

AN ORDINANCE AMENDING
CHAPTER TWO
OF THE SALEM CITY CODE,

BE IT ORDAINED by the Mayor and City Council as follows:

- I. Section 2-166 of the Salem City Code is hereby repealed.
- II. Section 2-166 is replaced in its entirety by a new City of Salem Policy Against Discrimination, Harassment, Sexual Misconduct Policy, as set forth in the attached Exhibit "A".

IN WITNESS WHEREOF, I have hereunto set my official hand and caused the corporate seal of the City of Salem, Illinois, to be affixed this 19th day of March, 2018.

CITY OF SALEM, ILLINOIS

By: *Rex A. Bender*
MAYOR

ATTEST:

Bess Quinn
CITY CLERK



EXHIBIT A

CITY OF SALEM **POLICY AGAINST DISCRIMINATION,** **HARASSMENT AND SEXUAL MISCONDUCT**

I. STATEMENT OF POLICY

It is the City of Salem's policy that it will not tolerate or condone discrimination or harassment on the basis of race, color, religion, creed, sex, gender-identity, gender-expression, sexual orientation, pregnancy, childbirth, medical or common conditions relating to pregnancy and childbirth, genetic information, national origin, age, physical or mental disability, ancestry, marital status, military status, arrest record, unfavorable discharge from military service, order of protection status, citizenship status or any other classification prohibited under federal or state law. Sexual misconduct is also prohibited. The City will neither tolerate nor condone discrimination, harassment or sexual misconduct by employees, managers, supervisors, elected officials, co-workers, or non-employees with whom the City has a business, service, or professional relationship. "Employee" for purposes of this policy includes any individual performing services for the City, an apprentice, an applicant for apprenticeship, or an unpaid intern. Retaliation against an employee who complains about or reports any act of discrimination, harassment or misconduct in violation of this policy is prohibited. Retaliation against any employee who participates in an investigation pursuant to this policy is likewise prohibited. The City of Salem is committed to ensuring and providing a work place free of discrimination, harassment, sexual misconduct and retaliation. The City will take disciplinary action, up to and including termination, against an employee who violates this policy.

As set forth above, sexual harassment and sexual misconduct are prohibited. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, or any other visual, verbal or physical conduct of a sexual nature when:

1. submission to or rejection of this conduct explicitly or implicitly affects a term or condition of individual's employment;
2. submission to or rejection of the conduct is used as the basis for an employment decision affecting the harassed employee or;
3. the harassment has the purpose or effect of unreasonably interfering with the employee's work performance or creating an intimidating, hostile or offensive work environment because of the persistent, severe or pervasive nature of the conduct.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The employee as well as the harasser may be a woman or a man. The employee does not have to be of the opposite sex.
- The harasser can be the employee's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The employee does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the employee.
- The harasser's conduct must be unwelcome.

Each employee must exercise his or her own good judgment to avoid engaging in conduct that may be perceived by others as sexual harassment or harassment based on any status protected by law. The following are illustrations of actions that the City deems inappropriate and in violation of our policy:

1. Unwanted sexual advances.
2. Offering employment benefits in exchange for sexual favors.
3. Retaliating or threatening retaliation after a negative response to a sexual advance or after an employee has made or threatened to make a harassment complaint.
4. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
5. Verbal conduct such as making or using derogatory comments, epithets, slurs, sexually explicit jokes, derogatory or suggestive comments about a person's body or dress.
6. Written or electronic communications of a sexual nature or containing statements or images which may be offensive to individuals in a particular protected group, such as racial or ethnic stereotypes or stereotypes regarding disabled individuals.
7. Physical conduct such as unwanted touching, assaulting, impeding or blocking movements.

Sexual misconduct is strictly prohibited by the City of Salem and can include any inappropriate and/or illegal conduct of a sexual nature including, but not limited to, sexual abuse, sexual exploitation, sexual intimidation, rape, sexual assault, or ANY sexual contact or sexual communications with a minor (including, but not limited to, conduct or communications which are written, electronic, verbal, visual, virtual or physical).

II. RESPONSIBILITIES

A. Supervisors

Each supervisor shall be responsible for ensuring compliance with this policy, including the following:

1. Monitoring the workplace environment for signs of discrimination, harassment or sexual misconduct;
2. Immediately notifying law enforcement where there is reasonable belief that the observed or complained of conduct violates the criminal laws of the State of Illinois.
3. Immediately notifying the Salem Police Department, who would notify the Department of Children and Family Services (DCFS) Hotline (1-800-25-ABUSE or 1-800-252-2873), if the observed or complained of conduct involves the abuse of a minor.
4. Immediately stopping any observed acts of discrimination, harassment or sexual misconduct and taking appropriate steps to intervene, whether or not the involved employees are within his/her line of supervision;
5. Immediately reporting any complaint of harassment, discrimination or sexual misconduct to the City Manager. If a complaint is lodged against the City Manager, it shall be reported to the Mayor; and
6. Taking immediate action to limit the work contact between the individuals when there has been a complaint of discrimination, harassment or sexual misconduct, pending investigation.

B. Employees

Each employee is responsible for assisting in the prevention of discrimination, harassment and sexual misconduct through the following acts:

1. Refrain from participation in, or encouragement of, actions that could be perceived as discrimination, harassment or sexual misconduct;
2. Immediately reporting any violations of this policy to a supervisor and law enforcement (if appropriate under the circumstances) and/or DCFS (if appropriate under the circumstances). Employees are obligated to report violations of this policy as soon as they occur. An employee should not wait until the conduct becomes unbearable before reporting the prohibited conduct. All employees are obligated to report instances of prohibited conduct even if the conduct is merely observed and directed toward another individual and even if the other person does not appear to be bothered or offended by the conduct. All employees are obligated to report instances of prohibited conduct regardless of the identity of the alleged offender (e.g. man, woman, supervisor, elected official, co-worker, volunteer, vendor, member of public).

3. Encouraging any employee who confides that he/she is the victim of conduct in violation of this policy to report these acts to a supervisor.

Failure to take action to stop known discrimination, harassment or sexual misconduct may be grounds for discipline.

There is a clear line in most cases between a mutual attraction and a consensual exchange and unwelcome behavior or pressure for an intimate relationship. A friendly interaction between two persons who are receptive to one another is not considered unwelcome or harassment. Employees are free to form social relationships of their own choosing. However, when one employee is pursuing or forcing a relationship upon another who does not like or want it, regardless of friendly intentions, the behavior is unwelcome sexual behavior. An employee confronted with these actions is encouraged to inform the harasser that such behavior is offensive and must stop. You should assume that sexual comments are unwelcome unless you have clear unequivocal indications to the contrary. In other words, another person does not have to tell you to stop for your conduct to be harassment and unwelcome. Sexual communications and sexual contact with a minor are ALWAYS prohibited.

If you are advised by another person that your behavior is offensive, you must immediately stop the behavior, regardless of whether you agree with the person's perceptions of your intentions.

The City of Salem does not consider conduct in violation of this policy to be within the course and scope of employment and does not sanction such conduct on the part of any employee, including supervisory and management employees.

III. APPLICABLE PROCEDURES

The City of Salem takes allegations of discrimination, harassment and sexual misconduct very seriously. It will actively investigate all complaints.

It is helpful for the employee to directly inform the offending individual that the conduct is unwelcome and must stop. The employee should use the City of Salem's complaint procedure to advise the City of any perceived violation of this policy as soon as it occurs.

A. Bringing a Complaint

Any employee of the City of Salem who believes that there has been a violation of this policy may bring the matter to the attention of the City in one of the following ways:

1. Advising his or her supervisor; or

2. Advising the offending employee's supervisor, the City Manager or the Mayor in the event that the alleged harasser is the City Manager. If the complaint involves the employee's supervisor, the employee should go directly to the City Manager or the Mayor in the event that the complaint involves the City Manager.

3. The complaint should be presented as promptly as possible after the alleged violation of this policy occurs.

4. All municipal employees have the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) for information regarding filing a formal complaint with those entities. An IDHR complaint must be filed within 180 days of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must be filed within 300 days.

5. Allegations, including anonymous reports, will be accepted and investigated regardless of how the matter comes to the attention of the City. However, because of the serious implications of sexual harassment charges and the difficulties associated with their investigation and the questions of credibility involved, the claimant's willing cooperation is a vital component of an effective inquiry and an appropriate outcome.

B. Resolution of a Complaint

Promptly after a complaint is submitted, the City will undertake such investigation, corrective and preventive actions as are appropriate. In general, the procedure in resolving any complaints can (but will not necessarily) include any of the following items:

1. A meeting between the employee making the complaint and an individual designated by the City Manager to investigate such complaints. Important data to be provided by the complaining employee includes the following:
 - a. A description of the specific offensive conduct;
 - b. Identification of all person(s) who engaged in the conduct;
 - c. The location where the conduct occurred;
 - d. The time when the conduct occurred;
 - e. Whether there were any witnesses to the conduct;
 - f. Whether conduct of a similar nature has occurred on prior occasions;

- g. Whether there are any documents which would support the complaining employee's allegations;
 - h. What impact the conduct had on the complaining employee.
- 2. While not required, the City encourages anyone who makes a complaint under this policy to provide a written statement setting forth the above details and attaching any pertinent records.
- 3. After a complaint is submitted by the employee, the alleged offending individual should be contacted by a designated representative of the City. The alleged offending individual should be advised of the charges brought against him or her, and may be provided with a copy of the written statement of complaint made by the complaining employee (if applicable). The alleged offending individual should have an opportunity to fully explain his or her side of the circumstances, and may also submit a written statement, if desired.
- 4. After the alleged offending individual is interviewed, any witnesses identified by either the complaining employee or the alleged offending individual may be interviewed separately.
- 5. Once this investigation is completed, the City will take such action as is appropriate based upon the information obtained in the investigation. In the event that the City finds merit in the charges made by the complaining employee, disciplinary action will be taken against the offending employee. This disciplinary action may, but need not necessarily, include:
 - a. Verbal or written reprimand;
 - b. Placing the offending employee on a corrective action plan for a period of time to be identified;
 - c. Delay in pay increases or promotions;
 - d. Suspending the offending employee from work without pay;
 - e. Demotion;
 - f. Immediate termination.
- 6. Upon completion of the investigation, the City will advise the complaining employee of the results of the investigation, including action taken, if any, against the offending individual.

When investigating alleged violations of this policy, the City looks at the whole record including, but not limited to, the nature of the allegations, the context in which the alleged incidents occurred, and the statements of the parties and witnesses. A determination on the allegations is made from the facts on a case-by-case basis.

Non-Retaliation

Pursuant to the Illinois Whistleblower Act (740 ILCS 174/15), under no circumstances will there be any retaliation against any employee making a complaint of discrimination, harassment or sexual misconduct. According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act. An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge – due within 180 days (IDHR) or 300 days (EEOC) of the alleged retaliation. Any act of retaliation by any party directed against a complaining employee, an accused employee, witnesses, or participants in the process will be treated as a separate and distinct complaint and will be similarly investigated. Complaints of retaliation should be addressed to the City Manager or the Mayor in the event that the alleged harasser is the City Manager.

If you have any questions concerning the City of Salem's policies on this matter, please see your supervisor, the City Manager, or the City Attorney. Further information may also be obtained from the Illinois Department of Human Rights, 312-814-6200, or the Equal Employment Opportunity Commission (EEOC), 800-669-4000 or for matters involving the abuse of minors the Illinois Department of Children and Family Services (DCFS), 800-25-ABUSE.

Consequences for Knowingly Making a False Report

A false report is a report of sexual harassment made by an accuser to accomplish some end other than stopping sexual harassment or retaliation for reporting sexual harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report is a severe offense that can itself result in disciplinary action. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to discipline or discharge pursuant to applicable municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements. Depending upon the circumstances, the person making a false report may also be subject to criminal and/or civil penalties.

Acknowledgement

Upon adoption of this Policy Against Discrimination, Harassment, and Sexual Misconduct, all officials and employees of the City of Salem shall acknowledge receipt and

understanding of this policy by completing the acknowledgment form at the end of this policy and returning it to the City Clerk. Should amendments be made to the Policy in the future, the same acknowledgement shall be made by all current officials and employees signifying receipt and understanding of any such amendments.