

Administrative Policies and Procedures Manual

City of Tallahassee Policy on Harassment & Discrimination



Department: Diversity & Inclusion

Date: 11/2022

No. 1201

PREAMBLE

The main goal of this policy is to prevent discrimination and harassment within the City of Tallahassee. The City of Tallahassee is committed to providing a workplace free from discrimination and harassment and maintaining an environment that recognizes the inherent worth and dignity of every individual; fosters tolerance, sensitivity, understanding, and mutual respect; and encourages its employees, volunteers, customers, and vendors to strive to reach their potential. The City will not tolerate any form of proscribed discrimination or harassment, nor will it tolerate any form of retaliation against employees or other individuals who complain about discrimination or harassment or who participate in any resulting investigation. All employees, officials, volunteers, vendors, independent contractors, and recipients of and participants in City services shall receive notice of this policy. Any employee who perceives that they are a victim of discrimination or harassment is strongly encouraged to take advantage of this policy.

1201.01 STATEMENT OF POLICY

The City of Tallahassee is committed to maintaining a workplace free of any discrimination, harassment, or retaliation. The City strictly forbids and will not tolerate discrimination or harassment against any employee, vendor, volunteer, independent contractor, or recipient of or participant in City services, on the basis of an individual's race, color, sex, gender, religion, national origin, age, disability, marital status, pregnancy, sexual orientation, gender identity or expression, genetic information, or any other characteristic protected by law. Further, the City will not tolerate any form of retaliation directed against an employee or other individual who complains about such discrimination or harassment or who participates in any investigation concerning discrimination or harassment.

1201.02 AUTHORITY

Authority for the provisions of this policy is found in (1) state and federal laws prohibiting harassment and discrimination based on an individual's protected characteristics, as well as prohibiting retaliation for opposing such discrimination or participating in an investigation about discrimination or harassment; and (2) City Commission policies prohibiting harassment and discrimination based on sexual orientation, gender identity or expression, or any other characteristic protected by law.

1201.03 SCOPE AND APPLICABILITY

This policy applies to all elected officials, appointed officials, City employees, vendors, independent contractors, volunteers, and recipients of or participants in City services.

1201.04 DEFINITIONS

HARASSMENT: For purposes of this policy, "harassment" is any unwelcome verbal or physical conduct that denigrates or shows hostility or aversion toward an individual, or is

designed to threaten, intimidate, or coerce an individual because of a protected characteristic as defined in this policy, and:

1. Enduring the offensive conduct becomes a condition of continued employment, or
2. The conduct is severe or pervasive enough to create a work environment that a reasonable individual would consider intimidating, hostile, or abusive. Petty slights, annoyances, and isolated incidents, unless extremely serious, will not constitute unlawful harassment under this policy.

SEXUAL HARASSMENT: Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when

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

Incidents of sexual harassment may involve individuals of the same or different sex. The harassment may involve individuals having equal or unequal power, authority, or influence. Sexual harassment, as defined above, may include, but is not limited to:

1. Unwelcome sexual advances, flirtations, or propositions, or persistent requests for dates;
2. Actual or implied demands for sexual favors in exchange for favorable treatment, continued employment, or to avoid unfavorable treatment;
3. Threats and/or demands to submit to sexual requests in order to obtain or retain any employment benefit;
4. Verbal conduct such as epithets; derogatory or obscene comments; slurs; sexual invitations; sexual jokes; propositions; suggestive, insulting, or obscene comments or gestures; audio productions or reproductions; verbal harassment or abuse; pressure for sexual activity; or other verbal abuse of a sexual nature;
5. Graphic verbal commentary about an individual's body, sexual prowess, attractiveness, or sexual deficiencies;
6. Any display in the workplace of sexually suggestive objects, pictures, videotapes, films, posters, reading material, screen savers, web pages, faxing, e-mail, or other items;
7. A coerced or forced sexual act or assault;
8. Uninvited physical contact of a sexual nature such as pinching, grabbing, patting, tickling, cornering, brushing up against, hugging, fondling, or kissing another individual, or other unwelcome or inappropriate touching;

9. Uninvited leering, whistling, or gestures of a sexual nature;
10. Uninvited or unwelcome terms of endearment such as “honey,” “dear,” or “sweetheart.”

Normal, courteous, mutually respectful, pleasant, noncoercive interactions between employees, *which are acceptable to and welcomed by both parties*, are not considered to be harassment, including sexual harassment.

RACIAL AND OTHER HARASSMENT: Harassment on the basis of race or any other protected characteristic may include, but is not limited to, the following:

1. Verbal conduct such as epithets, suggestive comments, off-color language or jokes, slurs, insulting or obscene comments or gestures, audio productions or reproductions, or verbal harassment or abuse that is based upon a protected characteristic;
2. Spreading gossip about an individual because of that individual’s protected characteristic;
3. Unwanted comments (serious or humorous) directed at an individual or about an individual that refer or relate to his or her protected characteristic;
4. Unwanted, suggestive, and/or denigrating letters or emails, or unwanted, suggestive telephone calls to an individual on the basis or because of that individual’s protected characteristic;
5. Any comments referencing an individual’s protected characteristic in employment practices that is of a derogatory or denigrating nature.
6. Any display in the workplace of racial or otherwise offensive or suggestive objects, pictures, videotapes, films, posters, reading material, screen savers, web pages, faxing, e-mail, or other items.

DISCRIMINATION: For the purposes of this policy, “discrimination” is any adverse action denying full and equal treatment in the provision of services or in the terms and conditions of employment. Discrimination means any practice prohibited by any state, federal, or local law, rule, or ordinance. Examples of prohibited employment practices include, but are not limited to:

1. Discharging or refusing to hire an individual based on any protected characteristic described in this policy;
2. Disciplining or rewarding an individual based on any protected characteristic described in this policy; or
3. Treating an individual less favorably with respect to compensation or terms, conditions, or privileges of employment based on any protected characteristic described in this policy.

PROTECTED CHARACTERISTIC: For the purposes of this policy, “protected characteristic” refers to an individual’s race, color, sex, gender, religion, national origin,

age, disability, marital status, pregnancy, sexual orientation, gender identity or expression, genetic information, or any other characteristic protected by law.

EQUAL OPPORTUNITY OFFICER: The City's Equal Opportunity (EO) Officer is the Chief Diversity Officer located in the Office of Diversity & Inclusion (D&I). The Chief Diversity Officer is responsible for processing and investigating all complaints of discrimination and harassment, as well as providing guidance on equal opportunity matters to appointed officials, managers, supervisors, and employees. The Chief Diversity Officer may designate other employees in D&I to investigate complaints and carry out other responsibilities related to this policy.

1201.05 RESPONSIBILITIES OF MANAGEMENT AND EMPLOYEES

- A. Managers' and Supervisors' Responsibilities:** Each manager and supervisor shall be responsible for preventing acts of harassment and discrimination and utilizing this policy in the event such conduct is reported. These responsibilities include:
1. Expressing strong disapproval of all forms of discrimination and harassment;
 2. Monitoring the work environment in the unit on a continuous basis for signs that discrimination or harassment may be occurring;
 3. Informing and reminding, when necessary and appropriate, all employees of the types of behavior prohibited and of the City's policy for reporting and resolving complaints of discrimination or harassment;
 4. Stopping any observed acts of possible discrimination, harassment, or retaliation, and taking appropriate steps to intervene, whether or not the involved employees are within his/her line of supervision;
 5. Reporting any observed acts of possible discrimination, harassment, or retaliation to the next level supervisor or manager (unless that individual is the offending party), or the Chief Diversity Officer or other D&I employee if the offensive behavior continues after his or her attempts to stop it;
 6. Taking immediate action to prevent retaliation against the complainant or a participant in an investigation; and
 7. Taking immediate action to eliminate any hostile work environment where there has been a report of harassment.

Failure to carry out these responsibilities will be considered in any evaluation or promotional decision and may be grounds for discipline, up to and including dismissal.

Each manager and supervisor shall provide assistance to any City employee who comes to that manager or supervisor with a report of discrimination or harassment by documenting and filing the report in accordance with section 1201.06 of this policy.

Administrative Policies and Procedures Manual	Number: 1201
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- B. Employee’s Responsibilities:** Each employee is responsible for assisting in the prevention of discrimination and harassment by:
1. Refraining from participating in or encouraging actions that could be perceived as discrimination or harassment;
 2. Promptly reporting acts of discrimination or harassment to a supervisor (or the next level supervisor if the supervisor is the offending party), manager, or D&I; and
 3. Encouraging any employee who confides that he or she is being harassed or discriminated against to report these acts to a supervisor, manager, or the Chief Diversity Office or other D&I employee.

All new employees, whether permanent, OPS, or temporary, must attend training on this policy within 90 days of their effective hire date. In addition, all employees must attend refresher training on this policy every two (2) years thereafter for the duration of their employment.

1201.06 COMPLAINT REPORTING AND INVESTIGATING

- A.** Any individual encountering discrimination, harassment, or retaliation is encouraged to inform the offending individual that their actions are unwelcome and offensive.
- B.** An individual who believes they have been discriminated against, harassed, or otherwise aggrieved by a violation of this policy **MUST** report the offending conduct, either orally or in writing, to one of the following individuals: the complainant’s direct supervisor or the supervisor of the area providing the services; the Department Director; or the Chief Diversity Officer or other D&I employee.

If any of the above individuals is the offending party, or it is impractical to disclose the matter to him/her, then the next higher-level official, and/or D&I shall be notified.

An individual who wishes to make a complaint of discrimination or harassment is not required to follow the chain of command and may choose to make his or her complaint directly to the Chief Diversity Officer or other D&I employee.

- C.** As soon as practical upon receiving an oral report, and immediately after receiving a written report, the supervisor, Department Director, or the Chief Diversity Officer or designated D&I employee shall provide the complainant with a copy of the City’s Anti-Harassment and Discrimination Policy and advise the complainant that they can either (1) enter the D&I Mediation Program or (2) fill out a Complaint Intake Form and file it with D&I.

- D.** If an individual reporting harassment or discrimination does not wish to file a written complaint, the supervisor, Department Director, or the Chief Diversity Officer or designated D&I employee receiving the information shall refer the individual to the D&I Mediation Program. The individual shall be required to submit a signed written statement indicating that they do not wish to file a complaint.
- E.** As soon as possible after receiving an oral or written report of possible discrimination, harassment, or retaliation, the supervisor, Department Director, or the Chief Diversity Officer or designated D&I employee shall complete a Complaint Intake Form, attach any written documentation from the complainant, and have the complainant sign the form. Should the complainant refuse to sign the form, a record of such refusal shall be made on the form. The completed form and attachments, or a copy thereof, shall be transmitted immediately to D&I. *In addition, the recipient of the complaint form shall immediately notify D&I of the complaint upon receiving it.* The Chief Diversity Officer or designated D&I employee shall notify the affected Department Director of the complaint.
- F.** Upon receipt of a completed complaint form, the Chief Diversity Officer or designated D&I employee shall assess the allegations in the complaint and consult with the Director of the affected Department to determine whether the complaint includes an allegation that falls under D&I’s jurisdiction and, if so, determine what temporary, remedial measures, if any, should be taken under the circumstances.
- G.** The Chief Diversity Officer or designated D&I employee shall take action within five (5) working days from receipt of the complaint. Actions may include, but are not limited to, facilitation of an informal resolution, mediation of the dispute, or investigation. All employees are encouraged to document all incidents of alleged harassment, discrimination, or retaliation to provide the fullest basis for any subsequent investigation.
- H. Formal Investigation Process**
1. Upon determining that a complaint includes an allegation that falls under D&I’s jurisdiction, D&I shall immediately initiate an investigation of the complaint. When conducting an investigation of a complaint of harassment, discrimination, or retaliation involving sworn Police or Fire personnel, the respective bill of rights shall be observed. Depending on the nature of the violation, the City Manager may refer the investigation to the appropriate authority.
 2. Within 30 days after receipt of the request for a formal investigation of the complaint, unless circumstances warrant additional time, D&I shall confer

with the affected Department Director to review the investigation's preliminary findings and/or to evaluate possible informal resolution of the matter.

3. In determining whether alleged conduct constitutes harassment, discrimination, or retaliation as defined herein, the totality of the circumstances, the nature of the conduct, and the context in which the alleged conduct occurred shall be investigated and considered.
4. The formal investigation of the complaint shall consist of, at a minimum, an interview of the complainant, respondent, and any identified witnesses to the alleged discriminatory conduct. The investigation may also consist of review of documents, including e-mail, identified by D&I as being pertinent to the investigation; onsite visits by D&I to observe the physical location of the alleged discriminatory conduct; review of relevant videotaped footage; and/or interviews of other persons identified by D&I as being pertinent to the investigation.
5. In the event the complaint cannot be resolved informally, D&I shall issue an investigative report with findings as to the nature and substance of the allegations to the affected Department Director. At the same time, D&I will issue a written notice to the complainant and respondent that the investigation has been completed. The notice shall include a statement of the investigative findings.
6. All aspects of the investigation must be completed within 90 days of beginning it, including conducting the investigation, preparing the report of findings, and sending the final investigative report to the affected Department Director. If D&I is unable to complete the investigation in 90 days, timeframe may be extended for good cause. Good cause may exist for a variety of factors, including but not limited to: the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, any need to accommodate the availability of witnesses, or in order to address other legitimate reasons. In the event a time frame is extended, both the complainant and the respondent will be notified of any delay and the anticipated length of the delay.
7. The complainant or respondent may file a response to the investigative report within 15 days from the date the report is issued. The response will be placed in the investigative file with the report and will become part of the case record.
8. The Department Director, in consultation with the Director of Human Resources and Workforce Development or designee and the Office of the City Attorney, will determine if any action and/or disciplinary action is appropriate, based on the findings in the investigative report, and will take the necessary action and/or disciplinary action.

Administrative Policies and Procedures Manual	Number: 1201
--	-----------------

1201.07 TEMPORARY REASSIGNMENT

If a complainant or alleged violator of this policy must be temporarily reassigned during the investigation phase of this process, such transfer or reassignment shall be done in the least disruptive manner to all parties under the circumstances, and, in the case of the complainant, shall not result in the loss of any tangible benefits including salary.

1201.08 CONFIDENTIALITY

All complaints shall remain confidential until (1) a finding is made and issued and all related grievances have concluded; (2) the investigation of the complaint becomes inactive; or (3) the complaint or other record is made part of the official record of any hearing or court proceeding. The City will keep confidential any potential complaint or report from an employee who chooses not to file a complaint and requests that the record of the potential complaint remain confidential to the extent permitted by law.

1201.09 MEDIATION PROCESS

If the complainant and respondent agree to try to mediate the complaint, the Chief Diversity Officer shall assign a qualified mediator upon receipt of the mediation request. The Chief Diversity Officer may engage the services of a qualified mediator outside of D&I. Mediated agreements shall be in writing and signed by all parties, and copies shall be provided to the complainant and the department representative. Referral for investigation shall be made no later than ten (10) working days from the receipt of the complaint by D&I unless mediation is in progress.

1201.10 PENALTY FOR VIOLATION OF THE POLICY

A substantiated charge of discrimination, harassment, or retaliation against an employee shall result in disciplinary action up to and including dismissal, subject to procedural requirements. A substantiated charge of discrimination, harassment, or retaliation against any volunteer, vendor, contractor, or participant in or recipient of City services shall result in appropriate corrective action being taken. Should there be a substantiated charge of discrimination, harassment, or retaliation against an elected official, a recommendation shall be made that the charging party file a charge with the Florida Commission on Human Relations, attaching the substantiated charge.

1201.11 RETALIATION PROHIBITED

Retaliation against any employee for filing a harassment or discrimination complaint, or for assisting, testifying or participating in the investigation of such a complaint, is illegal under state and federal law and is prohibited by this policy. Retaliation is a form of employee misconduct.

1201.12 TIME LIMITS FOR FILING A COMPLAINT

The City of Tallahassee encourages a prompt reporting of complaints so that a prompt response and appropriate action may be taken. A prompt report not only aids the complainant, but it also helps maintain an environment free from harassment and discrimination for all employees. Notwithstanding the City's encouragement, an aggrieved individual should report a complaint of violation of this policy to the supervisor, Department Director, or D&I within thirty (30) days of the most recent alleged violation in order to invoke the provisions of this policy.

In the event an aggrieved individual reports a complaint after thirty (30) days have passed since the most recent alleged violation of this policy, the Chief Diversity Officer or designated D&I employee shall inquire into the circumstances for such delay in reporting the discrimination, harassment, or retaliation and make a determination as to whether the delay was excusable, and if so, how to proceed.

1201.13 FALSE CHARGES

This policy shall not be used to knowingly bring false or malicious charges against any individual(s). Disciplinary action will be taken against any individual found to have brought a charge of discrimination, harassment, or retaliation in bad faith, or any individual who, in bad faith, is found to have encouraged another individual to bring such a charge.

1201.14 FILING A COMPLAINT WITH EEOC or FCHR

All aggrieved individuals are to take advantage of this policy in the event they become victims of discrimination, harassment, and/or retaliation. Further, in keeping with the Equal Employment Opportunity Commission's (EEOC) enforcement guidance, individuals protected under federal or state law are advised of their right to file a complaint with the following agencies:

Florida Commission on Human Relations (FCHR)

4075 Esplanade Way

Room 110

Tallahassee, FL 32399

(850) 488-7082 (phone)

(850) 487-1007 (fax)

fchrinfo@fchr.myflorida.com (email)<http://fchr.myflorida.com>

For those with communication impairments:

The Florida Relay Service – 711

TDD ASCII (800) 955-1339

TDD Baudot (800) 955-8771

Equal Employment Opportunity Commission (EEOC)

Tampa Field Office

501 E. Polk Street

Suite 1000

Tampa, FL 33602

(800) 669-4000 (phone)

(813) 228-2841 (fax)

(800) 669-6820 (TTY)

(844) 234-5122 (ASL video phone)

<https://www.eeoc.gov/>

Filing a complaint with an agency outside of the City will not affect an individual's rights under this policy.

1201.15 EFFECTIVE DATE

April 1, 1994

January 2000

June 2001

March 2010

August 2015

April 2017

June 2021

November 2022