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4 **CITY OF SPOKANE ETHICS COMMISSION**

5  
6 **SPOKANE AREA NOW,**

7 Petitioner,

8 vs.

9 **DAVID CONDON, MAYOR,**

10 Respondent.

**REQUEST FOR JUDICIAL  
NOTICE**

11  
12 COMES NOW Complainant SPOKANE AREA NOW (“NOW”), by and through its  
13 undersigned attorneys, Rick Eichstaedt and the Center for Justice request that this Commission take  
14 judicial notice of the attached City of Spokane Sexual Harassment Policy (December 2, 2005). A  
15 copy of this policy is available at the City’s website at  
16 <https://static.spokanecity.org/documents/opendata/policies/admin-0620-05-35.pdf>.

17 While the Rule of Evidence do not apply to the proceeding, Evidence Rule 201 provides that  
18 a “judicially noticed fact must be one not subject to reasonable dispute in that it is either (1)  
19 generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and  
20 ready determination by resort to sources whose accuracy cannot reasonably be questioned.” ER  
21 201(b). A tribunal “shall take judicial notice if requested by a party and supplied with the necessary  
22 information.” ER 201(d). “Judicial notice may be taken at any stage of the proceeding.” ER 201(f).  
23

24 Here, the existence and language of the City’s Sexual Harassment Policy is outside the  
25 scope of any dispute. The Policy is one adopted by the City that has been in existence since 2005.

REQUEST FOR JUDICIAL NOTICE- 1

CENTER FOR JUSTICE  
35 West Main, Suite 300  
Spokane, WA 99201  
(509) 835-5211  
Fax: (509) 835-3867

1 Moreover, this Policy will aid in consideration and resolution of this matter, in particular  
2 matters that were raised late in the proceeding in Mayor Condon's Prehearing Brief. The Mayor's  
3 Prehearing Brief raises a number of new legal arguments and contains late filed evidence for  
4 consideration by this Commission.

5 Lastly, the consistency or not of the actions of the Mayor with the Sexual Harassment Policy  
6 has been cited in prior pleading by both NOW and the Mayor.

7 Accordingly, judicial notice of the Sexual Harassment Policy is warranted.

8  
9 RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of September, 2016.

10 CENTER FOR JUSTICE

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16 RICK EICHSTAEDT, WSBA #336487  
17 Attorney for Spokane Area NOW  
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**CERTIFICATE OF SERVICE**

I, Rick Eichstaedt certify that on the 27<sup>th</sup> day of September, 2016 I caused the foregoing *Request for Judicial Notice* to be electronically delivered to the following:

Office of the City Attorney  
808 W. Spokane Falls Blvd., 5<sup>th</sup> Floor  
Spokane, WA 99201

James King  
Evans/Craven/Lackie  
818 W. Riverside, Suite 250  
Spokane, WA 99201

DATED this 27<sup>th</sup> day of September, 2016.

CENTER FOR JUSTICE



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RICK EICHSTAEDT, WSBA #336487  
Attorney for Spokane Area NOW

RECEIVED

NOV 21 2005

CITY CLERK'S OFFICE

CITY OF SPOKANE  
ADMINISTRATIVE POLICY AND PROCEDURE

ADMIN 0620-05-35

ADMIN 0620-05-35

LGL 05-63

TITLE: **SEXUAL HARASSMENT**

EFFECTIVE DATE: May 2, 1998

REVISION DATE: DECEMBER 2, 2005

## 1.0 GENERAL

- 1.1 Sexual harassment is a form of sex discrimination and is prohibited by Title VII of the Civil Rights Act of 1964, Washington State's Law Against Discrimination, and the Spokane Municipal Code Chapter 1.06.

## 1.2 TABLE OF CONTENTS

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- 3.0 REFERENCES
- 4.0 DEFINITIONS
- 5.0 POLICY
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- 7.0 RESPONSIBILITIES
- 8.0 APPENDICES

## 2.0 DEPARTMENTS/DIVISIONS AFFECTED

This policy shall apply to all City divisions and departments.

## 3.0 REFERENCES

42 USC 2000e et. seq.  
RCW chapter 49.60  
SMC chapter 1.06

## 4.0 DEFINITIONS

- 4.1 Sexual harassment is any verbal, non-verbal, or physical behavior of a sexual nature which is unwelcome, uninvited, and offensive to a reasonable person in the recipient's position and alters the condition of the recipient's employment. Sexual harassment is a form of employee misconduct which is demeaning to another person and undermines the integrity of the employment relationship.

4.2 Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. Submission to such conduct is either an explicit or implicit term or condition of employment; or,
- b. Submission to or rejection of the conduct is used as a basis for employment decisions affecting the recipient; or,
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an objectively hostile or offensive work environment.

4.3 Examples of this type of behavior include but are not limited to the following:

- a. Verbal: sexual comments, innuendoes, suggestions, jokes, or pressure for sexual favors.
- b. Non-Verbal: suggestive looks, gestures, pictures, cartoons, drawings, posters.
- c. Physical: pats or squeezes, deliberate touching, cornering, pinching, attempts to kiss or fondle.

## 5.0 POLICY

5.1 It is the City of Spokane's policy that there shall be no discrimination or harassment of any employee based on sex. The City of Spokane does not condone and will not permit sexual harassment of any employee. Same-sex sexual harassment is also prohibited. All employees are expected to abide by this policy. Anyone who violates this policy will be subject to disciplinary action up to and including discharge.

5.2 Potential Liability Of The City And Individual Employee

5.2.1 The City and individual employees can be held liable for sexual harassment.

5.2.2 The City may be liable for sexual harassment by supervisors regardless of whether or not the City is aware of the behavior.

- 5.2.3 The City may be liable for sexual harassment by co-workers if the City knew, or should have known, of the conduct.

## 6.0 PROCEDURE

### 6.1 Complaint Procedure

- 6.1.1 A complainant is encouraged to use the City's complaint procedures to resolve sexual harassment complaints. Complainants may also file, within certain time frames, with appropriate state and federal agencies, such as:

State of Washington

Washington State Human Rights Commission, Rockpointe Plaza 3, 1330 North Washington Street, Suite 2460, Spokane, WA 99201, (509) 568-3196, TDD (800) 300-7575, Voice (800) 233-3247

Federal Government

U.S. Equal Employment Opportunity Commission, 909 First Avenue, Suite 400, Seattle, WA 98104-1061, (206) 220-6883, TDD (206) 220-6882, FAX (206) 220-6911, Voice (800) 669-4000

Office of Federal Contract Compliance Programs, Districts IX & X, 71 Stevenson Street, Suite 1700, San Francisco, CA 94105, (415) 848-6969

- 6.1.2 The sexual harassment complaint procedure does not limit any procedures available under any existing federal or state law.
- 6.1.3 Complaints may be submitted in writing or by any means accessible to the complainant. All complaints must, however, be signed or attested to by the individual receiving the complaint and dated upon receipt. Complaint forms are available in the Human Resources Department.
- 6.1.4 Violations of this policy will ideally be resolved at the lowest appropriate level, informally and effectively. All employees of the City of Spokane are encouraged to use the internal complaint procedure whenever it is believed that sexual harassment has occurred.
- 6.1.5 An employee who experiences unwelcome sexual behavior may assertively tell the offending person that the conduct is unwelcome and must cease immediately.

6.1.6 If the above step 6.1.5 is not effective or feasible and the employee desires an internal resolution of the complaint, the process outlined below shall be followed:

- a. The complainant should bring the issue to his/her immediate supervisor's attention in a timely manner. If the supervisor is the one engaging in the sexually harassing conduct, or the individual does not wish to tell the supervisor, the situation should be brought to the attention of that person's supervisor.
- b. When supervisors are notified of alleged sexual harassment, they shall immediately:
  1. Document and report the incident to the department head.
  2. Investigate the complaint.
  3. Take appropriate corrective action.
  4. Forward the results of the investigation to the Human Resources Department.
  5. Provide official findings and comments to the complainant, in writing, within ten (10) working days of receipt of the complaint.

6.1.7 If the above step 6.1.6 is not effective, or if the complainant is not satisfied with the action taken, the issue must be brought by the complainant to the attention of the department head within five (5) working days of receipt of the supervisor's response. The department head is responsible for further investigation and must respond in writing to the complainant within ten (10) working days of receiving the complaint. A copy of all correspondence shall be sent confidentially to the Director of Human Resources.

6.1.8 Alternatively, a complaint may be submitted at any time directly to the Director of Human Resources.

6.1.9 No individual will be retaliated against or otherwise adversely affected in employment as a result of making a sexual harassment complaint, or participating in an investigation of sexual harassment, or as a result of being erroneously accused of sexual harassment.

## 6.2 Employee Rights

- 6.2.1 Employee rights are also protected through remedies available under the Washington State Law against Discrimination, RCW 49.60, the U.S. Civil Rights Acts of 1964 and 1991, and Spokane Municipal Code Chapter 1.06.

## 6.3 Complainant's Responsibilities

- 6.3.1 Occasionally the offender may not be aware that a behavior is offensive. If at all possible, advise the offending individual that the conduct in question is offensive, and request that it be discontinued immediately.
- 6.3.2 If the complainant is not comfortable talking to the offending person and/or the offending conduct continues or recurs, the matter should be immediately reported to the complainant's immediate supervisor, department head or the Human Resources Director.
- 6.3.3 Employees who see this type of behavior, hear of it, or know of its occurrence should immediately report it to a supervisor, the Department Head, or the Human Resources Director.
- 6.3.4 Employees are required to cooperate fully in processing of the complaint. Employees may be allowed to be accompanied by a union representative or a person of comfort. If the employee chooses to be accompanied by an attorney, the cost of the attorney will be the sole responsibility of the employee.
- 6.3.5 An employee who files a false or malicious complaint of sexual harassment may also be disciplined. Discipline may include dismissal.

## 6.4 Administration

- 6.4.1 If a violation continues, the Human Resources Department shall be consulted immediately. The Human Resources Department is to be notified of all sexual harassment complaints so that a record may be maintained as required by the Equal Employment Opportunity Commission.

## 7.0 RESPONSIBILITIES


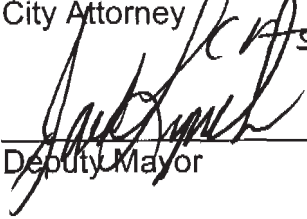
The Human Resources Department shall administer this policy.




8.0 APPENDICES

Sexual Harassment Complaint Form

APPROVED BY:

  
City Attorney  
  
Deputy Mayor

  
Director  
11/17/05  
Date

## DISCRIMINATION/HARASSMENT COMPLAINT FORM

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_ Department: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Is this a discrimination/harassment complaint? Yes ☐ No ☐ Are you a City employee? Yes ☐ No ☐

If yes, have you notified your supervisor? Yes ☐ No ☐ If yes, what was the outcome? \_\_\_\_\_

\_\_\_\_\_

*This complaint is based on: (Check all that apply)*

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Age                  | <input type="checkbox"/> Marital Status           | <input type="checkbox"/> Religion           |
| <input type="checkbox"/> Disability           | <input type="checkbox"/> National Origin          | <input type="checkbox"/> Sex/Gender         |
| <input type="checkbox"/> Familial Status      | <input type="checkbox"/> Race/Color               | <input type="checkbox"/> Sexual Harassment  |
| <input type="checkbox"/> Workplace Harassment | <input type="checkbox"/> Other Please Note: _____ | <input type="checkbox"/> Sexual Orientation |

Who allegedly discriminated against/harassed you: \_\_\_\_\_

Is the alleged offender a City employee? Yes ☐ No ☐ Department: \_\_\_\_\_

Where did it take place? \_\_\_\_\_

When did it take place? \_\_\_\_\_

Was this a single incident? Yes ☐ No ☐ If more than once, how many times? \_\_\_\_\_

How did the discrimination/harassment take place? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please explain additional details of complaint including why you feel you were discriminated against and or harassed. List any witnesses:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

In filing this complaint please explain the resolution you would like: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The following information is VOLUNTARY and is requested for statistical purposes

Age: \_\_\_\_\_ Gender: M ☐ F ☐ Race/Ethnicity \_\_\_\_\_ Disability \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\*FOR OFFICE USE\*\*\*

Complaint received by: Email ☐ Mail ☐ Phone ☐ Walk-In ☐ Prior Appointment ☐

Date complaint received: STAMP HERE

Detail of action taken: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Referral(s):

Date: \_\_\_\_\_ To: \_\_\_\_\_

Date: \_\_\_\_\_ To: \_\_\_\_\_

Complaint Closed: \_\_\_\_\_

Is complainant satisfied with outcome? Yes ☐ No ☐

Complainant Remarks (if any):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you need assistance in filing your complaint please contact the Human Resources Department  
at the address below or call (509) 625-6703

PLEASE MAIL THIS FORM TO:

CITY OF SPOKANE HUMAN RESOURCES DEPARTMENT, 4TH FLOOR  
808 W. SPOKANE FALLS BLVD. SPOKANE, WA 99201-3327  
OR FAX TO: (509) 625-6379