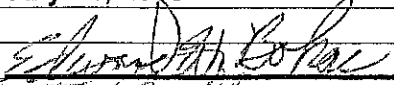
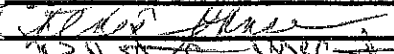



City of Sterling Personnel Policies

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CHAPTER 15

HARASSMENT, DISCRIMINATION, SEXUAL HARASSMENT and HOSTILE WORK ENVIRONMENT

Due to the nature of the complaint investigation process invoked for a complaint or claim of Harassment, Sexual Harassment, Discrimination and a Hostile Work Environment, these topics are grouped into one Chapter for administrative purposes. **The investigation of any complaint under this chapter shall be handled in as confidential a manner as possible.**

SECTION 1 - GENERAL

The desired standard of employee behavior by the City of Sterling is one of cooperation and respect for each other, despite any differences. With this desired standard in place, the City of Sterling will not tolerate employee behaviors which are prohibited by this chapter. Employees who engage in any of these prohibited behaviors/activities are subject to disciplinary action as a violation of city policy.

Supervisors and all City department or division heads are responsible for the conduct of all City employees and visitors to the city facilities. Supervisors or department or division heads who are aware of instances of City employees, or non-employees, engaging in prohibited activities or subjecting employees to prohibited behaviors, and who do not take immediate action to correct the situation will be subject to disciplinary action.

Usually, the conduct or actions of supervisors intended to provide employees with performance evaluations, verbal warnings, reprimands or other actions intended to promote positive performance and a proper order or disciplinary action taken against an employee by a supervisor, Division Superintendent, Department Head, or City Manager does not constitute a hostile work environment.

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SECTION 2 - HARASSMENT POLICY

Be advised that the definitions found in this section are governed by applicable Federal and State laws and may change from time to time.

All employees are prohibited from engaging in the harassment of any other employee or other person in the course of or in connection with employment. Generally, harassment is defined as unwarranted, unwelcome and unwanted verbal or nonverbal conduct which threatens, intimidates, pesters, annoys, or insults another person, where such conduct has the purpose or effect of creating an offensive, intimidating, degrading, or hostile work environment, or interferes with or adversely affects a person's work performance, results in a tangible employment action, or is sufficiently severe or pervasive to alter the conditions of employment.

The following are definitions of particular types of prohibited harassment. This list is not all inclusive and does not necessarily limit the City's inclusion of other types of harassment as prohibited behaviors/activities as specified in Federal and State laws.

Definitions of prohibited harassment:

- A. "Age harassment" means harassment because an individual is 40 years of age or older.
- B. "Disability harassment" means harassment because of an individual's physical or mental impairment that substantially limits one or more of the individual's major life activities, because the individual has a record of such impairment, or because the individual is regarded as having such impairment. "Disability" does not include current illegal use of drugs, or impairment on the job by alcohol.
- C. "Gender harassment" means harassment because of an individual's male or female gender.
- D. "Marital or family status harassment" means harassment because an individual is a parent or non-parent, married, single, divorced, separated, or widowed.
- E. "National origin harassment" means harassment because of an individual's ancestor's place of origin; or because an individual has the physical, cultural, or linguistic characteristics (such as language, accent, or manner of speaking) of a national origin group. Examples of "national origin groups" include but is not limited to Hispanic (i.e., persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin), Pacific Islander, Asian, Eastern, Middle Eastern, and Southern European origin.
- F. "Race/color/ethnic harassment" means harassment because of an individual's race, skin color, or ethnicity. Examples of "race" include, but are not limited to, African American/Black, Caucasian/White, Asian/Pacific Islander, Hispanic, Latino, and Native American.
- G. "Religious harassment" means harassment because of an individual's traditional religious views or moral or ethical beliefs as to what is right and wrong, which beliefs are sincerely held with the strength of traditional religious views.
- H. "Sexual orientation harassment" means harassment because of an individual's sexual orientation.
- I. In addition, examples of prohibited conduct which constitutes "sexual harassment" include but are not limited to sexual advances, requests for sexual favors, or other physical, verbal, or written conduct of a sexual nature, when submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment, submission to or rejection of the conduct by an individual is used as the basis for employment decisions affecting that individual, or submission to or rejection of the conduct by an individual otherwise results in a tangible employment action.

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SECTION 3 - HOSTILE WORK ENVIRONMENT POLICY

The City prohibits the creation of a hostile work environment due to employees' use of repeated innuendoes, jokes, or overt or implied threats to an employee based on an employee's religious affiliation, race, sex, age, disability, or national origin. A hostile work environment is created through the persistent and repeated use of innuendoes, jokes or overt or implied threats, so pervasive in nature that they interfere with the ability of a normal person to effectively perform the functions of their position. Any City employee engaging in this type of activity is subject to disciplinary action up to and including dismissal.

SECTION 4 - DISCRIMINATION POLICY

No City employee shall be subjected to discriminatory practices in violation of the City's Equal Employment Opportunity Policy. Discrimination, against any person in recruitment, examination, appointment, training, promotion, retention, transfer, reassignment, discipline, or any other aspect of personnel administration, because of religious affiliation, or because of race, sex, age, disability, national origin, or other non-merit factors, is prohibited, except where sex or physical requirements constitute a **bona fide occupational qualification** necessary for proper and efficient job performance. Any City employee engaging in a prohibited discriminatory practice is subject to disciplinary action up to and including dismissal.

SECTION 5 - COMPLAINT FILING PROCESS

Any employee, who believing to be subjected to a prohibited activity under this chapter, may file a complaint by immediately contacting one of the persons listed below with whom the employee feels the most comfortable.

Complaints shall be filed no later than fourteen (14) calendar days after the alleged discriminatory act or harassing activity occurred. **To file a complaint outside of City Hall working hours you can call 522-9700 extension 1101 or 1102 and leave your name, a number to be reached during City Hall office hours, and a brief message regarding your complaint.**

Complaints may be initiated verbally or made in writing to:

- a) The employee's immediate supervisor
- b) The employee's department head
- c) The Director of Human Resources
- d) Other supervisory personnel, or
- e) The City Manager.

An employee filing a complaint as allowed under this chapter shall document the incident in writing even though it may have been initiated as a verbal complaint. If necessary or requested, the recipient(s) of the complaint shall assist the employee filing the complaint with the written documentation, and the employee shall affix their signature attesting to the accuracy and truthfulness of the complaint. All information disclosed in the complaint procedure will be held in strictest confidence and will only be disclosed on a need-to-know basis in order to investigate and resolve the matter.

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An employee filing a complaint under this chapter should be prepared to provide the following information:

- a) Employee's name, department, and position title;
- b) The name of the person or persons committing the alleged violation under this chapter;
- c) The date(s) and approximate time(s) of the alleged violation(s) under this chapter;
- d) The specific nature of the alleged violation under this chapter and any employment action (demotion, failure to promote, dismissal, transfer, etc.) taken against the employee arising from the alleged violation, or any other threats made or actions taken against the employee as a result of attempting to file or filing a complaint under this chapter;
- e) Witnesses to the alleged violation under this chapter, if any;
- f) Whether the employee has previously reported such alleged violation(s) under this chapter and, if so, when and to whom.

SECTION 6 - COMPLAINT REVIEW PROCESS

It shall be the responsibility of the City Manager to coordinate the investigation and review complaints arising through alleged violations of this chapter, although the City Manager may delegate the investigation to the appropriate City employee or third party. If the City Manager is the subject of the complaint, the Mayor shall coordinate the investigation of the complaint. The following procedures shall apply to the receipt, review, and handling of such complaints:

- a) The person receiving the complaint shall present it to the City Manager within three (3) working days and an investigation into the alleged incident shall be promptly started. The complainant shall be notified within seven (7) working days that the alleged complaint has been received and an investigative process has been initiated.
- b) The investigator shall make and keep a written record of the investigation, including notes of verbal responses made to the investigator by the person filing a complaint under this chapter, witnesses interviewed during the investigation, the person against whom the complaint was made, and any other person contacted by the investigator in connection with the investigation.
- c) The investigator shall notify the employee accused of the alleged violation under this chapter as promptly as possible of the complaint and the severity of the allegations (immediate notification is not necessary if such notification would jeopardize the investigation).
- d) The employee accused of the policy violation shall be given appropriate opportunity to refute the allegation and present information and/or witnesses on their behalf.
- e) Based upon the investigation report, the City Manager shall determine whether the conduct of the person against whom a complaint has been made constitutes a policy violation. In making that determination, the City Manager shall look at the record as a whole and at the totality of circumstances, including the nature of the conduct in question, the context in which the conduct, if any, occurred. The determination of whether a violation has occurred will be made on a case-by-case basis.

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- f) If it is determined that the complaint is founded, the City Manager shall take, or in the event of a classified employee, require the appropriate department to take immediate and appropriate disciplinary action against the employee in violation of city policy.
- g) The disciplinary action shall be consistent with the nature and severity of the offense. Whether a supervisory relationship exists, and any other factors the City Manager believes relate to the effective and efficient administration of the City, including the effect of the offense on employee morale, public perception of the offense, and the light which it casts the City. The disciplinary action may include demotion and/or suspension, dismissal, warning, or reprimand. A determination of the level of disciplinary action shall also be made on a case-by-case basis.
- h) If it is determined that the complaint is unfounded, the City Manager shall notify the employee accused of a policy violation of the determination and advise that no disciplinary action is warranted.
- i) The employee making the complaint shall be notified of the results of the investigation in writing, but not the specific discipline should there be disciplinary action taken.
- j) If the City Manager determines after reviewing the investigation report that the complaint was intentionally falsified by the employee filing the complaint, the City Manager shall take immediate and appropriate disciplinary action against said employee.

In determining whether behavior constitutes harassment, City management will consider the totality of the complaint and its circumstances. Usually, a single incident that creates a distracting and uncomfortable atmosphere on a given day does not constitute harassment; however, isolated or sporadic acts that are severe may constitute harassment. It is possible for a series of individual incidents, each minor in itself, to have a cumulative effect over time of becoming pervasively harassing behavior.

SECTION 7 - RECORDS OF A HARASSMENT/DISCRIMINATION COMPLAINT

All records, except those affected by the Colorado Open Records Act, concerning a complaint under this article shall be kept as confidential as possible and maintained in a separate secured file. Access shall be only with the City Manager's approval to parties who have a direct and relevant need to know.

SECTION 8 - NO PREJUDICE CLAUSE

Any legitimate action taken by any employee pursuant to these rules shall in no way jeopardize the employee with regard to their employment with the City. Retaliation against anyone who participates in a claim or an investigation of a claim shall not be knowingly allowed. The initiation of a valid complaint under this chapter will not reflect negatively upon complainant, nor shall such adversely affect their employment, compensation or work assignment.