, shoving, pushing, hitting, intimidating, coercing, brandishing weapons, using weapons to inflict harm, throwing objects at another person, and threatening or talking of engaging in those activities.

Workplace and Workplace Conduct

“Workplace” includes the usual place of performing a person's job and work-related settings outside of the usual place of work, including board meetings (including in-person, telephonic, virtual, etc.), other job sites, business trips, business meetings, business-related social events, and company-sponsored events. “Workplace Conduct” is any conduct engaged in while at a Workplace.

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Workplace Bullying

“Workplace bullying” is behavior or conduct that, while not necessarily motivated by or based on a protected class status, is nevertheless so severe or so pervasive that it would offend a reasonable person in the workplace or unreasonably interferes with work performance or creates a hostile or intimidating working environment.

Behavior that may rise to the level of Workplace Bullying under this policy if it is severe or pervasive includes but is not limited to:

- (a) Conduct that intentionally embarrasses, humiliates, offends, or degrades another person.
- (b) Shouting or yelling at a person in anger or frustration or otherwise behaving in a manner that a reasonable person would consider unreasonably confrontational or disruptive in a workplace.
- (c) Personal attacks, negative or derogatory name-calling, and abusive language of any kind.
- (d) Disparaging or denigrating another person to others with the purpose or effect of diminishing that person’s reputation or credibility with management, other employees, or Directors or encouraging others to avoid, ignore or isolate an employee or Director.
- (e) Repeated and frequent complaints about an employee or Director that are determined to be unsubstantiated, false, misleading, or consistently relating to minor annoyances, or disagreements, or issues of little or no significance.

100.20.5 PROHIBITED CONDUCT

Discrimination, Harassment, Workplace Bullying and Retaliation

Directors are prohibited from engaging in Discrimination, Harassment, Workplace Bullying and Retaliation against Employees and other Directors.

Conduct Occurring Outside of Work or Board-Related Activities

Directors are also prohibited under this policy from using social media, regular media, telephone calls, text messages, recordings, and personal interactions outside of the Workplace to share, post, or publish information that would constitute Harassment, Discrimination, Workplace Bullying, or Retaliation against an Employee or Director if the conduct was undertaken in the Workplace.

Violence

Directors are prohibited from threatening violence, engaging in violence, or inciting others to engage in violence towards another LTD employee, Director, member of the public, group of people, or protected class demographic, regardless of the location or time of the conduct.

100.20.6 PROCEDURES FOR REPORTING A VIOLATION OF 100.20.5

Report by Employee of Potential Director Violation

Any LTD Employee who experiences what they reasonably believe to be a violation of Section 100.20.5 by a Director is encouraged to document the incident and report that information to at least one of the following: (1) a Director; (2) the LTD General Manager or Assistant General Manager; (3) a member of LTD’s Human Resources Department; or (4) the employee’s manager or supervisor. If one of the foregoing individuals receives notice of a potential violation other than through a report from the involved Employee, such as personally observing the conduct or being informed of the conduct by a witness, they shall treat the information as a report under this section and proceed accordingly.

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Designated Persons Responsible for Reports of Potential Director Violation

Supervisors, managers, and Directors who obtain reports of possible violations of Section 100.20.5 shall document the report in writing and submit the documented information to one of the following “Designated Persons” hereby made responsible for receiving such reports, in order of priority listed here: (1) the Board President; or (2) the Board Vice President. If the subject of the report is the Board President and the Board Vice President, the Director shall report the incident to the Board Secretary or Treasurer. Documentation of a report should contain at least the following information: (1) the name and contact information for the complainant; (2) the date of incident(s); (3) the date the report was made or otherwise received by the supervisor, manager or Director; and (4) a summary of the alleged violations of Section 100.20.5.

Upon receipt of a report, the Designated Person should consult with Board counsel to determine whether the alleged misconduct, if true, would in fact constitute a violation of Section 100.20.5. If the Designated Person, in consult with Board counsel, concludes that the alleged conduct, if presumed true, does not rise to the level of violation of Section 100.20.5, the complainant shall be informed in writing of that conclusion and no further action shall be taken in regard to the report. **Upon receipt of a report of misconduct that the Designated Person, in consult with Board counsel, determines would violate Section 100.20.5 if true, the Designated Person shall follow the procedure set forth in Addendum “A” hereto: “Procedure for Handling Complaints of Harassment, Discrimination, Workplace Bullying or Retaliation by a Director.”**

Other Reporting and Remedy Options

Although employees and Directors are encouraged to bring matters to the attention of the appropriate party for prompt resolution, nothing in this policy precludes an employee or Director from seeking remedies for unlawful conduct through the grievance process afforded by state or federal administrative agencies and the courts.

Reporting to the Governor’s Office

In addition to following the **Procedure for Handling Complaints of Harassment, Discrimination, Workplace Bullying or Retaliation by a Director**, the Designated Person shall concurrently forward reports of potential violations of Section 100.20.5 to the Governor’s office. If the complaint is forwarded to the Governor’s office, the Designated Person shall notify the complainant, the Board, and the accused Director that the Governor’s office has been notified. Any notice to the Governor’s office shall confirm the initiation and status of any investigation undertaken by the Board.

Investigations initiated by the Board shall be conducted independently from any investigation the Governor’s office may choose to pursue, unless a majority of the Board votes to discontinue its investigation in light of an investigation being conducted by the Governor’s office.

Cooperation with Investigation and Dishonesty

LTD expects all Employees and Directors to cooperate fully with any investigation. Dishonesty during an investigation is considered unprofessional, and, in some cases, may be a violation of the government ethics under ORS Chapter 244, and may be grounds for recommendation for removal from the Board.

Action on Finding of Violation

If the process undertaken in accordance with Addendum “A” results in the finding of a violation of Section 100.20.5, the Board shall proceed promptly to determine the appropriate action to be taken in accordance with Section 100.20.7, below.

Time Limitations

An Employee who is the subject of or witness to conduct that may violate Section 100.20.5 should report the information as soon as possible in accordance with the reporting procedure set forth herein. Time limitations

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apply to employee claims alleging violations of Oregon law. A complaint alleging a violation of ORS 659A.030, 659A.082, 659A.112 or Section 2 of the Oregon Workforce Fairness Act must be filed with the Oregon Bureau of Industries (BOLI) or in civil court no later than five years after the occurrence of the alleged violation. Civil actions and BOLI complaints alleging unlawful employment actions other than a violation of ORS 659A.030, 659A.082, 659A.112 or Section 2 of the Oregon Workforce Fairness Act must be filed no later than one year after the occurrence of the alleged unlawful employment practice. Filing deadlines differ and are considerably shorter for complaints filed with the federal Equal Employment Opportunity Commission and the federal Department of Labor. Additionally, any individual harmed by a public employer may be required to give advance notice of a claim as required by ORS 30.275.

100.20.7 VIOLATIONS AND DISCIPLINE

Violations

In accordance with Addendum "A", a violation of Section 100.20.5 must be supported by a preponderance of the evidence and must be set forth in an Investigatory Report.

Appropriate Discipline

Upon receipt by Board counsel of an Investigatory Report that contains a finding of a violation, Board counsel shall direct the Board Clerk to issue notice of an executive session meeting of the Board to occur as soon as reasonably possible. Board counsel shall provide all Directors with a copy of the Investigation Report in that executive session. Directors who receive a copy of the Investigatory Report shall not distribute or disclose the contents of the Report to any person or entity unless and until such document or information becomes public information. Board counsel shall collect and maintain all copies of the Investigatory Report upon the conclusion of the executive session.

After the Directors review of the Investigatory Report, the accused Director shall be allowed a reasonable opportunity to make a statement to their fellow Directors related to the sustained violation(s) before being excused from the executive session. Board counsel shall then make a recommendation to the remaining Directors regarding proposed discipline, if any. The remaining Directors shall then deliberate on the appropriate discipline, if any, for the accused Director. The appropriate discipline shall depend on the nature and seriousness of the violation, and it shall reflect LTD's commitment to prevent discrimination, harassment, and retaliation by taking prompt, appropriate action in the face of a violation. A vote on the proposed discipline, if any, shall occur in open session, with the accused Director(s) present but abstaining from the vote. If the proposal for discipline is passed, it shall be implemented immediately. A copy of the disciplinary measure shall be sent to the Governor's office by the Designated Person. If the Board votes to request removal of the Director from the Board, the accused Director shall be given the opportunity to resign in lieu of a request to the Governor's office that the accused Director be removed.

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ADDENDUM "A"

Procedure for Handling Complaints of Harassment, Discrimination, Workplace Bullying or Retaliation by a Director

Upon receipt of a report of a Director's conduct which, if true, would violate of Section 100.20.5 of the Discrimination and Harassment Policy, the Designated Person shall do the following, in consultation with Board counsel.

1. The Designated Person shall prepare and deliver written notice of the report to the accused Director. The notice shall:

- provide a brief narrative of the reported complaint;
- include a copy of this policy, including Addendum "A";
- remind the Director of their obligation to continue following this policy,
- inform the Director that an investigation into the reported complaint has been commenced and encourage the Director to maintain the confidentiality of the process;
- inform the Director that they are required to participate in the investigatory process, including providing any requested documentation and/or respond to questions; and,
- remind the Director that Board counsel cannot advise them during the investigatory process and inform them of their right to consult with personal counsel of their choice, at their own expense.

2. The Designated Person will prepare and deliver written notice to the complainant that an investigation into their report has been commenced, providing them with a copy of this policy, including Addendum "A", and reminding them that reasonable efforts should be taken to maintain the confidentiality of the process while the investigation is pending.

3. If deemed necessary under the circumstances, the Designated Person shall consult with LTD Human Resources, the LTD General Manager, and the complainant's supervisor regarding any actions that should be taken to protect the complainant during the pendency of the investigation and, if determined to be necessary, instruct the appropriate persons to take such actions.

4. The Designated Person, in consultation with Board counsel, shall identify and engage an experienced employment law attorney to conduct an investigation of the report and to prepare an Investigatory Report. The identity of the complainant and the Director shall be disclosed to the potential investigator prior to engagement to determine if either is personally known to the investigator. If either the complainant or the Director is personally known to the investigator, regardless of how or to what extent, that investigator shall not be engaged to conduct the investigation. LTD General Manager or their designee shall execute the necessary documents to engage the investigator who is ultimately selected by the Designated Person.

5. The Designated Person shall provide to the engaged investigator a copy of the written complaint and any additional supporting material provided by the complainant, the contact information for the person who will assist the investigator in arranging witness interviews and gathering requested documentation, and the requested timeline for completion of the investigation and Investigatory Report. The Designated Person and/or Board counsel will also inform the investigator in writing of the following:

- the defined scope of the investigation, if not clear from the complainant's report, which will be limited to allegations raised in the complainant's report;
- that the investigator is to include in the Investigatory Report all credible facts discovered during the investigation that relate to the complaint(s), regardless of whether the credible facts can be reconciled with one another or whether they support the investigator's ultimate factual findings;
- that the investigator is to make ultimate factual findings regarding the material issues in the complaint(s) and that such findings must be supported by a preponderance of the evidence discovered in the investigation; and,
- that the investigator must determine, based on their ultimate factual findings, whether or not the

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accused Director has violated Section 100.20.5. If the finding is that they have, the investigator must identify which provision or provisions of Section 100.20.5 has been violated.

6. Board Counsel shall receive the completed, unfinalized Investigatory Report from the investigator. Board counsel will review the unfinalized Report only to determine that the investigator has fully complied with the obligations set forth in number 5, above. Upon this review, Board counsel will either accept the Report as final or will send it back to the investigator with instruction to complete one or more of the steps set forth in number 5. If the latter, Board counsel will provide a copy of this communication to the Board and LTD General Manager, but not a copy of the unfinalized report. Board counsel shall not instruct, direct, seek changes or otherwise comment to the investigator on the substantive content of the unfinalized report. Board counsel shall notify the Board upon receipt of the finalized Investigatory Report and direct the Clerk of the Board to set and provide notice for an executive session.

7. All communication between the Designated Person/Board counsel and the engaged investigator shall be in writing.