



## RESOLUTION 2020-071

### AMENDING THE CITY OF SHERWOOD'S HARASSMENT, DISCRIMINATION, AND RETALIATION POLICY AND REPORTING PROCEDURES

**WHEREAS**, in 2019, the Oregon Legislature enacted Senate Bills (SB) 479 and 726; and

**WHEREAS**, said legislation requires numerous changes to the City's personnel policies relating to harassment, discrimination, and retaliation; and

**WHEREAS**, staff has prepared an amended policy, attached hereto as Exhibit 1, reflecting the required changes; and

**WHEREAS**, City Council has reviewed the attached policy and found that adoption of this policy is necessary and appropriate.

#### **NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:**

**Section 1.** The Harassment, Discrimination, and Retaliation Policy and Reporting Procedures, attached hereto as Exhibit 1, is hereby approved. All prior policies regarding the subject matter thereof are hereby repealed and replaced in their entirety.

**Section 2.** This Resolution shall be effective upon its approval and adoption.

**Duly passed by the City Council this 6<sup>th</sup> of October, 2020.**

  
\_\_\_\_\_  
Keith Mays, Mayor

Attest:

  
\_\_\_\_\_  
Sylvia Murphy, MMC, City Recorder



## **HARASSMENT, DISCRIMINATION, AND RETALIATION POLICY AND REPORTING PROCEDURE**

### **I PURPOSE**

To establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in City of Sherwood workplaces; to define those terms; and to set forth a procedure for investigating and resolving complaints. The City encourages all individuals to report, as soon as possible, any conduct that is believed to violate this Policy.

### **II SCOPE**

This policy protects all employees, volunteers, interns, and elected officials against conduct that is in violation of the policy, whether such conduct is by an employee, volunteer, intern, or elected official, or by a third party such as a vendor or customer. Employees, volunteers, interns, and elected officials alike are expected to adhere to and enforce this policy. Failure to do so may result in discipline, up to and including termination, for employees, volunteers, and interns, and may result in such corrective action as may be lawful and deemed appropriate by City Council for elected officials.

This policy applies to all aspects of the employment relationship including but not limited to, recruitment, hiring, compensation, promotion, demotion, transfer, disciplinary action, layoff, recall, and termination of employment—and similar aspects of the relationship as applicable for volunteers, interns, and elected officials.

### **III POLICY**

It is the policy of the City of Sherwood to provide equal employment opportunity to all qualified employees and applicants and a work setting free from all forms of unlawful discrimination, including harassment, on the basis of race, color, religion, gender identity, sex, pregnancy (including childbirth and related medical conditions), sexual orientation, national origin, age, disability, genetic information, domestic violence victim status, uniformed service, marital status, expunged juvenile record, any other status protected by applicable federal, Oregon, or local law, or association with other persons based on the foregoing. The City also recognizes an employee's right to engage in protected activity under Oregon and federal law, as discussed in various policies below, and will not retaliate against an employee for engaging in protected activity.

All employees, volunteers, interns, and elected officials are encouraged to discuss this policy with

their supervisor or Human Resources, as applicable, at any time if they have questions relating to the issues of harassment, or discrimination, or what it means to work in a respectful workplace.

#### **A. Statement Regarding Pay Equity**

The City supports Oregon's Pay Equity Law and federal and Oregon laws prohibiting discrimination between employees on the basis of a protected class (as defined by Oregon law) in the payment of wages or other compensation for work of comparable character. Employees who believe they are receiving wages or other compensation at a rate less than that at which the City pays wages or other compensation to other employees for work of comparable character are encouraged to discuss the issue with their supervisor.

#### **B. No Harassment**

The City prohibits harassment and sexual assault of any kind in the workplace, and harassment and sexual assault outside of the workplace that violates its employees', volunteers', interns', and elected officials' right to work in a harassment-free workplace. Specifically, the City prohibits harassment and other specified conduct related to an individual's race, color, religion, gender identity, sex, pregnancy (including childbirth and related medical conditions), sexual orientation, national origin, age, disability, genetic information, domestic violence victim status, uniformed service, marital status, expunged juvenile record, any other protected status or activity recognized under Oregon, federal or local law, and association with other persons based on the foregoing. Additionally, the City prohibits sexual assault, which means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat, or intimidation.

Each member of management is responsible for creating an atmosphere free of discrimination, harassment, sexual assault. Further, all employees, volunteers, interns, and elected officials are responsible for respecting the rights of others and refraining from conduct prohibited by this policy, regardless of the circumstances, and regardless of whether others participate in the conduct or did not appear to be offended.

This policy applies to and prohibits sexual and other forms of harassment that occur during working hours, in the workplace, during City related or sponsored events or trips (such as conferences or other work-related travel), and during non-working hours when that off-duty conduct is between an employer and employee or creates an unlawful hostile work environment.

Harassment includes verbal, written, or physical conduct that demeans or shows hostility or aversion toward an individual because of that individual's race, color, religion, gender identity, sex, pregnancy (including childbirth and related medical conditions), sexual orientation, national origin, age, disability, genetic information, domestic violence victim status, uniformed service, marital status, expunged juvenile record, and any other protected status or activity recognized under Oregon, federal or local law., and that (1) has the purpose or effect of creating an intimidating, hostile or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to, the following:

- Jokes, pictures (including drawings), epithets, slurs;
- Negative stereotyping, demeaning comments or labels;
- Criticizing or making fun of another person's religious beliefs, or "pushing" your religious beliefs on others;
- Threatening, intimidating, or hostile acts that relate to a protected class or protected activity;
- "Teasing" or mimicking the characteristics of someone with a physical or mental disability;
- Written or graphic material that demeans or shows hostility or aversion toward an individual or group because of protected status.

These are just a few examples; this is not a complete list. All employees, volunteers, interns, and elected officials are expected to exercise common sense and refrain from other similar kinds of conduct.

### ***Sexual Harassment***

Sexual harassment is a form of gender (sex) discrimination. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature (regardless of whether such conduct is "welcome"), 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.

Sexual harassment includes, but is not limited to:

- Unwanted sexual advances;
- Demands for sexual favors in exchange for favorable treatment or continued employment;
- Sexual jokes;
- Flirtations;
- Advances or propositions;
- Verbal abuse of a sexual nature;
- Comments about an individual's body, sexual prowess, or deficiency;
- Talking about your sex life or asking other questions about theirs;
- Leering or whistling;
- Unwelcome touching or assault;
- Sexually suggestive, insulting, or obscene comments or gestures;
- Displays of sexually suggestive objects or pictures;
- Making derogatory remarks about individuals who are gay, lesbian, bisexual or transgender;
- Discriminatory treatment based on sex.

These are just a few examples; this is not a complete list. All employees, volunteers, interns, and elected officials are expected to exercise common sense and refrain from other similar kinds of conduct.

## ***Harassment Complaint/Reporting Procedure***

Any employees, volunteers, interns, or elected officials who believe that they have been the subject of sexual assault, harassment, or discrimination in violation of this policy are expected to and should report the circumstances verbally or in writing to any one or more of the following: Human Resources, the City Manager, any supervisor or member of management, or the City Attorney as soon as possible. Complaints must be filed within four (4) years of the date of the alleged incident or within the time limits established under ORS 659A.875, whichever is a longer period of time. Documenting the information or incident in a written or electronic form is strongly encouraged for the person who believes they have been subject to sexual assault, harassment, or discrimination, and is mandatory for any person listed above who receives such a report. It is not necessary to first contact an immediate supervisor prior to contacting Human Resources, the City Manager, the City Attorney, or another member of management.

In addition, any employees, volunteers, interns, or elected officials who observe any conduct that they believe constitutes sexual assault, harassment, or discrimination, or who receive information about these types of incidents that may have occurred, must immediately report the matter as described above.

Employees, volunteers, interns, and elected officials who experience or witness harassment, are encouraged, but not required, to tell the harasser that the behavior is offensive and unwanted, and that they want it to stop.

## ***Investigation and Confidentiality***

All complaints and reports will be promptly, thoroughly and impartially investigated and confidentiality will be maintained to the extent possible, consistent with the City's need to conduct an adequate investigation and to take prompt, appropriate corrective action to rectify any harassment in violation of this policy which is found to have taken place. Records of complaints and reports will be maintained for at least the period of time required by law. The City will contact the victim of any alleged harassment at least once every three months until the end of the calendar year following the date the complaint or report was received in order to determine whether the alleged harassment has stopped and whether the person has been subjected to retaliation, unless the person requests in writing that the City not do so.

Employees who have been subjected to harassment, sexual assault, or discrimination are encouraged to use the City's complaint-reporting procedure, described above, to ensure a timely, thorough investigation and handling of the situation. Employees may, however, seek redress from the Oregon Bureau of Labor and Industries (BOLI) pursuant to ORS 659A.820 to 659A.865, or in a court under any other available law, whether criminal or civil. Although the City cannot provide employees with legal advice, employees should be aware of the statute of limitations applicable to harassment or discrimination claims under ORS 659A.030, 659A.082 or 659A.121 (five years). Further, before an employee can take any legal action against the City, the employee must generally provide written notice of the claim within 180 days of the act or omission the employee claims have caused harm (ORS 30.275). When an employee can prove harm as a result of unlawful harassment or discrimination in an administrative proceeding or in a court, remedies available to the employee include enforcement of a right, imposition of a penalty, or issuance of

an order to the employee's employer (in limited circumstances).

### ***Protection Against Retaliation***

The City prohibits retaliation in any way against an employee, volunteer, intern, or elected official because such individual has made a good-faith complaint pursuant to this policy or the law, has reported (in good faith) sexual assault, harassment, discriminatory conduct, or has participated in an investigation of such conduct.

Employees, volunteers, interns, and elected officials who believe they have been retaliated against in violation of this policy should immediately report the retaliation to Human Resources, the City Manager, any supervisor or member of management, or the City Attorney. Any employee, volunteer, or intern who is found to have retaliated against another individual in violation of this policy will be subject to disciplinary action up to and including termination. An elected official who violates this policy may be subject to such corrective action as may be lawful and deemed appropriate by City Council.

### ***Other Resources Available***

The City provides an Employee Assistance Program (EAP) to employees and dependents who are enrolled in the City's medical coverage. The EAP program provides confidential counseling services and educational tools such as resources relating to eldercare, childcare, legal consultation, financial coaching, identity theft, and others. Contact Human Resources for further information.

The City cannot provide legal resources to its employees or referrals to specific attorneys. Employees may contact the Oregon State Bar for more information: <https://www.osbar.org/public/>.

### ***Other Rights***

Nothing in this policy is intended to diminish or discourage an individual who has experienced workplace harassment or discrimination, or sexual assault, from talking about or disclosing the experience.

The City is committed to creating and maintaining a workplace free of sexual assault, harassment, discrimination, and retaliation and it has confidence in the process it has developed for addressing good-faith complaints. However, Oregon law requires the City to inform employees that if they have been aggrieved by workplace harassment, discrimination or sexual assault and want to enter into an agreement with the City regarding the experience and/or employment status, the employee should contact Human Resources. The employee's request to enter into such an agreement must be in writing (email or text is acceptable). Requests of this nature will be considered on a case-by-case basis; such agreements are not appropriate for every situation. If the City and employee do reach an agreement, the City will not require an employee to enter into a nondisclosure agreement (which would prohibit the employee from discussing or communicating about the experiences in the workplace or the terms of the agreement) or a non-disparagement agreement (which would prohibit the employee from speaking slightly about the City or making comments that would lower the City in rank or reputation) or a no-rehire

agreement (which would prohibit the employee from seeking reemployment with the City). If, however, the employee makes a request for an agreement under this paragraph, nondisclosure, non-disparagement, and no-rehire are terms that the City and the employee may agree to. The employee will have seven days to revoke the agreement after signing it.

### **C. Disability Accommodation**

The City is committed to complying fully with the Americans with Disabilities Act (ADA) and Oregon's disability accommodation and anti-discrimination laws. We are also committed to ensuring equal opportunity in employment for qualified persons with disabilities.

#### ***Accommodations***

The City will make reasonable efforts to accommodate a qualified applicant or employee, volunteer, intern, or elected official with a known disability, unless such accommodation creates an undue hardship on the operations of the City.

#### ***Requesting an Accommodation***

A reasonable accommodation is any change or adjustment to a job or work environment that does not cause an undue hardship on the department or unit (or, in some cases, the City) and that permits a qualified applicant or employee, volunteer, intern, or elected official with a disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges equal to those enjoyed by those without disabilities. For example, a reasonable accommodation may include providing or modifying equipment or devices, job restructuring, allowing part-time or modified work schedules, reassigning an individual, adjusting or modifying examinations or training materials provided by the City, providing readers and interpreters, or making the workplace readily accessible to and usable by people with disabilities.

Employees, volunteers, interns, and elected officials should request an accommodation as soon as it becomes apparent that a reasonable accommodation may be necessary to enable them to perform the essential duties of a position.

All requests for accommodation should be made with the immediate supervisor and/or Human Resources and should specify which essential functions cannot be performed without a reasonable accommodation. In most cases, the requester will need to secure medical verification of the need for a reasonable accommodation. Both the City and the requester must monitor the accommodation situation and make adjustments as needed.

### **D. Pregnancy Accommodation**

Employees and interns who are concerned that their pregnancy, childbirth, or a related medical condition (including lactation) will impact their ability to work should contact their supervisor to discuss their options for continuing to work and, if necessary, leave of absence options. The City will provide one or more reasonable accommodations pursuant to this policy for employees and interns with known limitations unless such accommodations impose an undue hardship on the City's operations.

Although this policy refers to “employees and interns,” the City will apply this policy equally to an applicant with known limitations caused by pregnancy, childbirth or a related medical condition.

### ***Requesting a Pregnancy-Related Accommodation***

Employees and interns who are concerned that their pregnancy, childbirth or a related medical condition will limit their ability to perform their duties should request an accommodation as soon as it becomes apparent that a reasonable accommodation may be necessary to enable them to work. All requests for accommodation should be made with an immediate supervisor and should specify which essential functions of the job cannot be performed without a reasonable accommodation. In most cases, information from the requester’s medical provider may be needed to assist the City and the employee or intern in finding an effective accommodation, or to verify the need for an accommodation. Both the City and employee or intern must monitor the accommodation situation and make adjustments as needed.

### ***No Discrimination, No Retaliation***

The City prohibits retaliation or discrimination against any employee, volunteer, intern, or elected official who, under this policy: (1) asked for information about or requested accommodations; (2) used accommodations provided by the City; or (3) needed an accommodation.

Anyone who asks about, requests, or uses accommodations under this policy and applicable Oregon law has the right to refuse an accommodation that is unnecessary for them to perform the essential functions of the job or when they do not have a known limitation. Under Oregon law, the City cannot require an employee to use sick leave, FMLA or OFLA if a reasonable accommodation can be made that does not impose an undue hardship on the operations of the City. Also, no employee will be denied employment opportunities if the denial is based on the need of the City to make reasonable accommodations under this policy.

### ***Leave of Absence Options for Pregnant Employees***

Employees who are pregnant or experiencing pregnancy-related medical conditions should also be aware of their leave of absence options under Oregon’s sick leave law, the Oregon Family Leave Act, and the Family Medical Leave Act.

## **E. Reporting Improper or Unlawful Conduct**

Employees may report reasonable concerns about the City’s compliance with any law, regulation or policy, using one of the methods identified in this policy. The City will not retaliate against employees who disclose information that the employee reasonably believes is evidence of:

- A violation of any federal, Oregon, or local law, rule, or regulation by the City;
- Mismanagement, gross waste of funds, or abuse of authority;
- A substantial and specific danger to public health and safety resulting from actions of the City;  
or
- The fact that a recipient of government services is subject to a felony or misdemeanor arrest

warrant.

Further, in accordance with Oregon law, the City will not prohibit an employee from discussing the activities of a public body or a person authorized to act on behalf of a public body with a member of the Legislative Assembly, legislative committee staff acting under the direction of a member of the Legislative Assembly, any member of the elected governing body of a political subdivision, or an elected auditor of a city, county, or metropolitan service district.

### ***Employee Reporting Options***

Employees who wish to report improper or unlawful conduct should first talk to their supervisor. If the employee's supervisor is implicated in the alleged misconduct, the employee is not comfortable speaking with their supervisor, or is not satisfied with their supervisor's response, the employee is encouraged to speak with Human Resources. Supervisors and managers are required to inform Human Resources about reports of improper or unlawful conduct they receive from employees.

Reports of unlawful or improper conduct will be kept confidential to the extent allowed by law and consistent with the need to conduct an impartial and efficient investigation.

If the City were to prohibit, discipline, or threaten to discipline an employee for engaging in an activity described above, the employee could file a complaint with the Oregon Bureau of Labor and Industries or bring a civil action in court to secure all remedies provided for under applicable law.

### ***Additional Protection for Reporting Employees***

Oregon law provides that, in some circumstances, an employee who discloses a good faith and objectively reasonable belief of the City's violation of law will have an "affirmative defense" to any civil or criminal charges related to the disclosure. For this defense to apply, the employee's disclosure must relate to the conduct of their coworker or supervisor acting within the course and scope of their employment. The disclosure must have been made to: (1) a state or federal regulatory agency; (2) a law enforcement agency; (3) a manager with the City; or (4) an Oregon-licensed attorney who represents the employee making the report/disclosure. The defense also only applies in situations where the information disclosed was lawfully accessed by the reporting employee.

### ***Policy Against Retaliation***

The City will not retaliate against employees who make reports or disclosures of information of the type described above when the employees reasonably believe they are disclosing information about conduct that is improper or unlawful, and lawfully accessed information related to the violation (including information that is exempt from disclosure as provided in Oregon law or by City policy).

In addition, the City prohibits retaliation against employees because they participate in good faith in any investigation or proceeding resulting from a report made pursuant to this policy. Further,

no City employee will be adversely affected because they refused to carry out a directive that constitutes fraud or is a violation of local, Oregon, federal or other applicable laws and regulations. The City may take disciplinary action (up to and including termination of employment) against an employee who has engaged in retaliatory conduct in violation of this policy.

This policy is not intended to protect an employee from the consequences of their own misconduct or inadequate performance simply by reporting the misconduct or inadequate performance. Furthermore, an employee is not entitled to protections under this policy if the City determines that the report was known to be false, or information was disclosed with reckless disregard for its truth or falsity. If such a determination is made, an employee may be subject to discipline up to and including termination of employment.

**F. Dissemination of Policy**

All employees will receive a copy of this Policy when they are hired, and all volunteers, interns, and elected officials will receive a copy of this Policy when they start their position with the City. The Policy may be updated from time to time and redistributed. If an employee, volunteer, intern, or elected official discloses concerns about workplace harassment in accordance with this policy the person receiving the report shall, at the time of disclosure, provide a copy of this policy.

**POLICY APPROVAL**

Human Resources Manager: \_\_\_\_\_

Date: \_\_\_\_\_

City Manager: \_\_\_\_\_

Date: \_\_\_\_\_

City Council Resolution No. (if applicable): \_\_\_\_\_

Effective Date: \_\_\_\_\_



## **RECEIPT OF HARASSMENT, DISCRIMINATION & RETALIATION POLICY AND REPORTING PROCEDURE**

I have received a copy of the City of Sherwood's harassment, discrimination & retaliation policy and reporting procedure. I understand that this policy constitutes "zero tolerance" policy regarding harassment, discrimination, and retaliation.

I understand that by signing this receipt, I acknowledge the City's zero tolerance of harassment, discrimination, and retaliation for making a complaint and agree to abide by all terms of this policy. I also understand that the City has a complaint process, which I may use to report harassment, discrimination, and retaliation, and that the complaint process is described in this Policy.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**CITY OF SHERWOOD  
HUMAN RESOURCES DEPARTMENT**

**Harassment, Discrimination, & Retaliation Reporting Form**

Person Reporting Incident: \_\_\_\_\_ Department: \_\_\_\_\_

Date/Time of Incident: \_\_\_\_\_ Location: \_\_\_\_\_

Other Persons Involved: \_\_\_\_\_

Witness(es): \_\_\_\_\_

Witness(es) phone number(s): \_\_\_\_\_

**NATURE OF COMPLAINT:**  Race  Color  Religion  Gender Identity  Sex  Pregnancy  
(including childbirth and related medical conditions)  
 Sexual Orientation  National Origin  Age  Disability  Genetic Information  Domestic  
Violence Victim Status  Uniformed Service  Marital Status  Expunged Juvenile Record   
Association with Other Persons Based on the Foregoing (Check Other Applicable Box(es))  Other \_\_\_\_\_

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a) Fully describe incident:

b) Incident caused by:

Signature: \_\_\_\_\_  
(Person Reporting Incident)

Date: \_\_\_\_\_

Position/Title: \_\_\_\_\_

Work Phone No.: \_\_\_\_\_