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## Discriminatory Harassment

### 311.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent department members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not otherwise required by law.

### 311.2 POLICY

The City of Kalamazoo is an equal opportunity employer and the Kalamazoo Department of Public Safety is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation. The Department will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. The Department will take preventive and corrective action to address any behavior that violates this policy or the rights and privileges it is designed to protect.

The nondiscrimination policies of the Department may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline. In addition, employees of the Kalamazoo Department of Public Safety are subject to the City of Kalamazoo Policy and Procedures Manual dealing with Discrimination and Harassment Complaints.

### 311.3 DEFINITIONS

Definitions related to this policy include:

#### 311.3.1 DISCRIMINATION

The Department prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on height, weight, race, color, religion, sex, age, national origin or ancestry, citizenship, ethnicity, familial status, marital status, genetic information, disability, military service, sexual orientation, gender identity and other classifications protected by law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment can include making derogatory comments, crude and offensive statements or remarks; making slurs or off-color jokes; stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters or material; making inappropriate physical contact; or using written material or department equipment and/or systems to transmit or receive offensive material, statements or

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pictures. Such conduct is contrary to department policy and to a work environment that is free of discrimination.

#### **311.3.2 RETALIATION**

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation or opposed a discriminatory practice. Retaliation will not be tolerated.

#### **311.3.3 SEXUAL HARASSMENT**

The Department prohibits all forms of discrimination and discriminatory harassment, including perceived sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex or gender.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly as a term or condition of employment, position or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

#### **311.3.4 ADDITIONAL CONSIDERATIONS**

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission and the Michigan Civil Rights Commission guidelines (MCL 37.2208).
- (b) Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with City or department rules or regulations, or any other appropriate work-related communication between supervisor and member.

#### **311.4 RESPONSIBILITIES**

This policy applies to all department members, who shall follow the intent of these guidelines in a manner that reflects department policy, professional law enforcement standards and the best interest of the Department and its mission.

Members are required to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher ranking supervisor or manager. Complaints or concerns may also

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be filed/inquired with the Office of Professional Standards, the Chief of Public Safety, the Human Resources Department, the City Manager or the City Attorney.

Any member who believes, in good faith, that he/she has been discriminated against, harassed or subjected to retaliation, or who has observed harassment, discrimination or retaliation, is required to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall fully document the information in a memo to the Human Resource Department. The memo shall be routed through the chain-of-command to the Chiefs Office who will forward to Human Resources.

#### 311.4.1 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment or retaliation shall be encouraged to contact, the Human Resources Department for further information, direction or clarification. Any supervisor that is approached by an employee asking for such clarification shall document the contact and details in a memo that shall be routed to the Office of Professional Standards through the chain of command.

#### 311.4.2 SUPERVISOR RESPONSIBILITIES

The responsibilities of each supervisor and manager shall include, but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.
- (c) Ensuring that their subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Notifying the Chief of Public Safety and the Human Resources Director through the chain of command in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment or retaliation no later than the next business day.

#### 311.4.3 SUPERVISOR'S ROLE

Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing or retaliatory. Supervisors and managers shall be aware of the following:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards.
- (b) False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.

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Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members or issuing discipline in a manner that is consistent with established procedures.

### **311.5 INVESTIGATION OF COMPLAINTS**

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Department that all complaints of discrimination, retaliation or harassment shall be fully documented and promptly and thoroughly investigated.

#### **311.5.1 SUPERVISORY RESOLUTION**

Members who believe they are experiencing discrimination, harassment or retaliation are encouraged to inform the individual that his/her behavior is unwelcome, offensive, unprofessional or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing his/her concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

#### **311.5.2 FORMAL INVESTIGATION**

All reported complaints shall be reviewed by the Human Resource Director who will assign a member of the Human Resource Department and a member of the City Attorney's Office to conduct a formal investigation consistent with Michigan law.

The persons assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the required cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include, but is not limited to, details of the specific incident, frequency and dates of occurrences and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

#### **311.5.3 ALTERNATIVE COMPLAINT PROCESS**

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Department. Members who believe that they have been harassed, discriminated or retaliated against are entitled to bring complaints of employment discrimination to federal, state and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

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#### **311.6 DOCUMENTATION OF COMPLAINTS**

All complaints or allegations shall be thoroughly documented on the appropriate forms and in a manner designated by the City of Kalamazoo Discrimination and Harassment Policy. The findings of the investigation shall be presented to the Human Resource Department Director who shall make recommendations to the City Manager for final disposition. All records shall be maintained in accordance with the established records retention schedule.

##### **311.6.1 NOTIFICATION OF DISPOSITION**

The complainant and/or victim, the accused, supervisor(s), and the Chief of Public Safety will be notified in writing of the disposition of the investigation and any actions taken to remedy or address the circumstances giving rise to the complaint.

#### **311.7 TRAINING**

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that he/she has been advised of this policy, is aware of and understands its contents and agrees to abide by its provisions during his/her term with the Department.

All members shall receive training as determined by the Training Division Commander and the Human Resources Department on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents and agree that they will continue to abide by its provisions.