



MEMORANDUM

Office of the City Attorney

Legistar No. _____

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commissioners

DATE: August 14, 2000
FIRST READING


FROM: City Attorney

SUBJECT: Ordinance No. 0-00-83
An Ordinance of the City of Gainesville, Florida; relating to Equal Opportunity; adopting the Policy Statement; adopting the Charter Officer's Duties Related to Equal Opportunity Policy; adopting the Discrimination, Harassment and Conduct Policy; adopting the Retaliation Policy, adopting the Disability Policy; and adopting the Equal Employment Opportunity Policy; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

At its meeting of June 26, 2000, the City Commission authorized the City Attorney's Office to prepare an ordinance adopting the equal opportunity policies that are contained in the Equal Opportunity Handbook. The Equal Opportunity Complaint Policy was previously adopted by the City Commission on June 26, 2000.

Prepared and
submitted by:


Marion J. Radson,
City Attorney

MJR/afm

Attachment

D R A F T

08/04/00

ORDINANCE NO. _____
0-00-83

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4 **An Ordinance of the City of Gainesville, Florida; relating**
5 **to Equal Opportunity; adopting the Policy Statement;**
6 **adopting the Charter Officer's Duties Related to Equal**
7 **Opportunity Policy; adopting the Discrimination,**
8 **Harassment and Conduct Policy; adopting the**
9 **Retaliation Policy, adopting the Disability Policy; and**
10 **adopting the Equal Employment Opportunity Policy;**
11 **providing a severability clause; providing a repealing**
12 **clause; and providing an immediate effective date.**
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14

15 **WHEREAS**, on July 12, 1999, the City Commission adopted the City of Gainesville
16 Equal Opportunity Policy Handbook by Resolution No. 981300; and

17 **WHEREAS**, the Equal Opportunity Policy Handbook includes certain Equal Opportunity
18 Policies describing the City's directives involving discrimination, harassment, conduct,
19 retaliation, disability, and equal employment opportunities; and

20 **WHEREAS**, on June 26, 2000, the City Commission adopted the Equal Opportunity
21 Complaint Policy (Policy No. 36) by Ordinance No. 991374; and

22 **WHEREAS**, on June 26, 2000, the City Commission authorized the City Attorney's
23 Office to adopt the remaining policies in the current Equal Opportunity Handbook by ordinance;
24 and

25 **WHEREAS**, at least ten (10) days notice has been given once by publication in a
26 newspaper of general circulation notifying the public of this proposed ordinance and of a Public

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08/04/00

1 Hearing in the City Commission Meeting Room, First Floor, City Hall, in the City of
2 ~~Gainesville; and~~

3 **WHEREAS**, a Public Hearing was held pursuant to the published notice described at which
4 hearing the parties in interest and all others had an opportunity to be and were, in fact, heard.

5 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
6 **CITY OF GAINESVILLE, FLORIDA:**

7 **Section 1.** The “Policy Statement” as provided in Exhibit “A” is hereby adopted:

8 See Exhibit "A" attached hereto and made a
9 part hereof as if set forth in full.

10
11 **Section 2.** The “Charter Officer’s Duties Related to Equal Opportunity Policy” as
12 provided in Exhibit “B” is hereby adopted:

13 See Exhibit "B" attached hereto and made a
14 part hereof as if set forth in full.

15
16 **Section 3.** The “Discrimination, Harassment and Conduct Policy” (Policy No.
17 27) as provided in Exhibit “C” is hereby adopted:

18 See Exhibit "C" attached hereto and made a
19 part hereof as if set forth in full.

20
21 **Section 4.** The “Retaliation Policy” (Policy No. 33) as provided in Exhibit “D” is
22 hereby adopted:

23 See Exhibit "D" attached hereto and made a
24 part hereof as if set forth in full.

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08/04/00

1 **Section 5.** The "Disability Policy" (Policy No. 34) as provided in Exhibit "E" is
2 hereby adopted:

3 See Exhibit "E" attached hereto and made a
4 part hereof as if set forth in full.

5
6 **Section 6.** The "Equal Employment Opportunity Policy" (Policy No. 35) as
7 provided in Exhibit "F" is hereby adopted:

8 See Exhibit "F" attached hereto and made a
9 part hereof as if set forth in full.

10
11 **Section 7.** If any section, sentence, clause or phrase of this ordinance is held to be invalid
12 or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect
13 the validity of the remaining portions of this ordinance.

14 **Section 8.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
15 such conflict hereby repealed.

16 **Section 9.** This ordinance shall become effective immediately upon final adoption.

17 **PASSED AND ADOPTED** this _____ day of _____,
18 2000.

19 _____
20 Paula M. DeLaney, Mayor

21
22 ATTEST: APPROVED AS TO FORM AND LEGALITY:

23
24
25 _____
26 Kurt Lannon, Marion J. Radson, City Attorney
27 Clerk of the Commission

28

D R A F T

08/04/00

1 This ordinance passed on first reading this ____ day of _____,
2 2000.

3 This ordinance passed on second reading this ____ day of _____,
4 2000.

POLICY STATEMENT

1
2
3 The City of Gainesville recognizes its responsibility to the citizens and employees to ensure equal
4 opportunity and access to City services, programs, activities, and employment for all qualified persons and
5 to work to ensure diversity in its employment, services, programs, and activities. The implementation of
6 this Equal Opportunity Policy is intended to identify programs and strategies to bring about positive and
7 proactive change in the workplace and work at ensuring diversity.
8
9 The City of Gainesville (hereinafter referred to as the City) has and will continue to develop policies to
10 afford equal opportunity and access to appropriate City services, programs, and activities for all qualified
11 persons to prohibit discrimination in employment because of race, color, religion, gender, national origin,
12 marital status, sexual orientation, age, or disability, and to ensure the full realization of equal opportunity
13 and diversity through a positive continuing program of equal opportunity throughout the City.
14
15 Equal opportunity and diversity, however, can only be achieved through committed leadership and
16 committed administration of viable policies and procedures. It is through the development and carrying
17 out of effective policies and procedures that the concepts of equal opportunity and diversity can become an
18 integral part of the culture of the City organization. The City shall promote equal opportunity and diversity
19 through nondiscriminatory practices by: (1) recruiting, hiring, training, transferring and promoting persons
20 in all job classifications without discrimination based upon race, color, religion, gender, national origin,
21 sexual orientation, marital status, age, or disability; (2) ensuring that employment and promotion decisions
22 are in accordance with equal employment laws, policies, and procedures; and (3) ensuring that all
23 personnel actions, benefits, and programs are administered without discrimination. In addition, the City
24 will make every good faith effort to identify, recruit, and employ qualified applicants, including women
25 and minorities. This policy does not imply that anyone can be employed who lacks the qualifications.
26
27 The City encourages employee development for the purpose of facilitating internal upward mobility
28 through the promotion and transfer process. The City's internal training program will provide training for
29 all employees consistent with equal employment opportunity laws, policies, and procedures. The City will
30 also take action through the adoption of a Plan that sets goals and objectives, which address
31 underutilization of groups within the City's work force. Underutilized job groups at a minimum will be
32 determined by annual work force analysis. The policies, goals and objectives established by the City shall
33 be implemented through its administrative staff.
34
35 The City shall employ a full-time Equal Opportunity Director to direct the development and
36 implementation of a comprehensive Equal Opportunity Program, adherence to equal opportunity laws,
37 policies, and procedures, and to develop strategies, training, and workshops to ensure diversity in
38 employment, services, programs, and activities. This program shall apply to every Charter Officer and all
39 employees working under the Charter Officers. In carrying out the responsibilities related to
40 investigations, the Equal Opportunity Director should make all reasonable efforts to ensure that
41 investigations are supported by factual information and impartial judgement. During the investigation of
42 complaints, the Equal Opportunity Director is neither an advocate for management nor for the complainant.
43 The Equal Opportunity Director will work to ensure that Commission policies and department policies and
44 procedures are adhered to.
45
46 It shall be the responsibility of the City's Charter Officers, managers, supervisors, and employees to assist
47 the Equal Opportunity Director with implementation and adherence to equal opportunity laws, policies, and
48 procedures. Nothing in the City's policies or procedures will abrogate the provisions of any collective
49 bargaining agreement or the City's responsibility to negotiate terms and conditions of employment.
50
51 It is the hope and intent of the City to reduce the City's liability to lawsuits, litigation, and to resolve any
52 problems, wherever possible within the City, before these problems are taken to an outside agency or
53 agencies. Thus, the City has established this policy handbook. However, an employee, applicant, or other
54 individual maintains the right to file a complaint with an outside agency or to use existing collective
55 bargaining procedures, as applicable, at any stage in the complaint process. Election by an employee to
56 exercise his/her right for external redress (including procedures set forth in a collective bargaining

1 agreement) of a complaint as indicated above, may at the discretion of the Equal Opportunity Director
2 based upon the totality of the circumstances, preclude the employee from utilizing the Complaint Policy in
3 this handbook when the allegations arise out of the same or similar operative facts.
4

5 The City of Gainesville believes in equal opportunity for all persons and the prompt redress of complaints
6 in a fair and impartial setting. It is the City's goal to foster an employment atmosphere where all people
7 are treated equally and fairly without discrimination based upon race, gender, color, age, national origin,
8 religion, sexual orientation, marital status, or disability. In this environment the City Commission believes
9 that City employees can cooperatively work together in the mutual interest of providing the highest level of
10 public service to the citizens of Gainesville. To assist in this regard, all officers and employees of the City
11 shall furnish to the Equal Opportunity Director any information and records within their custody and
12 respond to any questions regarding powers, duties, activities, organization, property and methods of
13 business that in the Equal Opportunity Director's opinion are required to perform an investigation and
14 requisite duties, except as prohibited by law. If such Charter Officer or employees fail to produce the
15 aforementioned access and/or information, the Equal Opportunity Director may call upon the City Auditor
16 to resolve the situation in whatever manner deemed appropriate. Nothing in the City's policies or
17 procedures waive either the confidentiality of any document or any other exemption as provided by law.
18

19 To ensure that the Equal Opportunity Director stays in contact with the work force, has another avenue for
20 assessing the needs of the workforce, and the proper framework to ensure diversity throughout the
21 organization, there shall be two Equal Opportunity Advisory Committees that shall be advisory to the
22 Equal Opportunity Director with regards to matters relating to Equal Employment and diversity. The
23 primary duties of the Advisory Committees shall be as follows: (1) Relay appropriate and pertinent
24 information discussed in Committee meetings to co-workers (2) Provide recommendations on Equal
25 Employment Opportunity and Diversity issues presented to them by the Equal Opportunity Director.
26 From applications received and with input from the Equal Opportunity Director, the City Manager shall
27 appoint on an annual basis members to the Equal Opportunity Advisory Committee. The City Manager's
28 appointments shall consist of a diverse group of at least seven (7) and no more than thirteen (13)
29 employees under the management authority of the City Manager. A majority shall be non-management
30 employees, at least one of whom has been recommended by collective bargaining representatives of
31 employees reporting to the City Manager. From applications received and with input from the Equal
32 Opportunity Director, the General Manager for Utilities shall appoint on an annual basis members to the
33 Equal Opportunity Advisory Committee. The General Manager's appointments shall consist of a diverse
34 group of at least seven (7) and no more than thirteen (13) employees under the management authority of
35 the General Manager. A majority shall be non-management employees, at least one of whom has been
36 recommended by collective bargaining representatives of employees reporting to the General Manager.
37 The Equal Opportunity Advisory Committees shall meet at least quarterly.
38

39 Because the Equal Opportunity Director is responsible for directing the development and implementation
40 of the City's comprehensive Equal Opportunity Program and adherence to equal opportunity laws, policies,
41 and procedures, proposed amendments to this Policy Handbook shall be reviewed by and commented on
42 by the Equal Opportunity Director prior to submission to and approval by the City Commission.
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EXHIBIT "B"

1 CHARTER OFFICER'S DUTIES RELATED TO EQUAL OPPORTUNITY POLICY

2
3 The Charter Officer(s) (In respect to their areas of responsibilities) shall:

- 4
- 5 a) Review and approve/disapprove only those hires, transfers, demotions; and promotions that are in
6 compliance with equal opportunity laws, policies, and procedures.
7
 - 8 b) Monitor subordinate management and supervisors to ensure, including through the use of the
9 performance evaluation and appraisal processes, adherence to and enforcement of equal opportunity
10 laws, policies, and procedures.
11
 - 12 c) Advise and instruct subordinate management to notify the Equal Opportunity Director, for training and
13 compliance purposes, of verbal or written complaints of discrimination or harassment received within
14 three working days of receipt of such complaint made by any employee.
15
 - 16 d) Assist the Equal Opportunity Director as needed in conducting investigations, and review and evaluate
17 investigation recommendations prepared by the Equal Opportunity Director, and determine the final
18 disposition of complaints and discipline for employees under the control and/or direction of the
19 respective Charter Officer.
20
 - 21 e) Ensure that a complete copy of all discrimination complaints received from federal or state agencies
22 for programs under their authority are sent to the Equal Opportunity Director and City Attorney as
23 soon as they are received by the City, and involve the Equal Opportunity Director in developing the
24 City's response to such complaints.
25
 - 26 f) Meet with the Equal Opportunity Director as needed, but no less than quarterly, to discuss issues
27 related to equal opportunity.
28
 - 29 g) Assist the Equal Opportunity Director as requested in the coordination and development of all training
30 and initiatives related to diversity, sexual harassment, Americans with Disabilities Act, and other
31 compliance and training issues related to equal opportunity to address the City's equal opportunity
32 knowledge and skills and develop new skills for the City's work force to address future needs.
33
 - 34 h) Assist the Equal Opportunity Director and the Human Resources Department as requested in the
35 development of a recruitment program or programs designed to meet the City's goals.
36
 - 37 i) Assist the Equal Opportunity Director as requested in reviewing hires, transfers, demotions,
38 promotions, and terminations as deemed necessary for compliance with equal employment laws,
39 policies, and procedures and assist as necessary to participate in the assessment and review of the
40 city's recruitment, appointment, promotion, and other personnel practices as they pertain to all
41 employees and applicants at all levels of City employment.
42
 - 43 j) Assist the Equal Opportunity Director as requested in reviewing current and all proposed City
44 employment policies, procedures, and job descriptions for compliance with equal opportunity laws,
45 policies, procedures, and guidelines (at a minimum to include selection, recruitment, testing, and
46 applications).
47
 - 48 k) Assist the Equal Opportunity Director as requested in providing technical assistance to individual
49 departments within the City that have individual Equal Opportunity responsibilities above and beyond
50 the City's overall Equal Opportunity Program.
51
 - 52 l) Assist the Equal Opportunity Director as requested in the compilation of various equal opportunity
53 reports such as the EEO-4 report required of the City by state and federal agencies and ensure that the
54 City's computer network systems are producing necessary reports as needed by the Equal Opportunity
55 Director to ensure compliance with equal opportunity laws, policies, rules and regulations.
56

- 1 m) Assist the Equal Opportunity Director as requested in reviewing current and all proposed purchasing
2 policies and procedures prior to approval, and in maintaining a monitoring system(s) to review
3 purchasing activities to ensure equal opportunity and diversity in the awarding of City bids, contracts,
4 contract extensions and amendments, and all other purchasing related activities.
5
- 6 ~~n) Assist the Equal Opportunity Director as requested in providing appropriate reports for the purpose of~~
7 ~~reviewing the effectiveness of the City's Recruitment Plan and efforts and the Minority Business~~
8 ~~Enterprise Plan and efforts.~~
9
- 10 o) Assist the Equal Opportunity Director as requested in developing comprehensive yearly training for
11 the City's managers, supervisors, and employees to keep them abreast of changes in equal opportunity
12 related laws, policies, and procedures, and in providing an orientation to new employees on the Equal
13 Opportunity program.
14
- 15 p) Ensure that all hiring, promotion, and the "out of class assignments" for more than two weeks are
16 based on job related criteria and/or will be in accordance with the appropriate collective bargaining
17 agreement with a written explanation indicating the reason the respective Charter Officer or designee
18 made the selection, and forwarding to the Equal Opportunity Director within one week a copy of the
19 documentation authorizing or rejecting the action.
20
- 21 q) Charter Officers and/or their designees shall document the basis for demotions, promotions,
22 terminations, and transfers as defined by Human Resources procedures and forward to the Equal
23 Opportunity Director within one week, a copy of the documentation authorizing or rejecting the
24 action.
25
- 26 r) Ensure that all new and/or modified job descriptions and qualification requirements are forwarded to
27 the Equal Opportunity Director for equal opportunity compliance review at least one week prior to
28 approval, use or posting.
29
- 30 s) Ensure that the Equal Opportunity Director or designee shall receive for review current employment
31 policies and procedures for equal opportunity compliance and shall ensure that all new and/or
32 modified policies and procedures pertaining to employment are received for review by the Equal
33 Opportunity Director or designee prior to approval, implementation or change.
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DISCRIMINATION, HARASSMENT AND CONDUCT POLICY

(This policy will replace City Policy 27)

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4 The City of Gainesville does not discriminate on the basis of race, color, gender, age, religion, national
5 origin, marital status, sexual orientation, or disability (protected characteristics) and will not tolerate any
6 such discrimination by or against its employees or citizens utilizing City services, programs, and activities.
7 This policy against discrimination applies to all aspects of employment with the City, including
8 recruitment, hiring, training, working conditions, compensation, promotion, discipline and termination and
9 all City services, programs, and activities.

10
11 One type of discrimination occurs when the terms and conditions of an individual's employment are based
12 on these protected characteristics and not on the qualifications and abilities of the individual to do the job.
13 Examples of this type of discrimination include basing hiring and firing decisions on the protected
14 characteristics of an individual and not offering available opportunities to an individual because of a
15 protected characteristic.

16
17 Another type of discrimination occurs when an individual is subject to harassment in the work environment
18 or while utilizing City services because of a protected characteristic. As with any other form of
19 discrimination, the City will not tolerate inappropriate behavior by or against its employees based on a
20 protected characteristic. This includes inappropriate behavior by other employees, elected and appointed
21 officials, customers, vendors, contractors, or citizens coming into the workplace.

22
23 Inappropriate behavior becomes actionable in a court of law when it is severe or pervasive enough to create
24 a work environment that is hostile or abusive. However, the City desires to provide for its employees and
25 citizens utilizing its services an environment that is free of all inappropriate behavior as described below as
26 opposed to tolerating the inappropriate behavior until it becomes severe or pervasive.

27
28 It is inappropriate for an employee or citizen to be subject to unwelcome speech, conduct, or other
29 behavior that interferes with the conditions of work or City services and is based on one of the protected
30 characteristics. Inappropriate behavior includes such things as making insulting or derogatory comments
31 based on a protected characteristic, frequent teasing regarding a protected characteristic, or any other
32 behavior based on the protected characteristic of another that may create an intimidating, hostile, or
33 offensive working or service environment. Inappropriate behavior based on gender may include not only
34 the above, but such things as unwanted physical touching, unwelcome sexual advances or requests for
35 sexual behavior, the display of sexually suggestive objects or pictures in the workplace, and basing
36 employment or service decisions on an employee's or citizen's refusal to engage in sexual conduct.

37
38 Employees or citizens utilizing City services who believe that they are being discriminated against or being
39 subjected to inappropriate behavior or harassed, whether by City employees, co-workers, supervisors,
40 managers, elected or appointed officials, may firmly and promptly notify the offender that the behavior is
41 improper or unwelcome. At the same time, or in the alternative, if the employee or citizen does not desire
42 to confront the offender, the employee or citizen may notify any manager with whom the employee or
43 citizen is comfortable discussing the matter or may directly notify the Equal Opportunity Director of the
44 situation. For City employees, there is no requirement to adhere to the chain of command in making
45 complaints under this policy. Notices will be placed in appropriate work and service areas notifying
46 employees and citizens that they have a right to notify the City's Equal Opportunity Director if they believe
47 or have observed someone being harassed or discriminated against.

48
49 The City will swiftly and thoroughly investigate any complaints brought to the attention of management or
50 the Equal Opportunity Director. In order for this to occur, it is recommended that the complainant contact
51 City management or the Equal Opportunity Director as soon as possible. The investigation of the
52 complaint will be handled as confidentially as possible, taking into account the desires of the complainant,
53 the rights of the accused, the nature of the investigation, and the need to take corrective or disciplinary
54 action. If the City determines that applicable policies, laws, or procedures have been violated, the City will
55 take appropriate corrective action, including, but not limited to, disciplinary action up to and including
56 termination, or in the case of citizens, necessary steps to prevent any inappropriate behavior.

1
2 Participants involved in the complaint investigation will be treated courteously. The making of a good
3 faith complaint shall in no manner be used adversely against the complainant. The City will take
4 corrective action that is effective and appropriate to the circumstances, including, but not limited to,
5 disciplinary action up to and including termination against any person attempting to retaliate against the
6 complainant, or in the case of a citizen, whatever legally appropriate steps are necessary to prohibit
7 retaliation.

8
9 All employees have an obligation to report observed discrimination or harassment so that the City can take
10 appropriate action. Supervisors and managers have an obligation to report and take appropriate action to
11 discrimination, harassment, or inappropriate behavior observed or reported. Such failure to report
12 observed discrimination or harassment may result in corrective action. Managerial and supervising
13 employees will be trained regarding their responsibility upon receiving a verbal or written complaint and
14 their responsibility to advise the complainant of available avenues to resolve the complaint. All new
15 employees will receive training as to the City's Discrimination, Harassment, and Conduct Policy. This
16 Policy will be distributed to employees and available in City workplaces. Copies of the complaint process
17 shall be available to employees and distributed to the participants in an investigation.

18
19 As stated above, it is the City's policy to prevent and prohibit inappropriate behavior based on an
20 individual's protected characteristics whether or not the behavior is severe or pervasive enough to become
21 actionable in a court of law. Thus, employees and managers are encouraged to deal with inappropriate
22 behavior as soon as it occurs so as to prevent any similar behavior from occurring. Managers and
23 supervisors who have been made aware of prohibited inappropriate behavior shall within three days
24 communicate that information directly to the City's Equal Opportunity Department Director or designee
25 for training and compliance purposes. Employees engaging in inappropriate behavior may be subject to
26 counseling, discipline, or other corrective action regardless of whether their behavior rises to the level of
27 harassment or discrimination actionable in a court of law. In the case of citizens utilizing City services
28 who engage in inappropriate behavior, they will be dealt with in accordance with any legal remedy
29 available to the City that may prevent the inappropriate behavior.

30
31 This policy applies to elected and appointed officials, managers, supervisors, employees, contractors, or
32 vendors. Employees of the City who violate this policy will be subject to corrective action that is effective
33 and appropriate to the circumstances, including, but not limited to, disciplinary action up to and including
34 termination. Elected and appointed officials, contractors, or vendors whose actions are deemed to
35 constitute violations of this policy will be dealt with as provided for by law, contract, or other available
36 means.

37
38 The Equal Opportunity Director or designee shall be responsible for formal and informal investigations as
39 requested or needed under this policy and shall be the custodian of all formal complaints filed under
40 policies contained in the Equal Opportunity Policy Handbook.

RETALIATION POLICY
(Policy No. 33)

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2
3
4 The City of Gainesville has adopted an Equal Employment Opportunity Policy, a Disability Policy, and a
5 Discrimination, Harassment, and Conduct Policy. In order to encourage and assist in the implementation
6 of these policies, it is important that City employees or citizens who bring to the City's attention apparent
7 or real violations of these policies, or employees or citizens who otherwise participate in the investigation
8 or resolution of these matters, be protected against retaliation for their good faith efforts in this regard.
9

10 Therefore, this policy prohibits retaliation by City officials, managers, supervisors, or employees because
11 they have engaged in protected activities. For the purpose of this policy, protected activity consists of: (1)
12 opposing a procedure or practice prohibited by the City's Equal Employment Opportunity Policy;
13 Disability Policy; Discrimination, Harassment, and Conduct Policy; Title VII of the 1964 Civil Rights Act;
14 the Equal Pay Act, or (2) making a complaint, providing evidence, providing assistance in filing a
15 complaint, assisting or participating in any manner in an investigation, proceeding, or hearing authorized
16 under City policies or procedures relating to the City's Equal Employment Opportunity Policy; Disability
17 Policy; Discrimination, Harassment, and Conduct Policy; Title VII of the 1964 Civil Rights Act; or the
18 Equal Pay Act. Retaliation prohibited by this policy would occur if: (1) an employee or citizen opposes a
19 violation of the aforementioned policies or laws, or participates in a proceeding brought under one of the
20 policies (protected proceeding), (2) there is an adverse action against the employee or citizen, and (3) there
21 is a causal connection between the protected activity and the adverse action taken against the employee or
22 citizen.
23

24 The following are some examples of how an employee or citizen might oppose a violation of one of the
25 aforementioned policies.
26

- 27 1) Filing a complaint or otherwise making a complaint in accordance with City policies and/or
28 procedures or federal or state law regarding discrimination, or harassment.
- 29 2) An employee or citizen refuses to participate in, condone or support a discriminatory employment or
30 service decision.
- 31 3) An employee or citizen makes a request for reasonable accommodation in an employment or service
32 situation, or proposes an accommodation to provide fair access to facilities, programs, activities, or
33 services for qualified individuals who have disabilities.
34

35 An example of protected proceedings would be:
36

- 37 1) Making a complaint of discrimination in accordance with City policies and/or procedures or federal or
38 state law.
- 39 2) Providing evidence or testimony to an investigator in the course of investigating such complaint,
- 40 3) Rendering a decision or providing advice during the investigation or resolution of a complaint,
- 41 4) Providing assistance in the filing of a complaint.
42

43 The City will take corrective action that is effective and appropriate to the circumstances,
44 including, but not limited to, disciplinary action up to and including termination of any City employee who
45 retaliates against another employee or citizen. The Equal Opportunity Director or designee shall be
46 responsible for formal or informal investigations as requested or needed under this policy and shall be the
47 custodian of all formal complaints filed under policies contained in the Equal Opportunity Policy
48 Handbook.

DISABILITY POLICY

(Policy No 34)

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4 In accordance with the Rehabilitation Act of 1973, Section 504, and the 1990 Americans with Disabilities
5 Act regarding persons with disabilities, no otherwise qualified person with a disability shall, solely by
6 reason of the individual's disability, be excluded from participation in, be denied the benefits of, or be
7 subject to discrimination under any City program, service, or activity. The Equal Opportunity Director will
8 work to ensure that in every public area there is posted a notice that states individuals have a right to file a
9 complaint with the Equal Opportunity Department if they believe their rights have been violated by the
10 City based upon a disability. The Equal Opportunity Director will work to ensure the City's compliance
11 with this policy.

13 Covered Individuals

14
15 The City, in conformance with Title I of the Americans with Disabilities Act (ADA), requires the fair
16 treatment of qualified individuals with disabilities. A disabled person is defined as an individual with a
17 disability who, with or without reasonable accommodation, can perform the essential functions of the
18 employment position that such individual holds or desires. The ADA covers people with current or past
19 physical or mental impairments as well as people who are not disabled but are regarded as such.

20
21 The ADA prohibits employment discrimination against qualified disabled individuals, while ensuring that
22 employers can continue to require all applicants and employees, including those with disabilities, to be able
23 to perform the essential, non-marginal functions of the job in question.

25 Essential Job Functions and Reasonable Accommodations

26
27 A qualified individual with a disability is someone who is able to perform the "essential functions" of a
28 job, with or without a "reasonable accommodation". To determine if a person is "qualified" to perform a
29 particular job, the employer must identify, in advance, the essential and non-essential functions of the job,
30 and then determine whether the individual can perform them.

31
32 Determining the "essential functions" of a position is critical in evaluating whether or not a disabled person
33 is qualified for the position he or she holds or desires. If an individual with a disability can perform the
34 essential job functions, with or without reasonable accommodation, he or she may be considered qualified
35 for the position held or desired. An employer is not required to eliminate or transfer essential functions --
36 in other words, fundamentally change the job -- to accommodate a disabled employee who cannot perform
37 them.

38
39 Essential functions are the fundamental job duties of the employment position the individual with a
40 disability holds or desires. Marginal duties are not included. Essentially, employers must figure out what
41 employees actually do in their jobs.

43 Determining Essential Functions of a Job and Examples

44
45 Essential functions of a job are determined as follows: First, a task may be essential because the position
46 exists to perform the function. For example, the ability to proofread documents is an essential function of a
47 proofreader's job. Removing that proofreading function would fundamentally alter the job. An employer
48 may state that typing is an essential function of a certain job. However, if people holding that job never
49 actually type, typing would not be an essential function.

50
51 Second, a function may be essential based on the number of other employees available to perform that task
52 or among whom the responsibility of doing so can be distributed. This may be a factor either because of
53 few available workers, or because of the fluctuating demands of an operation. With a small work force, the
54 need to perform several tasks is more critical than with a larger staff, where work perhaps can be
55 redistributed with less impact.

56

1 Finally, a function may be essential if it requires a certain degree of skill or specialization. In some
2 professions, people are hired for their expertise or ability to perform certain functions, e.g.; an interpreter is
3 hired because of fluency in a foreign language. As with much of the ADA, deciding what is an essential
4 function will be determined by the City on a case-by-case basis.
5
6

7 Determining Reasonable Accommodations and Examples 8

9 The concept of "reasonable accommodation" is critical to understanding the actions that an employer may
10 be required to take to comply with the ADA. Disabled applicants and employees may need to be
11 accommodated, by law, as long as it is reasonable.
12

13 The City must make reasonable accommodations to the known physical or mental limitations of an
14 otherwise qualified applicant or employee, unless the City can demonstrate that the accommodation would
15 impose an "undue hardship." Also, the City cannot deny any employment opportunity, (i.e., refuse to
16 consider for employment), or deny a benefit to a qualified person with a disability if the denial is based on
17 the need to make reasonable accommodation. Reasonable accommodation applies to all phases of
18 employment.
19

20 Reasonable accommodation is defined as any change in the work environment or in the way things are
21 customarily done that enables an individual with a disability to enjoy equal employment opportunities.
22

23 Examples of reasonable accommodations include: 24

- 25 1) Accommodations that are made to ensure equal opportunity in the application process;
- 26 2) Accommodations that allow disabled employees to perform the essential functions of the job
27 such as acquiring or modifying equipment or devices, providing readers or interpreters;
- 28 3) Accommodations that enable employees with disabilities to enjoy employment benefits and
29 privileges equal to those of other non-disabled employees such as making facilities used by
30 employees readily accessible and usable and restructuring jobs;
- 31 4) Making existing facilities used by employees readily accessible to and usable by individuals
32 with disabilities;
- 33 5) Job restructuring, part-time or modified work schedules, reassignment to a vacant position,
34 acquisition or modification of equipment or devices, appropriate adjustment or modifications
35 of examinations, training materials or policies, the provision of qualified readers or
36 interpreters, and other similar accommodations for individuals with disabilities.
37

38 Actions that fall within the concept of "reasonable accommodation" range from purchasing equipment to
39 modifying company policies to reallocating space.
40

41 Employee Rights and Responsibilities 42

43 When requested by qualified applicants or employees, supervisors and managers will attempt to make
44 reasonable accommodations as needed. The Equal Opportunity Director or designee shall develop
45 procedures to assist supervisors and managers in providing reasonable accommodations. Employees who
46 need an accommodation are encouraged to initially discuss the matter with their supervisor, manager, or
47 department head. Employees maintain the right to directly contact the Equal Opportunity Director.
48

49 A person who wishes to file a complaint under this policy should consult the complaint policy in this
50 handbook. However, an employee or applicant maintains the right to file a complaint with an outside
51 agency or to use existing collective bargaining procedures, as applicable, in lieu of the procedures provided
52 by this City policy.
53

53 Access 54

55 To ensure compliance in accordance with Section 504 of the Rehabilitation Act of 1973 and the ADA, the
56 Equal Opportunity Director shall work with the appropriate City departments in conducting "self-

1 evaluations" of City buildings, services, programs, and activities pursuant to federal regulations. The
2 Equal Opportunity Director shall be responsible for coordinating with other affected City departments
3 planning implementation dates for a "Transition Plan" which lists access barriers and dates for corrective
4 action. The Equal Opportunity Director will also assist the Regional Transit System, Community
5 Development Block Grant Office, and any other departments that are required by the federal or state
6 governments to submit a disability plan.

7
8 Citizens Disability Advisory Committee

9
10 The Citizens Disability Advisory Committee shall consist of persons selected by the Equal Opportunity
11 Director and appointed by the City Manager. Members should be individuals with disabilities or have
12 some experience working with or expertise about persons who are disabled. Members shall be appointed
13 annually. The committee will be responsible for evaluating and providing assistance in implementing
14 Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Acts and also give
15 advice or assistance to the Equal Opportunity Director on accessibility and utilization as it relates to all
16 City programs, services, activities, and facilities.

17
18 The Equal Opportunity Director will serve as the City's liaison and render assistance to persons with
19 disabilities or organizations advocating the needs of persons with disabilities.

20
21 The Equal Opportunity Director or designee shall be responsible for investigations under this policy and
22 shall be the custodian of all formal complaints filed under policies contained in the Equal Opportunity
23 Policy Handbook.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

(Policy No. 35)

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It shall be the policy of the City to provide equal employment opportunities to all persons regardless of race, gender, color, age, national origin, religion, sexual orientation, marital status, or disability, except as may otherwise be required by law. Included in this policy are the goals. The Equal Opportunity Director or designee shall be responsible for proposing and presenting amendments to this policy and for establishing written procedures to implement this policy and its goals.

A. Policy. All actions related to recruitment will be in accordance with equal employment laws, policies, and procedures.

Goal. Ensure that the City does a thorough job in its recruiting efforts and has a process for capturing the diversity of its applicant pool, specifically the race and gender, and whether applicants meet the minimum requirements of the job in question.

B. Policy. All actions related to interviewing and selection will be in accordance with equal employment, laws, policies, and procedures.

Goal. Ensure that the City has a process that does not discriminate, preclude or have an adverse affect on any protected group by ensuring that there is no inappropriate or unlawful criteria used in the interview and selection process.

C. Policy. All actions related to hiring will be in accordance with equal employment laws, policies, and procedures.

Goal. Ensure that each hiring decision is reviewed before final approval to ensure it is fair, appropriate, and non-discriminatory.

D. Policy. All actions related to promotions will be in accordance with equal employment laws, policies, and procedures.

Goal. Ensure that each promotion decision is reviewed before final approval to ensure it is fair, appropriate, and non-discriminatory and in compliance with equal employment laws, policies, and procedures.

E. Policy. All actions related to transfers will be in accordance with equal employment laws, policies, and procedures.

Goal. Ensure that each transfer decision is reviewed before final approval to ensure it is fair, appropriate, and non-discriminatory and in compliance with equal employment laws, policies, and procedures.

F. Policy. All actions related to demotions will be in accordance with equal employment laws, policies, and procedures

Goal. Ensure that each demotion is reviewed before final approval to ensure it is fair, appropriate, and non-discriminatory and in compliance with equal employment laws, policies, and procedures.

G. Policy. Training programs shall have established criteria for employee participation that are non-discriminatory.

Goal. Ensure the participation of and facilitate the upward mobility of a diverse group of employees within the City's employment system.

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H. Policy. All employees, applicants, and citizens utilizing City services will be given the opportunity to voice complaints of discrimination and/or harassment.

Goal. Ensure there is an avenue to receive and resolve complaints internally and give the City a mechanism for addressing concerns of discrimination and/or harassment.

I. Policy. All Charter Officers and employees of the City shall furnish to the Equal Opportunity Director any information and records within their custody and respond to questions regarding powers, duties, activities, organization, property, business practices and methods that in the Equal Opportunity Director's opinion are required to perform investigations and requisite duties, except as prohibited by law.

Goal. Ensure the Equal Opportunity Director access to records, information, and resources to carry out requisite duties and to investigate, review, and resolve matters, except as prohibited by law.

