

9.23 City of Kenosha Harassment Policy & Procedure		
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Special Instructions: This policy revises Ordinance 1.29 (01-06) by replacing the previous <i>Sexual Harassment Policy & Procedure</i>		

A. Policy

It is the policy of the City of Kenosha that employees shall not, directly or indirectly, engage in any form of harassment, whether it occurs in the workplace or outside the workplace at City-sponsored activities.

The City of Kenosha is committed to providing and maintaining a professional work environment that maintains employee equality, dignity, and respect. It is the policy of the City of Kenosha that harassment, including sexual harassment, and/or retaliation is strictly prohibited. Harassment of any kind increases hostility, creates an offensive working environment, adversely affects productive working relationships, and ultimately obstructs the City's vision of a diverse workforce, reflective of the City itself. Employees are entitled to a work atmosphere free from harassment based upon race, color, creed, sex, religion, age, disability, pregnancy, sexual orientation, national origin, ancestry, marital status, military or veteran status, citizenship, arrest record, conviction record or any other characteristic protected by State, Federal or local law.

Behavior that creates a hostile work environment is a serious offense and will not be tolerated. All employees are prohibited from participating in any conduct that could be construed as harassment, as defined by this Ordinance. Any individual who is determined to have engaged in acts of harassment will be disciplined appropriately, up to and including dismissal.

Whether one is a victim of harassment or simply a witness to it, all employees are required to report any incidents of harassment. All complaints of harassment are to be made in accordance with the reporting procedures set forth in this policy. This prohibition against harassment is to be enforced by all supervisory and administrative employees. Accordingly, disciplinary action will also be taken against any supervisor or administrator who knowingly allows such conduct to occur without taking appropriate action.

B. Definitions

1. **“City of Kenosha”** means the City of Kenosha and its Water Utility, Redevelopment Authority, Housing Authority, Library, Museum, and any Board, Commission, Authority, Committee or Department created by Ordinance or Resolution.
2. **“Employee”** shall mean an individual employed by or performing services for the City of Kenosha. “Employee” includes employees and officers of the City of Kenosha and members of the Common Council and of any Board, Commission, Authority, Committee or Department created by Ordinance or Resolution.
3. **“Enforcing Officer”** shall mean the Director of Personnel or his/her designee.

4. **“Harassment”** shall mean any verbal, written, visual or physical act based upon race, color, creed, sex, religion, age, disability, pregnancy, sexual orientation, national origin, ancestry, marital status, military or veteran status, citizenship, arrest record, conviction record or any other characteristic protected by State, Federal or local law, that affects terms or conditions of employment, interferes unreasonably with an individual’s work performance, or creates a hostile working environment. Harassment shall also mean retaliation against any employee for filing of a harassment complaint or cooperating with the investigation of a Harassment complaint. Harassment shall also mean the knowing and malicious filing of a complaint under this Ordinance for the sole purpose of affecting the terms and/or conditions of employment of a City employee or subjecting a City employee to a hostile work environment.

While it is not possible to list all those circumstances that may constitute unlawful harassment, the following are some examples of conduct that, if unwelcome, may constitute harassment depending upon the totality of the circumstances, including severity of the conduct and its pervasiveness.

- Epithets, slurs, insults or negative stereotyping with regard to race, color, creed, sex, religion, age, disability, pregnancy, sexual orientation, national origin, ancestry, marital status, military or veteran status, citizenship, arrest record, conviction record or any other characteristic protected by State, Federal or local law.
 - Acts or jokes that are hostile or demeaning.
5. **“Sexual harassment”** shall mean any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature that creates a hostile work environment, regardless of the gender of the harassing party, or is used as the basis for employment decisions affecting the employee.

The types of behaviors that constitute Sexual Harassment may include, but are not limited to:

- Physical assault;
- Unwelcome sexual flirtations, advances or propositions;
- Derogatory, vulgar, or graphic written or oral statements regarding one's sexuality, gender or sexual experience;
- Unnecessary touching, patting, pinching or attention to an employee's body;
- Entering the restroom of the opposite sex for purposes unrelated to employment or when occupied by individuals of the sex for whom the restroom is designated;
- Unwanted sexual compliments, innuendoes, suggestions or jokes;
- Asking employees about their sexual experiences or discussing one’s own sexual experiences;
- Displaying pictures, posters, cartoons, calendars, graffiti, objects, promotional materials, reading materials, music, or other materials that are sexually suggestive or sexually demeaning.
- Displaying or publicizing in the work environment, materials that are in any way sexually revealing, sexually suggestive, or sexually demeaning;
- Displaying signs or other materials purporting to segregate an employee by gender in any area of the workplace other than restrooms and similar semi-private lockers/changing rooms;
- Birthday, promotional, or farewell parties, or other celebrations that feature cards, cakes or food items or performances of a sexual nature;

- Production, transmission or display of any sexually explicit material electronically via fax, e-mail, the internet, or any other similar mode of workplace communication;
- Any of the above that may be deemed harassing on any other unlawful basis are likewise prohibited.

C. Prohibition of the Possession or Display of Harassing Materials

Employees are prohibited from possessing, displaying, disseminating, distributing, trading or sharing of any materials, regardless of format; (e.g., electronic, paper, film, video, animated) that constitute harassment on the basis of race, color, creed, sex, religion, age, disability, pregnancy, sexual orientation, national origin, ancestry, marital status, military or veteran status, citizenship, arrest record, conviction record or any other characteristic protected by State, Federal or local law. This prohibition extends to all materials which are pornographic and/or demeaning. This includes, but is not limited to, nude, semi-nude or scantily clad images, or images of non-nude people intended to simulate acts or exhibit expressions which are intimate, sexual, demeaning or provocative.

This prohibition extends to all City of Kenosha property and outside the workplace at City-sponsored activities.

D. Application of this Policy

This Ordinance applies to all employees of the City of Kenosha. There will be no variance or exception to this Ordinance, except as explicitly provided by this Ordinance.

E. Complaint Procedure

The following steps should be followed in reporting harassment:

1. Harassment to be Reported

Employees who believe they have been or currently are being the subject of harassment, have the responsibility to report the harassment. Employees who witness harassment have the responsibility to report the harassment even if they are not the subject of the harassment.

2. Complaint Forms and Filing

Any employee who believes he/she has been the subject of harassment, or any employee who is aware of harassment directed towards another employee, should immediately report that behavior, either orally or in writing, through the appropriate reporting procedure. A City Department may specify a reporting procedure in writing, subject to the approval of both the City Attorney, or his/her designee, and the Director of Personnel, or his/her designee. If the Department has not specified a reporting procedure, the employee should direct his/her complaint to his/her immediate supervisor, any other supervisor, or his/her Department Head. All complaints, oral or written, shall be brought to the attention of the Department Head and the Director of Personnel.

Once a complaint has been made, the City of Kenosha will take steps to ensure the complainant is not subject to additional harassment during the processing of the complaint. Reported complaints shall be reduced to writing by either the complainant or a member of the Personnel Department, on forms available in the Personnel Department. A separate complaint shall be filed for each alleged harasser. Complaints shall be signed. However, failure of a complainant to sign the complaint form will not prevent full investigation and processing of the complaint. Should

any person in the Personnel Department be the subject of an harassment complaint, complaint forms may be obtained and filed in the City Attorney's Office.

The complainant shall have the option of conciliation through the City Administration prior to the complaint being submitted to the Enforcing Officer. Upon the refusal of such option, the complaint will be referred by the office in which filed to the Enforcing Officer.

The Enforcing Officer, within ten (10) working days of the receipt of the complaint, shall notify the employee accused of harassment that a complaint has been filed against him/her, and request that a written response be provided within twenty (20) days. The employee accused of harassment shall be notified of the confidentiality requirements of this Ordinance and the prohibition against retaliation.

If the Enforcing Officer determines that the complaint, on its face, even if true, does not allege facts sufficient to constitute a violation of this Ordinance, he/she shall dismiss the complaint and notify the complainant and the employee accused of harassment. If the Enforcing Officer determines that the complaint, on its face, alleges facts, which, if true, may be sufficient to constitute a violation of this Ordinance, he/she shall make an investigation with respect thereto. If the complaint involves rape, assault or other conduct of a criminal nature, the Kenosha Police Department shall be contacted, and a report of the incident shall be made.

Pursuant to any investigation conducted under this Ordinance, the Enforcing Officer has the power to require any employee to submit, in writing, such reports and answers to questions relevant to the investigation as the Enforcing Officer may prescribe, such submission to be made within such period and under oath, or as he/she may otherwise determine.

Investigation of any employee accused of harassment may not be commenced until the employee, who is the subject of the investigation, has been notified of the complaint and given an opportunity to respond as herein provided.

3. Protection Against Retaliation

The City of Kenosha will not permit or condone retaliation against an employee who files a harassment complaint, makes a report of harassment, or participates in an investigation of harassment. Retaliation is a violation of this Ordinance and shall be reported immediately. Any employee found to have retaliated against another employee for filing a harassment complaint, reporting harassment, or participating in an investigation of harassment will be subject to the same disciplinary action as provided for harassment offenders. Complaints for retaliation shall be reported and processed in the same manner as complaints for harassment.

F. Investigating the Complaint

1. Confidentiality

Any harassment complaint filed under this Ordinance will be promptly investigated in a confidential manner so as to protect the privacy of persons involved. Confidentiality will be maintained throughout the investigatory process, and records will be released only if required by State or Federal law.

Members of the Common Council and Committees thereof shall not have access to confidential information. Collective bargaining units and members thereof shall have and retain any rights of representation authorized under a Collective Bargaining Agreement.

2. Investigation

Harassment complaints will be investigated by the Enforcing Officer or his/her designee.

3. Investigation Process

In pursuing the investigation, the Enforcing Officer will try to take the wishes of the complainant under consideration, but shall thoroughly investigate the matter as he/she sees fit, keeping the complainant and employee accused of harassment informed as to the status of the investigation. If the complainant indicates that he/she does not agree with the action taken, the Enforcing Officer may request that the complainant provide suggestions in writing for possible consideration. Although suggestions submitted will be given full consideration, the City of Kenosha reserves the right to determine the final action taken based on the totality of findings from the investigation.

G. Resolving the Complaint

Upon completing the investigation of a harassment complaint, the Enforcing Officer will communicate his/her/their findings to the City Administrator, or Mayor if the City Administrator is the employee accused of harassment, the Personnel Director, the Department Head of the complainant, and to the complainant and the employee accused of harassment.

If the Enforcing Officer finds that harassment has occurred, the employee accused of harassment will be subject to appropriate disciplinary procedures, as hereinafter set forth, in accordance with applicable procedures. The complainant will be informed of the disciplinary action taken.

If the Enforcing Officer determines that no harassment has occurred, this finding will be communicated to the complainant in an appropriately sensitive manner.

The Enforcing Officer may, with the consent of the complainant and employee accused of harassment, attempt to resolve the complaint by conciliation. However, any proposed resolution of the complaint shall only have the force and effect of a recommendation to any Department Head, or to any person or body having appropriate jurisdiction to impose discipline upon the employee who is deemed to have violated this Ordinance.

The Enforcing Officer, upon making a finding of a violation of this Ordinance, may, but is not obligated to, make a recommendation with respect to the nature of the discipline to be imposed.

An employee found to have engaged in misconduct constituting harassment will be disciplined, up to and including discharge. Appropriate sanctions will be determined by the Department Head, or by the person or body having appropriate jurisdiction in accordance with applicable procedures. Records of substantiated charges of harassment will be placed in the accused employee's file. Additional action may include referral to counseling, withholding of a promotion, reassignment, suspension without pay, withholding of salary increases, or termination, when and as authorized by applicable law, rule, or regulation.

H. Maintaining a Written Record of the Complaint

The City of Kenosha shall maintain a complete written record of each complaint and how it was investigated and resolved. Written records shall be maintained in a confidential manner in the Personnel Department, except where disclosure is required under the Public Records Law.

Written records will be maintained for the longer of seven (7) years from the date of the resolution of the complaint, or so long as the complainant or employee accused of harassment is employed by the City of Kenosha.

I. Severability and Conflict of Laws

In the event that this Ordinance may conflict with Federal or State law, it will be interpreted to comply with such. The subsequent invalidity or unenforceability of any one or more of the provisions or clauses hereof shall not effect the validity or enforceability of the other provisions or clauses hereof.

**Policy 9.23 – City of Kenosha Harassment Policy & Procedure
Employee Acknowledgement & Sign-Off**

This is to acknowledge that I have received a copy of the City of Kenosha Harassment Policy & Procedure (as outlined under Ordinance 1.29 of the Code of General Ordinances of the City of Kenosha) and that I will read this material as soon as practicable.

Furthermore I understand that, as a City of Kenosha employee, I am expected to abide by the City of Kenosha Harassment Policy & Procedure.

Print Name

Signature

Date Signed

(After this page has been signed and dated, detach and return this page to the City of Kenosha Human Resources Department where it is will be retained in your personnel file. Employees should keep their copy of this policy with their other employment information for further reference.)