



**CITY OF WASILLA**

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Requested by: Administration

Prepared by: Administration

**RESOLUTION NO. WR96-24**

A RESOLUTION OF THE WASILLA CITY COUNCIL ADOPTING PERSONNEL POLICY NO. 96-01 EQUAL OPPORTUNITY AND HARRASSMENT COMPLAINT RESOLUTION.

WHEREAS, WMC 3.10.010 (m) gives authority to the Mayor to develop policies and procedures to implement the City personnel code; and

WHEREAS, the Council may approve these administrative policies by resolution; and

WHEREAS, to conform with state and federal regulations, the consultant personnel manager has developed a policy for equal employment opportunity and harrassment complaint resolution which has been approved by the Mayor.

NOW THEREFORE BE IT RESOLVED that the Wasilla City Council hereby approves Personnel Policy No. 96-01, Equal Opportunity and Harrassment Complaint Resolution.

I certify that a resolution in substantially the above form was approved by a majority of those voting at a duly called and conducted meeting of the governing body of the City of Wasilla this 8th day of April, 1996.

APPROVED:

John C. Stein, Mayor

ATTEST:

Marjorie D. Harris, CMC  
City Clerk

(Seal)

RECEIVED

FEB 22 1996

CITY OF WASILLA, ALASKA

February 21, 1996

Memorandum for: Mayor Stein

From: Ron Stocker

Subject: Personnel Policy 96-01, Equal Employment Opportunity and Harassment Complaint Resolution

The attached policy has been developed to enable the City to deal with EEO and Harassment complaints. It has been staffed with the Employee Committee, Department Heads and the City Attorney.

All changes (mostly grammatical) recommended by responding Department Heads were made.

A recommendation from the Employee Committee to include information that an employee may be represented by counsel during the informal investigation process was not included since by definition the process is informal. If an employee insists on being represented by counsel the city must accept the employees desires but there is no need to place this in the policy.

A recommendation from the Employee Committee to include information that an employee may be represented by counsel during the formal investigation process was not included since formal investigations are conducted by compliance agencies and each agency has its own instructions for complainants. The City's role in a formal investigation is one of providing information and possibly defending itself; not one of protecting the complainant's rights, as this falls to the compliance agency.

Recommendations made by the City Attorney were adopted for the most part; however, some basic disagreements between Dick and me remain:

1. Dick would prefer to not quote the Personnel Code under para 2. and to refer to the code only since changes to one place or the other could evolve over time and cause confusion. I feel that there is more confusion for employees to have to go to the code to read the City's policy. If changes in either place happen in the future, I would think that the Code would apply, as it is law. It could be incumbant on the administration to insure chages are made in both places as necessary.

2. Dick would prefer to remove para 5.f. the definition of Harassment as he feels that as case law develops the definition may be to restrictive or not meet evolving definitions and

may need be changed. I disagree and feel that it is valuable to inform supervisors and employees what is meant.

3. Dick would like the remove para 6. Prohibited Acts for basically the same reasons as above and I feel that the paragraph is needed for clarity.

Since I cannot state Dick's position as well as he perhaps a meeting with the two of us in your office would help us to reach compromise.

Once these determinations are made, I believe the policy is ready for submission to the City Council.

cc Dick Deuser

# CITY OF WASILLA

## *Personnel Policy 96-01*

### ***EQUAL EMPLOYMENT OPPORTUNITY AND HARASSMENT COMPLAINT RESOLUTION***

1. PURPOSE

To establish a standard process for <sup>resolving</sup> ~~seeking resolution to~~ informal complaints of discrimination/harassment filed by City employees and for processing and responding to formal complaints of discrimination/harassment received from Compliance Agencies.

2. POLICY-City of Wasilla, Personnel Code, Chapter 3.95 is quoted here for clarity.

**“3.95.020 NON-DISCRIMINATION.** Equal Employment Opportunity. In order to provide equal employment and advancement opportunities to all individuals, employment decisions at the City of Wasilla will be based on merit, qualifications, and abilities. The City of Wasilla will not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, national origin, age, disability, or any other characteristic protected by law. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action, including possible termination of employment.

**3.95.030 SEXUAL HARASSMENT POLICY.**

- A. It has always been the policy of the City that all employees should be able to work in an environment free from all forms of discrimination, including sexual harassment. Sexual harassment is a form of misconduct which undermines the integrity of the employment relationship. No employee should be subject to unsolicited and unwelcome sexual conduct, either verbal or physical.
- B. Sexual harassment does not refer to casual conversation or compliments of a socially acceptable nature. It refers to behavior which is not welcome and which is personally offensive, interfering with effectiveness or creating a hostile environment on the job. Such conduct, whether committed by supervisors or non supervisory personnel, is specifically prohibited.
- C. Employees can raise concerns and make reports without fear of reprisal. Anyone engaging in sexual or other unlawful harassment will be subject to disciplinary action, including possible termination of employment.”

3. ORGANIZATIONS AFFECTED

All City Departments.

4. REFERENCES

- a. Title VII, Civil Rights Act 1964, as amended
- b. Title 18, Chapter 80, Alaska Statutes
- c. Wasilla City Code Chapter 3.95
- d. Age Discrimination in Employment Act of 1967
- e. Rehabilitation Act of 1973
- f. Americans with Disabilities Act

5. DEFINITIONS

- a. The City Clerk/Personnel Office (CCO) - The City office charged with the responsibility to assist in resolving allegations of discrimination made by City employees. The City Clerk/Personnel Office(CCO) is not a Compliance Agency.
- b. City Official - For the purpose of this policy/procedure, a City employee at the supervisory or managerial level.
- c. Complainant - The individual or group who is alleged to be the victim of illegal discrimination.
- d. Compliance Agency - A local, state, or federal agency empowered by the statutes, ordinances or regulations to investigate formal complaints of discrimination. The following are Compliance Agencies: Alaska State Commission for Human Rights (ASCHR); Federal Equal Employment Opportunity Commission (FEEEOC); and the Office of Federal Contract Compliance Programs (OFCCP). Other federal agencies have certain investigative responsibilities on matters relating to grants or programs that they administer.
- e. Formal Complaint - A complaint filed with a compliance agency alleging illegal discrimination on the basis of race, color, sex, religion, national origin, age, disability, marital status, changes in marital status, parenthood or pregnancy in which a City department or employee is listed as the respondent.
- f. Harassment - Unjustified or unwarranted annoyance or incitement (physical or verbal conduct) that occurs and:
  - (1) acceptance of such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - (2) reaction to such conduct by an employee is used as a basis for employment decisions affecting such individual; or
  - (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment does not refer to casual conversation or compliments of a socially acceptable nature. It refers to behavior which is not welcome and which is personally offensive, interfering with effectiveness or creating a hostile environment on the job. Such conduct, whether committed by supervisors or non supervisory personnel, is specifically prohibited. Because the specifics of unwelcome behavior or offensive behavior are different to different people the offended party must be willing to clearly notify the offender that the behavior is not welcome.

- g. **Illegal Discrimination** - An act or acts which are prohibited by federal, state or local anti-discrimination laws. Prohibited acts include those where individuals or groups are treated differently because of their race, color, religion, sex, age, disability, national origin, marital status, pregnancy or parenthood.
- h. **Informal Complaint** - A complaint, alleging illegal discrimination on the basis of race, color, sex, religion, national origin, age, disability, marital status, changes in marital status, parenthood or pregnancy, that has been filed by a City employee with the CCO, but has not been filed with a compliance agency.
- i. **Respondent** - The City of Wasilla or any of its departments as identified in a formal complaint. Specific individuals may also be listed as respondents.

## 6. PROHIBITED ACTS

Prohibited acts include slurs, epithets, sexual advances, request for sexual favors, and other verbal or physical conduct of an intimate nature such as uninvited touching or sexually suggestive comments; and other acts which threaten or intimidate because of race, color, sex, national origin, disability, age, marital status, pregnancy/parenthood, or religion such as disparaging terms, jokes, pictures, cartoons, and physical or property assaults, commonly understood disparaging or abusive terms relating to race, color, religion, sex, national origin, age, or disability.

Harassment occurs when a supervisor or employee creates or condones a discriminatory work environment, regardless of whether an employee loses any tangible job benefits as a result of the discrimination. Sexual harassment does not refer to casual conversation or compliments of a socially acceptable nature. It refers to behavior which is not welcome and which is personally offensive, interfering with effectiveness or creating a hostile environment on the job. Because the specifics of unwelcome behavior or offensive behavior are different to different people the offended party must be willing to clearly notify the offender that the behavior is not welcome. Such continuing conduct, whether committed by supervisors or non supervisory personnel, is specifically prohibited.

Note: Criticism of an employee's work habits or work products is considered part of the evaluation process and is not considered harassment under the guidelines of this policy.

## 7. RESPONSIBILITIES

- a. All City employees shall report allegations and acts of discrimination or harassment to their supervisor or the CCO. Employees may report acts of discrimination to any supervisor, Department Head, or City Official.
- b. City Officials shall take action when they become aware of a situation involving allegations and/or acts of discrimination and will report such allegations to the CCO.
- c. The CCO shall:
  - (1) Provide technical assistance and support to City officials, employees, and complainants in their efforts to resolve complaints of discrimination.
  - (2) Cooperate with Compliance Agencies in processing or investigating formal complaints of discrimination.

- d. The City Attorney shall provide legal advice and assistance as requested by the CCO or the respondent department or as the City Attorney's Office deems necessary.

8. PROCEDURE-INFORMAL COMPLAINTS

- a. Use of official duty time for filing and processing informal complaints of discrimination.

- (1) City employees will make arrangements with their supervisors when they wish to schedule official duty time to consult with the CCO staff or other City officials on matters relating to informal complaints. When an employee cannot be released at the requested time, an alternate time should be scheduled within five work days of the time originally requested.
- (2) If the complaint is against a supervisor, the complainant may schedule leave time to consult with the CCO or other City official on the matter. The complainant need not inform the supervisor of the nature of the request. However, the City official or complainant should notify the CCO. The CCO will arrange reinstatement of the amount of leave used with the Finance Department.

- b. Processing informal complaints of discrimination

- (1) When a City official or employee becomes aware of an allegation of discrimination, action shall be taken to resolve the issues or to secure the assistance of the CCO to review and attempt to resolve the allegation. The CCO shall be advised of the results of the review.
- (2) To be considered for informal review by the CCO, a complaint must be filed with the CCO within 30 calendar days of the date the incident occurred or when the complainant becomes aware of the incident.
- (3) Upon receipt of an informal complaint of discrimination from a complainant or at the request of a City official, the CCO may, after consultation with the Mayor, appoint a neutral supervisor/manager to investigate and assist the parties in an attempt to resolve the issues raised by the complainant. Both the complainant and the department must be willing to cooperate in the resolution effort. Failure of complainant to cooperate or assist in the resolution will preclude further efforts by the CCO at the informal level.

Note: The CCO or appointed supervisor/manager will make an effort to resolve an informal complaint within 30 calendar days from the date the employee files the complaint.

- (4) Actions by the CCO or appointed supervisor/manager to seek resolution may include, but are not limited to the following:
  - \* Inform the employee of his/her right to file a formal complaint with a Compliance Agency by providing the employee an informational copy of the Complainant's Right to File form. (see Attachment A)
  - \* Listen to and document the complainant's allegations.
  - \* Attempt to facilitate the resolution that the complainant is seeking.

- \* Inform the respondent of the allegation(s) and establish his or her perceptions of the facts or problem.
- \* Gather and review other relevant data and facts.
- \* Meet with the complainant and respondent to discuss resolution.
- \* Provide both parties with a summary of any resolution agreed to by all parties.
- \* If any problems of a non-discriminatory nature surface, they may be brought to management's attention by the CCO or appointed supervisor/manager for resolution.

Note: The CCO or appointed supervisor/manager may keep records as are necessary to document actions taken.

- (5) The City Attorney's Office will assist the respondent, complainant, and the CCO or appointed supervisor/manager as necessary to resolve a complaint of discrimination.

## 9. PROCEDURE-FORMAL COMPLAINTS

- a. Use of official duty time for filing and processing formal complaints of discrimination.
  - (1) City employees will make arrangements with their supervisors when they wish to schedule official duty time to consult with a Compliance Agency on matters relating to formal complaints. When an employee cannot be released at the requested time, an attempt to schedule an alternate time within five work days of the time originally requested should be made.
  - (2) Compliance Agencies may request that city employees be provided with official duty time to meet with them concerning a complaint that the employee has filed. All such requests must be coordinated by the CCO, which will forward the request to the appropriate Department and Finance Department.
  - (3) If an employee is unaware that official duty time can be used to consult with the CCO or a Compliance Agency, the CCO will advise the Finance Department Director so that a leave adjustment may be made providing the employee and/or Compliance Agency notifies the CCO of meetings with the Compliance Agency.
- b. The CCO will be the central point for receiving complaints from Compliance Agencies. City departments receiving complaints from Compliance Agencies will forward all original documents received to the CCO.
- c. Upon receipt of a formal complaint of discrimination, the CCO will:
  - (1) Review the complaint and establish a file.
  - (2) Forward a copy of the complaint to the department listed as respondent, by confidential memo. If specific individuals are listed as respondents, a copy of the complaint will be forwarded to them through the department head. If the



department head is listed as the respondent, the CCO will forward a copy of the complaint to the Mayor.

- (3) Forward a copy of the complaint to the City Attorney's Office.
  - (4) If the complaint is an employment complaint, advise the Mayor that (name of employee) has filed a formal complaint that is being reviewed by (name of compliance agency).
- d. Upon receipt of a formal complaint of discrimination from the CCO, the department head will:
- (1) Review the complaint and attached request for information and/or documentation, prepare responses accordingly, and submit responses to the CCO.
  - (2) Determine if the matter was reviewed as an informal complaint. Note: If an informal review was not completed, the department head should conduct a review to determine if any aspect of the complaint requires immediate corrective action. The CCO shall be advised of the results of the review.
- e. Any City employee named as a respondent in a complaint may be asked to assist the department in its efforts to expeditiously review and, if possible, resolve the issues listed in the complaint. However, no employee shall be expected to waive any of his/her personal rights.
- f. Legal advice and assistance will be provided as requested, or as the City Attorney's Office deems necessary.
- g. Upon receipt of notification that a formal complaint has been received, the Department Head will review his/her files to determine if a grievance has been filed by the complainant on the same subject. If a grievance has been filed, the Department Head shall notify the CCO.
- h. Response to requests for information, interrogatories and other documents by Compliance Agencies.
- (1) The CCO will be the central point for receipt of all requests for information/interrogatories and documents from Compliance Agencies. Such requests received by City departments will be forwarded to the CCO.
  - (2) Upon receipt of a request from a compliance agency, the CCO will:
    - \* Review the request and notify the respondent department and other impacted officials of the date when the requested information is due to the CCO. If clarifications are required, the CCO will contact the Compliance Agency by telephone. If necessary, the CCO should ask for an amended request.
    - \* Forward a copy of the request for information/interrogatories and documents to the City Attorney's Office to determine if any of the requested items are privileged information. The City Attorney's Office shall advise the CCO and the respondent in writing of any items that should be withheld due to their privileged nature.

- \* Forward a copy of the request to the department listed as the respondent in the complaint.
  - \* Forward a copy of the specific items requested to any other office that will have to assist in preparation of the requested information.
- (3) Each office requested to provide information will review the request upon receipt and consult with the CCO on any questions that may develop. If it appears that additional time will be required to prepare the requested information, the CCO should be advised and asked to request additional time from the compliance agency.
- (4) Each office requested to provide information shall submit responses to the CCO.
- (5) The CCO will coordinate and forward the materials prepared in response to the compliance agency request within the time frame requested. Prior to forwarding the materials, the CCO will:
- \* Review the response and provide the preparing office with any comments that might assist in clarifying any portion of the response. The CCO will not edit or make unilateral changes in the response.
  - \* Provide the City Attorney's Office with a copy of the response for their review and comment.
  - \* Upon completion of the legal review, forward the response to the compliance agency. The CCO shall retain a copy of all forwarded materials. Note: Efforts will be made to prepare the information in the time frame requested by the compliance agency.

i. Fact Finding (FF) Conference

- (1) Fact Finding Conferences are scheduled and conducted by compliance agencies. These conferences, while not mandatory, are usually scheduled to occur after the compliance agency has received the respondent's response to the request for essential information/interrogatories or other documents. The FF Conference is usually the first time the respondent has an opportunity to discuss the allegations in the complaint and to provide his or her perception of the events surrounding the allegations. Fact Finding Conferences are held in an informal atmosphere and while questions may be asked through the moderator (compliance agency staff member), cross examining is not allowed. Each party is afforded an opportunity to present information in support of his or her respective positions. The FF Conference should result in one of the following:
- \* The compliance agency may determine that there is not a sufficient basis to proceed further with the investigation.
  - \* Based on the positions reviewed during the conference, the moderator may suggest a basis for a resolution to the allegations. If both sides are agreeable, a written agreement can be prepared to conclude the matter.

- \* The compliance agency may determine that there is a need to proceed with a formal investigation.
- (2) When a compliance agency schedules a FF Conference, City departments will make efforts to cooperate with the request. The following procedures shall serve as guidance for all City departments:
- \* The Mayor will determine who will represent the City at the FF Conferences. The designated representative will determine which employees will attend the conference. When the representative determines that a requested employee should not participate in the conference, this decision should be coordinated with the CCO and the City Attorney's Office within sufficient time to provide the compliance agency with notice of the decision prior to the conference.
  - \* It should be remembered that the goal of the FF Conference is to provide the compliance agency with the facts from the City's perspective.
  - \* The City Attorney's office will provide legal assistance and advise to both the respondent department and the CCO prior to and during the FF Conference.
- (3) Resolutions resulting from the FF Conferences.
- \* The designated city representative and the City Attorney's Office will share the responsibility for negotiating a proposed resolution. However, prior to agreeing to the basis for a resolution, the representative, CCO, City Attorney's Office, and any other department that may have to assist in implementing the proposed resolution will confer with the Mayor to determine if the proposal is acceptable. If agreement cannot be reached between the parties, the Mayor will decide.
  - \* Resolution agreements will be prepared for the signature of the appropriate City official (or his/her designee).
  - \* The CCO will ensure that all interested parties (respondent department, City Attorney's Office, etc.) have an opportunity to review a draft of the proposed resolution agreement before it is finalized for signing. Once the agreement is signed by the parties, it is binding.
- j. Investigation of formal complaints.
- (1) Investigation of formal complaints, when necessary, will be conducted by Compliance Agencies. The Compliance Agencies are requested to contact the CCO which will coordinate with the respondent department to establish the schedule for the investigation. The CCO will assist Compliance Agencies by scheduling interviews and making other arrangements necessary to coordinate the investigation.
  - (2) A CCO staff member may participate as an observer in all meetings between compliance agency investigators and City employees, except the complainant or witnesses specifically named by the complainant.

k. Additional Provisions

- (1) Any decision which constitutes an adverse or disciplinary action, change in duty station, job assignment, or supervision of an employee who has a current informal or formal complaint of discrimination must be coordinated with the CCO and the City Attorney prior to being implemented. The CCO and City Attorney should review the proposal and advise the department head if they concur on the need for the proposed action. If they do not concur, an effort should be made to conciliate the differences. If conciliation is unsuccessful, the issues shall be reviewed with the Mayor.
- (2) All City officials should avoid actions that might be construed as retaliatory against a complainant. The employee/complainant has the right to file discrimination charges if he/she believes that retaliatory action is being taken against them.
- (3) Any offer of settlement of a formal complaint made to a complainant directly by a City official shall be coordinated with the CCO and the City Attorney's office prior to being made. In cases where a formal complaint is settled by a City official and the complainant, the CCO shall be notified immediately of the settlement. The CCO will then notify the compliance agency and will provide the department with a copy of any written agreement.

APPROVED BY COUNCIL RESOLUTION \_\_\_\_\_, April — 1996

CITY OF WASILLA

MEMORANDUM

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DATE:

TO: (Employee Alleging Discrimination)

FROM: (CCO)

SUBJECT: Complainant's Right to File

Your comments regarding alleged discrimination are receiving careful review as an informal complaint.

You are advised that, should you choose to pursue this matter as a formal discrimination complaint, the CCO will stop its review of the informal complaint. You then have the option of filing a formal complaint with one of the Compliance Agencies listed below or taking any other action you desire.

Alaska State Human Rights Commission  
800 A Street, Suite 204  
Wasilla, Alaska 99501  
276-7474

Federal Equal Employment Opportunity Commission  
Seattle District Office  
2815 2nd Avenue, Suite 500  
Seattle, Washington 98124  
(206) 442-0968

Each of these agencies has a specific filing deadline within which a complaint must be filed. The filing date varies from 120 to 300 days depending on the agency. If you have any questions regarding complaint processing, you are encouraged to contact the agency directly.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Complainant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness