

**RESOLUTION NO. \_\_\_\_\_, SERIES 2017**

**A RESOLUTION OF THE LOUISVILLE METRO COUNCIL AMENDING THE METRO COUNCIL POLICIES AND PROCEDURES TO ADD AN ANTI-HARASSMENT POLICY.**

**SPONSORED BY: COUNCILWOMEN LEET AND GREEN**

**WHEREAS**, Metro Council is committed to providing a safe work environment for its employees and members that is free of harassment.

**WHEREAS**, Metro Council is desirous of establishing an anti-harassment policy to protect its employees and members from verbal or physical abuse, harassment, intimidation, threats, violence or other adverse behavior.

**BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:**

**SECTION I:** The Louisville Metro Council Policies and Procedures are hereby amended to add the following Anti-Harassment Policy:

**Section 30. ANTI-HARASSMENT POLICY**

**A. Sexual Harassment and Other Harassment**

The Metro Council employees protected by the Anti-Harassment policies are Metro Council Members, legislative assistants, caucus staff, the Metro Council Clerk and the employees who report to the Metro Council Clerk, assistant to the Council President, business office staff (also called common staff), staff helpers, administrative assistants (also called administrative clerks), interns, and volunteers.

The Council will make every reasonable effort to ensure that no Metro Council employee is subjected to harassment. In order to preserve and protect an environment in which all employees and all members of the public are treated with equal courtesy and respect, the Council will not tolerate verbal or physical abuse, harassment, intimidation, threats, violence or other adverse behavior towards any individual on the basis of race, color, religion, national origin, ancestry, sex, age 40 and older, disability, smoking status (as long as workplace policy is complied with), pregnancy, veteran status, military status, sexual orientation, gender identity or any other protected characteristic as established by law.

The Council will not tolerate any behavior intended to intimidate, humiliate, threaten, denigrate or otherwise interfere with the ability of any employee, or any member of the public to perform job functions or conduct business, whether or not such behavior constitutes a violation of individual civil rights within the meaning of federal or Kentucky statutes, Louisville Metro Code of Ordinances or any other violation of this policy.

The Council commits to make every reasonable effort to ensure that no employee is subjected to harassment or a “hostile working environment”<sup>1</sup> by Council Members, co-workers, or supervisors, and further seeks to prevent any harassment of members of the public by its employees.

Sexual harassment consists of any unwelcome sexual advance, request for sexual favors, and other verbal and physical conduct or communication of a sexual nature if: (1) submission to such advances, requests or conduct and communication is an explicit or implicit term or condition of obtaining or retaining employment; (2) submission to or rejection of such advances, requests or conduct and communication by an employee affects decisions concerning an individual’s employment; or (3) such conduct or communication has the purpose or effect of unreasonably interfering with the employee’s ability to perform his/her job functions or to create a hostile, intimidating or offensive work environment. Sexual harassment is a violation of federal and state statutes as well as of the Council’s policies and procedures.

Other sexually harassing or offensive conduct in the workplace, whether committed by employees, supervisors, managers, non-supervisory employees, or non-employees is also prohibited.

This conduct includes but is not limited to:

1. Unwanted physical contact or conduct of any kind, including sexual flirtations, touching, advances, or propositions
2. Verbal harassment of a sexual nature, such as lewd comments, sexual jokes or references, and offensive personal references
3. Demeaning, insulting, intimidating, or sexually suggestive comments about an individual
4. The display in the workplace of demeaning, insulting, intimidating, or sexually suggestive objects, pictures or photographs
5. Demeaning, insulting, intimidating, or sexually suggestive written, recorded, or electronically transmitted messages (such as email, text messaging, and Internet materials)

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It does not refer to consensual personal and social relationships without a discriminatory employment effect.

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<sup>1</sup> The term “hostile work environment” is used as it is understood in Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act of 1967, American With Disabilities Act, Equal Pay Act, KRS Chapter 344, and LMCO Chapter 92.

Not every incident of inappropriate conduct constitutes harassment in violation of this policy. Isolated incidents of offensive conduct are not necessarily unlawful harassment. For example, random words that offend a particular person may not be sufficient to constitute harassment under this policy. Or, on occasion, employees may use rough or profane language in the workplace. While this may not be harassment, any Metro Council employee who finds it offensive should report it under the procedure outlined below.

Inappropriate, offensive, or discourteous conduct, even if it does not constitute harassment in violation of this policy, may result in an investigation. If a Metro Council employee is offended by such behavior, it is important that he or she follows the procedures set out below so the offensive behavior can be investigated, evaluated, and brought to the attention of the Members of Committee on Committees.

Any of the above conduct, or other offensive conduct, directed at any Metro Council employee because of his or her status under the protected employment categories is also prohibited.

## **B. Reporting Process**

A Metro Council employee should report any violation of this policy as soon as it occurs by using this reporting process. The very nature of harassment makes it difficult to detect unless the person being harmed registers his or her discontent. Any Metro Council employee who believes that he or she has been harassed should report the alleged harassment to the Third Party Investigator, (as retained per LMCO § 39.140(F)). The name and contact information for the Third Party Investigator will be provided to all Metro Council employees by the Metro Council President. The Metro Council employee may also report the alleged harassment through the Louisville Metro anonymous tip line. The Metro Council employee is encouraged to notify his or her immediate supervisor of the alleged harassment.

Any Metro Council supervisor who receives a complaint of alleged harassment must report the complaint to the Third Party Investigator for review and investigation. The complaint should be reported to the Third Party Investigator within seven days of the Metro Council supervisor receiving the complaint.

Nothing in this policy precludes any Metro Council employee from pursuing a private cause of action or filing a complaint with the Equal Employment Opportunity Commission (EEOC) or the Kentucky Human Rights Commission. Metro Council employees may also file a complaint with the Ethics Commission against any Metro Council Member, Legislative Assistant, or Caucus Staff for behavior prohibited in LMCO Chapter 21. Any allegations of criminal conduct should be reported promptly to the appropriate law enforcement agency.

*Confidentiality.* The Council recognizes the potential conflict between the employee's desire for confidentiality and the duty to investigate such complaints and allegations when the employee informs management about alleged harassment. However, after the Metro Council supervisor is notified of harassment and the employee requests that no action be taken, the Metro Council supervisor is still obligated to report the alleged harassment to the Third Party Investigator for review. Inaction in such circumstances could subject other employees to continued inappropriate and potentially illegal behavior, as well as lead to liability for the employer. The Council must take all reasonable steps to provide its employees a safe work place by preventing and correcting harassment.

The Council recognizes that confidentiality is important and will protect the confidentiality and privacy of individuals reporting or accused of harassment to the extent possible. However, the Council cannot guarantee complete confidentiality, because it usually cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. As a result, information about the allegation of harassment will be shared only with those necessary for the Third Party Investigator to carry out its investigative and operational responsibilities. Records relating to harassment complaints will be maintained in the same manner. The Council cannot maintain confidentiality in circumstances in which it is required by law to disclose information (such as in response to legal processes, Open Records, etc.) and when disclosure is required by the Council's outweighing interest to protect others.

The process for reporting and investigating complaints of alleged harassment is as follows:

1. The Complainant Metro Council employee reports his or her complaint of alleged harassment to the Third Party Investigator directly or via the Louisville Metro anonymous tip line. Written complaints are encouraged but not mandatory. The Complainant is also encouraged to notify his or her immediate supervisor of the alleged harassment.
2. The Third Party Investigator begins review of the complaint after the complaint is submitted by the Complainant, the Louisville Metro anonymous tip line or an immediate supervisor of the Complainant Metro Council employee. The Third Party Investigator's contract shall be executed through Louisville Metro Internal Auditor.
3. The Third Party Investigator has authority to determine whether a complaint on its face is sufficient or vexatious (as in the case of someone who has a history of abusing the anonymous tip line or who has filed multiple complaints and is known to have abused process in the past). If the Third Party Investigator determines the complaint is insufficient or vexatious, a letter shall be communicated to the Complainant and the alleged harassing Metro Council employee with an explanation of the deficiencies in the complaint. A copy of said letter will be filed with the Metro Council Clerk's office. The Metro Council Clerk is to maintain a file

containing communications from the Third Party Investigator. Records relating to harassment complaints are to remain confidential to the extent allowed by law. The Council cannot maintain confidentiality in circumstances in which it is required by law to disclose information (such as in response to legal processes, Open Records, etc.) and when disclosure is required by the Council's outweighing interest to protect others.

4. The Third Party Investigator shall give notice of investigation to the Complainant, if known, and the alleged harasser.
5. The Third Party Investigator shall exercise the authority to interview the Complainant, alleged harasser, and any witnesses to the incident or incidents in question as well as collect documentation or any available information with respect to the incident or incidents in question. Metro Council employees have a duty to cooperate with the investigation. The Third Party Investigator will report incidents of noncooperation to the Members of Committee on Committees.
6. At the conclusion of the investigation, the Third Party Investigator shall prepare and present a written report of the results of the investigation to the Metro Council Members of the Committee on Committees with a copy to the Complainant and the alleged harasser. If the allegations of harassment concern any Metro Council Members on the Committee on Committees, the Metro Council President shall appoint a replacement Metro Council Member to review the results of the investigation.

### **C. Review of Investigation Results and Action**

The Members of Committee on Committees shall review the investigation results concerning allegations against a Metro Council employee and take all reasonable measures to protect any Metro Council employee against harassment.

The Complainant and/or the alleged harasser may submit a written response to the Third Party Investigator's written report. Any such response shall be presented to the Committee on Committees within seven days after receipt of the Third Party Investigator's written report. The Committee on Committees may allow an opportunity for the Complainant and/or the alleged harasser to appear before the Committee on Committees before it takes action.

#### **1. Action against a Metro Council Member**

If the Committee on Committees determines there is sufficient cause to believe the alleged harassing Metro Council Member has subjected a Metro Council employee to harassment, the Committee on Committees may publish the report findings and encourage the alleged harassing Metro Council Member to follow recommended actions consistent with the investigation results and/or strongly admonish the actions of the Metro Council Member.

The Committee on Committees can initiate removal proceedings against a Metro Council Member as set forth in KRS § 67C.143 or file a complaint with the Ethics Commission pursuant to the complaint requirements contained in LMCO § 21.06.

If the investigation results suggest criminal conduct, the allegations should be reported promptly to the appropriate law enforcement agency.

## **2. Action against a Metro Council Employee**

If the Committee on Committees determines there is sufficient cause to believe the alleged harassing Metro Council employee has subjected a Metro Council employee to harassment, the Committee on Committees may take remedial actions consistent with the severity of the harassment and the authority granted to the Committee on Committees.

The Committee on Committees will provide the report to the immediate supervisor of the alleged harassing Metro Council employee with recommended corrective actions and/or suggested discipline, including but not limited to suspension or termination.

If the Committee on Committees supervises the alleged harassing Metro Council employee, the Committee on Committees will take appropriate corrective actions and/or discipline, including but not limited to suspension or termination.

### **D. Retaliation**

The Council will not tolerate adverse treatment of any individual because he or she has filed a harassment complaint, or has provided information concerning such complaint. Any Metro Council employee who engages in retaliation against another Metro Council employee who has filed a complaint or provided information concerning such complaint shall be subject to disciplinary action. Any Metro Council employee who feels he or she has been subjected to such retaliation should report this action to his or her immediate supervisor and/or the Metro Council President or to the Third Party Investigator retained per LMCO § 39.140(F).

### **E. False Claims**

No person shall file a complaint which is false, made in bad faith, with actual malice, or without probable cause. In the event that such a complaint is filed under this policy, the complaint and any report by the Third Party Investigator shall be forwarded to the Committee on Committees for review and action, if appropriate.

The Complainant and/or the alleged harasser may submit a written response to the Third Party Investigator's written report that finds a false complaint was filed. Any such response shall be presented to the Committee on Committees within seven days after receipt of the Third Party Investigator's written report. Upon request, the Committee on

Committees may allow an opportunity for the Complainant, the alleged harasser, and others to discuss his or her response before the Members of the Committee on Committees takes any action.

## **F. Training**

Metro Council employees are required to attend sexual harassment training, as offered through Louisville Metro Government, every four years or as otherwise deemed necessary by the Committee on Committees.

**SECTION II:** This Resolution shall take effect upon its passage and approval.

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H. Stephen Ott  
Metro Council Clerk

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David Yates  
President of the Council

**This is working document prepared at the request of the sponsors. The JCAO continues to review for form and legality:**

Michael J. O'Connell  
Jefferson County Attorney

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[R-081-17] Amending MC Rule to add Anti-Harassment Policy 6-21-17.doc