

City of Flint, Michigan

*Third Floor, City Hall
1101 S. Saginaw Street
Flint, Michigan 48502
www.cityofflint.com*



Meeting Agenda - Final

Wednesday, February 6, 2019

5:00 PM

Committee Room

LEGISLATIVE COMMITTEE

Eva L. Worthing, Chairperson, Ward 9

*Eric Mays, War
Santino J. Guerra, Ward 3
Jerrri Winfrey-Carter, Ward 5
Monica Galloway, Ward 7*

*Maurice D. Davis, Ward 2
Kate Fields, Ward 4
Herbert J. Winfrey, Ward 6
Allan Griggs, Ward 8*

Inez M. Brown, City Clerk

ROLL CALL

ADDITIONS/CHANGES TO AGENDA

Council shall vote on any agenda changes.

SPECIAL ORDERS

180514 Special Order/Recreational Marihuana Ordinances

A Special Order as requested by Councilperson Worthing to discuss the city's recreational Marihuana ordinances.

190032 Special Order/COF Purchasing Ordinance/Emergency Purchases

A Special Order as requested by 1st Ward Councilperson Eric Mays to allow for a council discussion regarding the emergency purchases (Ord. No. 3865, Sec. 18-21.9).

ORDINANCES

None

RESOLUTIONS

180590 Approval/City of Flint Statement of Policy/Anti-Bullying

Resolution resolving that the Flint City Council agrees to adopt the Anti-Bullying Policy, as requested by Human Resources. [NOTE: Policy is attached.]

180591 Approval/City of Flint Statement of Policy/Harassment and Discrimination in the Work Place/Complaint Procedure

Resolution resolving that the Flint City Council agrees to adopt the Harassment and Discrimination in the Work Place Policy, and Complaint Procedure, as requested by Human Resources. [NOTE: Policy is attached.] [NOTE: Policy last adopted on April 22, 2015.]

190011 Approval/City of Flint Statement of Policy/Alcohol & Drug Free Workplace & Testing Policy

Resolution resolving that the Flint City Council agrees to adopt the Alcohol & Drug Free Workplace & Testing Policy, as requested by Human Resources. [NOTE: Policy is attached.]

DISCUSSION ITEMS

190033 Discussion Item/CWAC Ordinance

Discussion Item as requested by Councilperson Mays, re: He would like to discuss the proposed changes to the City Wide Advisory [Council] Committee ordinance (Ord. No. 180523.2). [Referral Action Date: 2/04/2019 @ City Council Meeting]

OLD, OUTSTANDING DISCUSSION ITEMS

170028 Referral/Tax Breaks/Home-Based Businesses

Referral by Councilperson Mays to ADMIN, re: He would like to know if the current Administration has considered or is working toward offering tax breaks to city residents with home-based businesses, as well as asks that the City Council consider creating specific legislation in this regard. [Referral Action Date: 1/09/2017 @ City Council Meeting.]

170386 Ordinance Drafts/Water Bills

Referral by Councilperson Mays to MAYOR/ADM/LAW/: He would like two ordinances drafted for the council to review: 1. water lien relief, and 2. a limit on how far the city can go back in trying to collect past due water bills that have been estimated. [Referral Action Date: 7/6/2017 @ Finance Committee Meeting.]

180017 Discussion Item/Home Business Ordinance

Discussion item proposed by Councilperson Mays, re: He would like a discussion of the Home Business Ordinance on the next Legislative Agenda. [Referral Action Date: 1/3/2018 @ Governmental Operations Committee Meeting.]

180304 Referral/CWAC/Ordinance/Discussion

Referral by Councilperson FIELDS to LEGAL/PLANNING & DEVELOPMENT, re: She would like a copy of the CWAC Ordinance and to have a discussion item about the CWAC on the Legislative Agenda. [Referral Action Date: 6/20/2018 @ Grants Committee Meeting.]

180443 Discussion Item/Ordinance Amendment/Blight Infractions

Discussion Item as requested by Councilperson Mays, re: He would like to discuss the possibility of amending the City Code with regard to blight infractions in order to include a \$500 fine and possible jail time. [Referral Action Date: 8/27/2018 @ City Council Meeting.]

180533 Referral/Lobbyists/Fee

A referral as requested by Councilperson Fields to LEGAL: She would like to legislation to require lobbyists to pay fees, as referenced in the new City of Flint Charter. [Referral Action Date: 10/3/2018 @ Finance Committee Meeting.]

180534 Discussion Item/Parking on Lots

A discussion item as requested by Councilperson Mays: He would like to discuss parking on lots. [Referral Action Date: 10/3/2018 @ Finance Committee Meeting.]

180576 Discussion Item/Recreational Marihuana

A discussion item as requested by Councilperson Mays, re: He would like to discuss the recreational marihuana. [Referral Action Date: 11/7/2018 @ Legislative Committee Meeting.]

NEW BUSINESS

ADJOURNMENT

180590

RESOLUTION NO.: _____

PRESENTED: 11-20-18

ADOPTED: _____

RESOLUTION TO ADOPT THE ANTI-BULLYING POLICY

BY THE MAYOR:

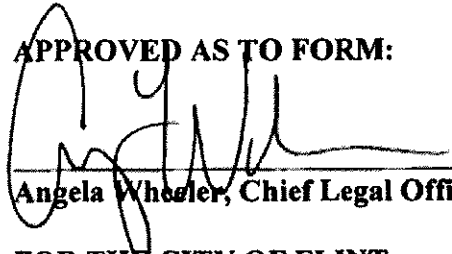
WHEREAS, The City of Flint intends to protect the rights of public servants and employees by adopting policies and procedures regarding bullying.

WHEREAS, The City has prepared an Anti-Bullying Policy. The policy is attached.

WHEREAS, Mayor, Karen W. Weaver recommends adopting the Anti-Bullying Policy.


THEREFORE, BE IT RESOLVED that the Flint City Council agrees to adopt the Anti-Bullying Policy.

APPROVED AS TO FORM:




Angela Wheeler, Chief Legal Officer

FOR THE CITY OF FLINT:



Dr. Karen W. Weaver, Mayor

APPROVED AS TO FINANCE:



Hughey Newsome, Chief Financial Officer

APPROVED BY CITY COUNCIL:

Herbert Winfrey, City Council President

Resolution Routing

TO: Resolution Signatories
FROM: **Law Department**
SUBJECT: RESOLUTION FOR APPROVAL

This RESOLUTION has been forwarded to you for your respective review and approval.

Date recorded: 11/15/2018 18-6470

All documents should be reviewed within three working days after receipt by your office.

Anti-Bullying Policy

The attached resolution is submitted to the Legal Dept. for approval as to form only:

Review and Approval:	IN	OUT	<u>Approval</u>
1. City Attorney (Form Only):		11/15/2018	
2. Finance		11/15/2018	
3. City Administrator			

Please call Jennifer at ex. 2082



City of Flint

Policy: Anti-Bullying Policy	Original Date:
Issued by the City of Flint Legal Department and the Human Resources & Labor Relations Department	Revision Date:

Disclaimer: No statements in this policy are intended or set forth as contractual commitments or obligations of the City to any individual employee or group of employees or to establish an exception to the employment-at-will doctrine beyond that specified in contracts or pertinent collective bargaining agreements. If there are differences between the various collective bargaining agreements and this policy, the pertinent collective bargaining agreement takes precedence.

INTRODUCTION

The following is the City of Flint's policy prohibiting bullying of City public servants¹, employees or job applicants. The Complaint/Report Procedure described in this policy should be utilized to report bullying. The City will take appropriate action to prevent bullying and will protect the rights of public servants and employees who file complaints.

PURPOSE

The City of Flint ("City") considers workplace bullying unacceptable and will not tolerate it under any circumstances. This policy shall apply to all public servants, employees, contractors, interns, externs, and volunteers. Any employee found in violation of this policy will be disciplined, up to and including discharge.

A. Work Place Bullying Defined

The City defines bullying as persistent, malicious, unwelcome, severe and pervasive mistreatment that harms, intimidates, offends, degrades or humiliates an employee, whether verbal, physical or otherwise, at the place of work and/or in the course of employment.

The City promotes a healthy workplace culture where all employees are able to work in an environment free of bullying behavior.

The City encourages all public servants and employees to report any instance of bullying behavior. Any reports of this type will be treated seriously, investigated promptly and impartially. The complaint and procedure policy will be followed as found in this policy.

B. Work Place Bullying Behavior

The City considers the following types of behavior as workplace bullying. Please note, this list is not meant to be exhaustive and is only offered by way of example:

1. Exclusion or social isolation;
2. Excessive monitoring or micro-managing;
3. Personal attacks (angry outbursts, excessive profanity, or name-calling);
4. Encouragement of others to turn against the targeted employee;
5. Sabotage of a co-worker's work product or undermining of an employee's work performance;
6. Stalking;

¹ Public Servants: All persons employed or otherwise engaged by the Corporation of the City of Flint to conduct business on its behalf including but not limited to elected officials, appointed employees, members of boards and commissions, classified employees, contractual employees, and volunteers. Flint City Charter §1-405

7. Unwelcome touching or uncontested-to touching;
8. Invasion of another's person's personal space;
9. Unreasonable interference with an employee's ability to do his or her work (i.e., overloading of emails);
10. Repeated infliction of verbal abuse, such as the use of derogatory remarks, insults and epithets; and
11. Conduct a reasonable person would find hostile, offensive, and unrelated to the employer's legitimate business interests

C. Complaint/Report Procedure

The following procedure shall be utilized by the City public servants and employees for the processing of complaints relating to bullying in the work place. This procedure shall apply only to those complaints directed against a person who at the time of the filing of the complaint is a City of Flint employee or public servant. The procedure may be utilized with regard to complaints covering administrators, supervisory personnel and co-employees. While the procedure itself is not directly applicable to complaints involving non-employees of the City of Flint, any bullying from such individuals in the City of Flint work place should be brought to the attention of the employee's supervisor and/or the Human Resources Director.

1. City of Flint Fact Finding Procedure

- i. An employee, regardless of position, who feels he or she is being or has been subjected to bullying is expected to notify the Human Resources Director or his/her supervisor (or a higher level supervisor if the immediate supervisor is the offending party) immediately by issuing their complaint in writing or verbally. All complaints will be forwarded to the Human Resources Director if the offending party is the Human Resources Director is believed to have violated the City's Anti-Bullying Policy, the employee should immediately file a written or verbal complaint with the City Attorney.
- ii. The written complaint must provide the following:
 - a. The dates and times the instances of bullying have occurred;
 - b. The identity of the perpetrators;
 - c. Any known witnesses;
 - d. The nature of the conduct amounting to bullying; and
 - e. A request for an investigation.
- iii. If a verbal complaint is made then the person who took the complaint must reduce the complaint to writing and provide the requirements listed under Section E(1)(ii)

The Human Resources/Labor Relations Director then assigns an Investigator to the complaint. Information received during the complaint process will be treated as confidentially as may be permitted under the circumstances, giving due regard to an employee's right to be apprised of and respond to allegations made against him or her.

2. Investigation Process

- i. During the investigation a statement of public servants and/or employees or others with any possible knowledge of the situation are obtained through interviews. The statement may be reduced to writing for signature by the maker of the statement recorded or transcribed at the discretion of the investigator.
- ii. The complainant and the accused employee may be accompanied at the time of the statement by his or her union steward. Other persons may not be allowed at the time the statement is made.
- iii. Any physical and/or documentary evidence is collected or secured.
- iv. Upon completion of the investigation, a summary report of the findings and the Investigator's recommendation is prepared and submitted to the Human Resources Director.
- v. The Human Resources Director in consultation with the City Administrator will issue the final determination as to whether the City's Anti-Bullying Policy has been violated.
- vi. If it is found the Policy has been violated, the Human Resources and Labor Relations Director in consultation with the City Administrator will determine what amount of disciplinary action is appropriate, and initiate implementation of discipline.

Although confidentiality will be maintained to the extent practicable throughout the investigation process, notification to the accused may occur at any step of this investigation process.

At any stage in the process an investigation may be discontinued or held in abeyance due to conflicting or insufficient evidence, improper motivation or lack of jurisdiction as determined by the investigator. The Human Resources Director, in consultation with the City Administrator, shall have final authority to determine whether an investigation proceeds or is discontinued. If the Human Resources Director is the subject of such investigation, final authority shall rest with the City Attorney.

3. Unsubstantiated Complaints

- i. If, as a result of the investigation, it is determined no violation of the policy has occurred, or there is insufficient information from which to make a determination whether a violation has occurred: The complaint and alleged bully shall be notified of the finding and the reason(s) therefore.

D. False Allegations

- i. If after an investigation the City of Flint finds clear and convincing evidence a complainant knowingly made false complaints, the complainant may be subject to disciplinary action up to and including termination.

DRAFT

180591

RESOLUTION NO.: _____

PRESENTED: 11-20-18

ADOPTED: _____

RESOLUTION TO ADOPT HARASSMENT AND DISCRIMINATION IN THE WORK PLACE POLICY AND COMPLAINT PROCEDURE

BY THE MAYOR:

WHEREAS, The City of Flint intends to protect the rights of public servants and employees by adopting policies and procedures regarding discrimination and harassment.

WHEREAS, The City has prepared a Harassment and Discrimination in the Work Place Policy and Complaint Procedure. The policy is attached.

WHEREAS, Mayor, Karen W. Weaver recommends adopting the Harassment and Discrimination in the Work Place Policy and Complaint Procedure.

THEREFORE, BE IT RESOLVED that the Flint City Council agrees to adopt the Harassment and Discrimination in the Work Place Policy and Complaint Procedure.

APPROVED AS TO FORM:



Angela Wheeler, Chief Legal Officer

FOR THE CITY OF FLINT:



Dr. Karen W. Weaver, Mayor

APPROVED AS TO FINANCE:



Hughey Newsome, Chief Financial Officer

APPROVED BY CITY COUNCIL:

Herbert Winfrey, City Council President

Resolution Routing

TO: Resolution Signatories
FROM: **Law Department**
SUBJECT: RESOLUTION FOR APPROVAL

This RESOLUTION has been forwarded to you for your respective review and approval.

Date recorded: 11/15/2018 18-6469

All documents should be reviewed within three working days after receipt by your office.

Harassment and Discrimination Policy

The attached resolution is submitted to the Legal Dept. for approval as to form only:

Review and Approval:	IN	OUT	<u>Approval</u>
1. City Attorney (Form Only):		11/15/2018	
2. Finance		11/15/2018	
3. City Administrator			

Please call Jennifer at ex. 2082



City of Flint

Policy: Harassment and Discrimination in the Work Place Policy and Complaint Procedure	Original Date:
Issued by the City of Flint Legal Department and the Human Resources & Labor Relations Department	Revision Date:

Disclaimer: No statements in this policy are intended or set forth as contractual commitments or obligations of the City to any individual employee or group of employees or to establish an exception to the employment-at-will doctrine beyond that specified in contracts or pertinent collective bargaining agreements. If there are differences between the various collective bargaining agreements and this policy, the pertinent collective bargaining agreement takes precedence.

INTRODUCTION

The following is the City of Flint's policy prohibiting discrimination and harassment of City public servants¹, employees or job applicants on any basis protected by federal, state or local law. The Complaint/Report Procedure described in this policy should be utilized to report discrimination and harassment. The City will take appropriate action to prevent discrimination and harassment and will protect the rights of public servants and employees who file complaints.

PURPOSE

Because the City of Flint ("the City") is an equal opportunity employer, it is the policy of the City that public servants, officials, employees and applicants shall receive consideration and treatment consistent with all equal employment opportunity laws in all terms and all conditions of work. This includes a workplace free of discriminatory and harassing conduct as those terms are defined. The City does not discriminate against anyone on the basis of race, color, religion, ancestry, national origin, place of birth, sex, sexual orientation, gender identity, gender expression, familial status, age, or non-disqualifying physical or mental disability, or any basis protected by federal, state, or local law.

The City strives to provide a work environment which promotes respect and in which each employee has the opportunity to develop to his or her full potential. Discrimination and harassment are strictly prohibited, not only because they violate the law, but also because they are contrary to the City's interest in attracting, retaining and promoting the most talented, effective and dedicated employees.

The City has an internal Complaint/Report Procedure to address and resolve complaints of discrimination and harassment. The City will take appropriate action to prevent discrimination and harassment, and to protect the rights of public servants who file complaints.

A. Discrimination is Prohibited

¹ Public Servants: All persons employed or otherwise engaged by the Corporation of the City of Flint to conduct business on its behalf including but not limited to elected officials, appointed employees, members of boards and commissions, classified employees, contractual employees, and volunteers. Flint City Charter §1-405

The City requires all applicants, public servants, and employees be treated as individuals, on the basis of their own qualifications, skills, abilities, conduct and performance.

Discrimination on account of any status protected by law, including but not limited to those identified in the first paragraph above, is prohibited. This Policy applies to all employment practices, including recruitment, hiring, evaluation, promotion, transfer, discipline and termination, as well as to all forms of compensation and benefits.

All personnel working for the City, including public servants, contractors, students, interns, externs and volunteers are required to comply with this Policy, including the Complaint/Report procedure. All personnel must behave in a non-discriminatory and business-like manner in all dealings with co-workers and all non-employees of the City contracted in the course of employment. The Policy also prohibits discrimination and harassment by persons doing business with the City, including vendors.

B. Harassment is Prohibited

Additionally, this Policy prohibits harassment, both in the workplace and in other work-related activities, such as business trips and business-related meetings and social events. No employee should have to tolerate harassment of the type described in this Policy and the City takes allegations of harassment seriously. The City will promptly investigate all reports and complaints of prohibited harassment. If it is determined inappropriate conduct has occurred, the City will take corrective and remedial action appropriate to the situation. If any public servant or employee engages in harassment prohibited by this Policy, they will be subject to disciplinary action, up to and including discharge.

C. Sexual Harassment is Prohibited

Sexual harassment in the workplace or in other work-related settings is illegal and is prohibited by this Policy. Sexual harassment is typically defined as unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature, when:

- Submission to that conduct is made explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of that conduct is used as a basis for employment decisions; or
- The conduct has the effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

For the purpose of this Policy "unwelcome" means "unwanted." An employee should never assume any such conduct is welcomed by others.

Under the definition given above, sexual harassment includes a direct or implied request by a supervisor for sexual favors in exchange for favorable job action (such as a favorable review, a salary increase or promotion) or in exchange for avoiding unfavorable job action (such as demotion, discipline or discharge). Any such requests are strictly prohibited and will result in disciplinary action or discharge. If any supervisor or manager makes any such direct or implied request, it must be reported as described in the policy. The City will take actions appropriate to fully investigate allegations of harassment.

The legal definition of sexual harassment also includes other types of conduct. While it is not possible to describe all circumstances which may constitute sexual harassment, the following are examples of conduct which, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances, including the severity and pervasiveness of the conduct:

- Sexual advances and propositions, with or without physical contact;
- Making or threatening reprisal for a negative response to sexual advances;
- Sexual epithets and jokes and written or oral remarks about a person's sex life, body or sexual activities, sexual deficiencies or prowess;
- Displaying or circulating obscene or sexually suggestive objects, pictures, cartoons, internet materials or screen-savers;
- Gossip or questions about someone's sexual experiences, gender identification, or orientation or talking about sexual experiences;
- Assaults, pinching, hugging, kissing or touching of an offensive or sexual nature or rubbing up against the body or impeding or blocking movement;
- Leering, wolf whistles, catcalls, sexual slurs or gestures, or sexually suggestive, insulting or degrading comments;
- Sexually suggestive or obscene letters, notes, e-mails or invitations; and
- Repeated flirtation, requests for dates and the like by anyone to someone who has indicated such attentions are not welcome.

Whether such conduct is deemed to be illegal or not, unwelcome and offensive conduct of these types by any individual toward anyone is prohibited by this Policy. Anyone found to be in violation of this policy is subject to disciplinary action up to and including termination and any other penalties recognized by Federal, State and Local law.

D. Other Types of Harassment are Prohibited

Not all harassment is sexual. This Policy also prohibits verbal or physical harassment of any person because of his or her race, color, religion, ancestry, national origin, place of birth, sex, sexual orientation, gender identity, gender expression, familial status, age, disability, height, weight, marital status, or protected status or exercise of legal rights, including the right to report violations of this Policy, where such conduct is unwelcome and has the effect

of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. Whether any such conduct is deemed to be illegal or not, conduct such as that described below is prohibited:

- Epithets, slurs, ridicule, insults, or threatening, intimidating or hostile acts, including those that purport to be "jokes" or "pranks," made to or about someone because of his or her membership in a protected class or exercise of legal rights;
- Stereotyping or offensive comments, cartoons, pictures or objects that denigrate or insult members of a protected class or those who exercise legal rights; and
- Demeaning, hostile or derogatory remarks directed at someone because of his or her protected class status or exercise of legal rights.

These are just some examples of conduct which may constitute harassment, depending upon the totality of circumstances, including the severity and pervasiveness of the conduct.

E. Complaint/Report Procedure

The following procedure shall be utilized by the City public servants and employees for the processing of complaints relating to discrimination and harassment. This procedure shall apply only to those complaints directed against a person who at the time of the filing of the complaint is a City of Flint employee or public servant. The procedure may be utilized with regard to complaints covering administrators, supervisory personnel and co-employees. While the procedure itself is not directly applicable to complaints involving non-employees of the City of Flint, any discrimination or harassment from such individuals in the City of Flint work place should be brought to the attention of the employee's supervisor and/or the Human Resources Director.

1. City of Flint Fact Finding Procedure

- i. An employee, regardless of position, who feels he or she is being or has been subjected to illegal discrimination or harassment by another person on the basis of their race, color, sex, religion, ancestry, national origin, place of birth, sex, sexual orientation, gender identity, gender expression, familial status, age, disability height, weight, marital status, is expected to notify the Human Resources Director or his/her supervisor (or a higher level supervisor if the immediate supervisor is the offending party) immediately by issuing their complaint in writing or verbally. All complaints will be forwarded to the Human Resources Director unless the Human Resources Director is the offending party. If the Human Resources Director is believed to have violated the City's No Harassment and Discrimination in the Work Place Policy, the employee should immediately file a written or verbal complaint with the City Attorney.

- ii. The written complaint must provide the following:
 - a. The dates and times the instances of discrimination or harassment have occurred;
 - b. The identity of the perpetrators;
 - c. Any known witnesses;
 - d. The nature of the conduct amounting to the discrimination or harassment; and
 - e. A request for an investigation
- iii. If a verbal complaint is made then the person who took the complaint must reduce the complaint to writing and provide the requirements listed under Section E(1)(ii).

The Human Resources/Labor Relations Director then assigns an investigator to the complaint. Information received during the complaint process will be treated as confidentially as may be permitted under the circumstances, giving due regard to an employee's right to be apprised of and respond to allegations made against him or her.

2. Investigation Process

- i. During the investigation a statement of public servants and/or employees or others with any possible knowledge of the situation are obtained through interviews. The statement may be reduced to writing for signature by the maker of the statement recorded or transcribed at the discretion of the investigator.
- ii. The complainant and the accused employee may be accompanied at the time of the statement by his or her union steward. Other persons may not be allowed at the time the statement is made.
- iii. Any physical and/or documentary evidence is collected or secured.
- iv. Upon completion of the investigation, a summary report of the findings and the Investigator's recommendation is prepared and submitted to the Human Resources Director.
- v. The Human Resources Director in consultation with the City Administrator will issue the final determination as to whether the City's No Harassment and Discrimination in the Work Place Policy has been violated.

- vi. If it is found the Policy has been violated, the Human Resources and Labor Relations Director in consultation with the City Administrator will determine what amount of disciplinary action is appropriate, and initiate implementation of discipline.

Although confidentiality will be maintained to the extent practicable throughout the investigation process, notification to the accused may occur at any step of this investigation process.

At any stage in the process an investigation may be discontinued or held in abeyance due to conflicting or insufficient evidence, improper motivation or lack of jurisdiction as determined by the investigator. The Human Resources Director, in consultation with the City Administrator, shall have final authority to determine whether an investigation proceeds or is discontinued. If the Human Resources Director is the subject of such investigation, final authority shall rest with the City Attorney.

3. Unsubstantiated Complaints

- i. If, as a result of the investigation, it is determined no violation of the policy has occurred, or there is insufficient information from which to make a determination whether a violation has occurred: The complainant and alleged harasser shall be notified of the finding and the reason(s) therefore.

F. Federal, State and Local Laws

Federal, state and local laws prohibit illegal discrimination, harassment and retaliation. It is the policy of the City to comply with all state and federal laws which prohibit illegal harassment and discrimination in the workplace, including the Elliott-Larson Civil Rights Act and Title VII of the 1964 Civil Rights Act.

G. False allegations

If after an investigation the City of Flint finds clear and convincing evidence a complainant knowingly made false complaints, the complainant may be subject to disciplinary action up to and including termination.

RESOLUTION NO. 190011

(Resolution to Adopt the Alcohol & Drug Free Workplace and Testing Policy) is being prepared by the Administration for the 2/06/2019 Council Committee agenda. Policy attached.

CITY OF FLINT

ALCOHOL & DRUG FREE WORKPLACE AND TESTING POLICY

1. PURPOSE

The City of Flint recognizes the importance of a drug and alcohol free workplace. The abuse of drugs, alcohol or other chemical substances by an employee endangers the safety of the public, the employee, and other City employees. The City recognizes it is in its best interest, as well as the best interest of its employees and the public, to prevent and eliminate drug, alcohol and/or substance abuse in the work place. Any employee found using, possessing, selling, distributing or being under the influence of an illegal chemical substance and/or alcohol during working hours, while on City property, or while using City equipment will be subject to discipline up to and including termination of employment.

2. APPLICATION

This policy applies to all employees as well as all applicants for employment once they have received a conditional offer of employment.

Nothing in this policy shall conflict with the Collective Bargaining Agreements of any employees. If a provision of this policy conflicts, the Collective Bargaining Agreement prevails.

Because of Federal law requirements, any employee who is convicted of manufacturing, distributing, dispensing, possessing, or use of controlled substances in the workplace must report that fact within five days of the conviction to the Director of Human Resources and Labor Relations. If your job relates to, or is funded by a Federal grant or contract, the City is required to notify the Federal Government of your conviction within ten (10) days.

3. APPLICANT PRE-EMPLOYMENT TESTING

All applicants will undergo drug and/or alcohol testing following a conditional offer of employment, but prior to final hiring and assignment. Refusal to undergo a test, or a positive test, will result in the City withdrawing its conditional offer of employment. In addition, adulteration of a specimen or a drug or alcohol test will be considered as a refusal to undergo a test.

4. FOR CAUSE TESTING

Drug and/or alcohol testing may be conducted on any employee at any time the City has reasonable suspicion there is cause to believe an employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

- a. Observation of drugs or alcohol on or about the employee's person or in the employee's vicinity;
- b. Observation of conduct on the part of the employee that suggests that the employee is impaired or is under the influence of drugs or alcohol;

- c. Receipt of a report of drug or alcohol use by an employee while at work;
- d. Information that an employee has tampered with drug or alcohol testing at any time;
- e. Negative job performance patterns by the employee; or
- f. Excessive or unexplained absenteeism or tardiness.

The supervisor will verbally inform the employee of the reason for the test. Additionally, a written record of the situation leading to the drug or alcohol test will be created and signed by the supervisor(s) within 24 hours of the event. A copy of the report will be forwarded to the Human Resources and Labor Relations Department.

5. POST-ACCIDENT TESTING

Post-Accident drug and/or alcohol testing may be conducted on an employee where there has been damage to City property or equipment while the employee was at work or the employee or another person has sustained an injury while at work. The post-accident test will be administered while the employee is still on duty or as close as possible. No employee required to take a post-accident alcohol or drug test may use any alcohol or drugs of any kind following the accident until the employee undergoes the post-accident testing.

6. RANDOM TESTING

The City of Flint will randomly test employees for compliance with its drug-free workplace policy. As used in this policy, "random testing," means a method of selection of employees for testing, performed by an outside third party. The selection will result in an equal probability that any employee from a group of employees will be tested. Furthermore, the City of Flint has no discretion to waive the selection of an employee selected by this random selection method.

The City may, at various times, randomly select members of the following employment groups, at its discretion, for unannounced random testing for drugs or alcohol:

- a. Police officers
- b. Firefighters
- c. Safety-Sensitive Employees: Persons engaged in activities that directly affect the safety of the public.
- d. Employees whose work requires possession of a CDL.

7. SCHEDULED PERIODIC TESTING

The City of Flint reserves the right to conduct periodic testing on a regularly scheduled basis for employees in designated departments, classifications or workgroups.

8. RETURN TO DUTY TESTING

When an employee has a confirmed positive test result, or has been sent to a drug dependency program at the request of the City of Flint as a condition of continued

employment, the employee will be required to be tested at least six (6) times in the first twelve (12) months following the employee's return to active duty. Return to Duty tests must be conducted under direct supervision.

9. SUBSTANCES COVERED BY DRUG AND ALCOHOL TESTING

Employees will be tested for their use of commonly abused controlled substances, which include amphetamines, barbiturates, benzodiazepines, opiates, cannabinoids*, cocaine, methadone, methaqualone, phencyclidine (PCP), propoxyphene and chemical derivatives of these substances.

Employees must advise testing lab employees of all prescription drugs taken in the past month before the test and be prepared to show proof of such prescriptions to testing lab personnel.

** Despite Michigan law, marijuana for medical or recreational use is a Drug Enforcement Administration listed Schedule I controlled substance and therefore is prohibited.*

10. MARIJUANA USE PROHIBITED

The State of Michigan has enacted legislation allowing for the recreational and medical use of marijuana. Despite Michigan law, marijuana for medical or recreational use is a Drug Enforcement Administration listed Schedule I controlled substance. Therefore, the marijuana use remains prohibited when engaged in activities governed by Federal law specifically, the U.S. Department of Transportation (DOT) Drug and alcohol testing regulations.

The City of Flint, as an employer, is required to ensure the safety and protection of the citizens served by its employees. Therefore, the enactment of the Medical Marijuana Act (MMA) and recreational marijuana usage legislation does not override existing policies concerning the following:

- The City of Flint Alcohol & Controlled Substance Testing Policies and Procedures for Employers with Commercial Driver's License (CDL) or City policies affiliated with DOT Federal Transit Administration Regulations;
- Negligent entrustment of City vehicles;
- Driving while impaired or yielding positive test results post-accident, including the operation of City vehicles or a private vehicle while conducting City business;
- Any employee engaged in conduct or action prohibited by the MMA;
- Smoking marijuana in public;
- Possession of marijuana at schools or correctional facilities;
- Operating a vehicle under the influence of marijuana;
- Selling marijuana during hours of employment, at any City work site and/or on City property;
- Being in possession of marijuana while on City premises or on duty; and
- Working while under the influence of marijuana.

11. TESTING METHODS AND PROCEDURES

All testing will be conducted by a licensed independent medical laboratory, which will follow testing standards established by the state or federal government. Testing will be conducted on a urine sample provided by the employee to the testing laboratory under procedures established by the laboratory to ensure privacy of the employee, while protecting against tampering/alteration of the test results.

Employees will be considered to be engaged at work for the time spent in taking any tests and will be compensated for such time at their regular rate.

The City of Flint will pay for the cost of the testing, including the confirmation of any positive test result by gas chromatography. The testing lab will retain samples in accordance with state law, so an employee may request a retest of the sample at his or her own expense if the employee disagrees with the test result.

12. REFUSAL TO UNDERGO TESTING

Employees who refuse to submit to a test are subject to disciplinary action, up to and including immediate discharge.

13. POSITIVE TEST

If an employee tests positive on an initial screening test, the employee will be temporarily suspended while the confirmation test is being conducted. On receipt of the confirmation test, the employee will be subject to disciplinary action, up to and including discharge. Discipline selected by the City of Flint will depend on a variety of factors, including, but not limited to, the prior work record of the employee, the length of prior employment, the prior accident and attendance record of the employee, the circumstances that led to the testing, and the proposals by the employee to address the problem.

14. RIGHT TO EXPLAIN TEST RESULTS

All employees and applicants have the right to meet with the testing laboratory personnel, and with the City of Flint, to explain their test results. These discussions should be considered confidential, except information disclosed in such tests will be communicated to personnel within the City of Flint Human Resources and Labor Relations department or within the lab who need to know such information to make proper decisions regarding the test results or regarding the employment of the individual.

15. RIGHT TO REVIEW RECORDS

Employees have a right to obtain copies of all test results from the testing laboratory, or from the City of Flint. When an employee disagrees with the test results, the individual may request the testing laboratory repeat the test. Such repeat testing will be at the expense of the individual, unless the repeat test overturns the original report of the lab, in which case the City of Flint will reimburse the employee for the costs incurred for the retest.

16. CONFIDENTIALITY REQUIREMENTS

All records concerning test results will be kept in medical files that are maintained separately from the personnel file of the employee.

Testing laboratories may conduct testing only for substances included on the disclosure list provided to the individual, and may not conduct general testing related to the medical conditions of the individual that are unrelated to drug use.

17. RETESTING

Employees may request a retest of their positive test results within five (5) working days after notification by the City of Flint of such positive test result. This retest is at the expense of the individual, unless the original test result is called into question by the retest.

Where the employee or applicant believes the positive test result was affected by taking lawful or prescribed substances, the individual may be suspended without pay pending receipt of confirming information to substantiate the claims of the individual. Normally, the individual will be provided no more than five (5) business days in which to provide this additional information.

Once City of Flint has determined whether there is evidence to indicate the test results are incorrect, the City of Flint will advise the individual of its decision.

18. TREATMENT, TERMINATION AND REHIRE

Employees who test positive for any drug(s) listed on the disclosure list have two (2) choices. One, the employee may agree to enter an authorized treatment program approved by the City of Flint, and agree to subsequent retesting for a period of two (2) years after returning from treatment. Or two, the employee will be terminated immediately and will not be considered for rehire until he or she can show he or she has remained drug-free for a period of two years or more.

19. RESPONSIBILITIES OF INDIVIDUALS

In order to comply with the provisions of this policy, each employee assumes the following responsibilities:

- a. *Working under the Influence of Performance Impairing Medication:* Employees who have been prescribed legal medications that might affect the safe performance of their duties are required to notify their supervisors prior to performing any hazardous or dangerous tasks.
- b. *Reporting to Work or Working While Impaired:* Employees may not report to work and may not continue to work while impaired by any restricted substance identified in this policy.
- c. *Reporting Violations:* The services provided by certain employees are performed, at times, under hazardous and dangerous conditions. Thus,

employees are encouraged to come forward and report any violation of this policy to management. This information may be instrumental in the prevention of serious accidents and injuries on the job.

Any questions concerning this policy, its interpretation or application should be directed to the Human Resources and Labor Relations Department.

Policy Enacted: 2004

Policy Revision: November 20, 2006

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