



MEMORANDUM

TO: Mayor and Council Members

FROM: Mark Washington, ^{mw}Interim Assistant City Manager

DATE: June 30, 2016

SUBJECT: Response to Resolution No. 20160324-014: Discrimination, Harassment and Retaliation

The purpose of this memorandum is to provide a response to Resolution 20160324-014 which directed:

1. The City Manager to review all City anti-discrimination policies and protocols; to include updating discrimination, harassment, and retaliation definitions by June 30, 2016
2. The City Auditor to present an external audit to Audit and Finance Committee by September 30, 2016 on investigations of discrimination, harassment, and retaliation between 2010-2015
3. The City Manager to recommend options for a third-party appeals process by June 30, 2016
4. The Municipal Civil Service Commission to consider potentially expanding its role for cases related to discrimination, harassment, and retaliation by June 15, 2016

Staff previously provided council a report on June 15, 2016 with the Municipal Civil Service Commission's recommendations that highlighted reasons why they were not well-suited to expand their role for third-party appeals for discrimination, harassment and retaliation, and other recommendations that supported another City Department hearing third-party appeals of investigations conducted by the Human Resources Department. I have attached a report from interim Human Resources Director, Joya Hayes, dated June 30, 2016, that provides an analysis and updates on all of the directives from the council resolution.

While the report is thorough, I do want to provide additional comment on the third-party appeals process/options. Based on staffs' benchmarking with practices in similar cities, our process is comparable and consistent with these cities. Additionally, in light of the upcoming budget challenges, some of the options require adding resources and funding to develop a third-party appeals process. While we are not recommending a third-party appeals option at this time, staff remains open to evaluating the upcoming report from the City Auditor.

We fully support a workplace free from discrimination, harassment, and retaliation and are committed to ensuring the appropriate steps are taken when such allegations are received. Staff will be bringing forward recommended changes to the personnel policies that will update the discrimination, harassment and retaliation definitions as explained in the attached report.

Attachment: June 30, 2016 memo/appendices from Joya Hayes, Interim Director of Human Resources

cc: Marc A. Ott, City Manager
Assistant City Managers and Chief of Staff
Corrie Stokes, City Auditor
Joya Hayes, Interim Director of Human Resources & Civil Service



MEMORANDUM

TO: Mark Washington, Interim Assistant City Manager fem
FROM: Joya Hayes, Interim Director of Human Resources and Civil Service Director
DATE: June 30, 2016
SUBJECT: Follow-up to Resolution No. 20160324-014- Discrimination, Harassment and Retaliation

The purpose of this memorandum is to follow-up on the March 24, 2016 resolution #20160324-014 (Attachment A), passed by City Council. The resolution reaffirms the City of Austin's opposition to discrimination in employment and encourages employees to promptly report any concerns they experience regarding discrimination, harassment or retaliation in the workplace. City management is in full support of maintaining a workplace free of discrimination, harassment, or retaliation. The resolution directed the City Manager to engage in four actions that are outlined in the memo below. A summary of the status, analysis and recommendation for each of the four actions directed by Council is provided below.

The resolution passed by Council directs the following four actions:

- (1) The resolution directs a review of all City anti-discrimination policies and protocols by June 30, 2016, and:
- Update definitions of discrimination, harassment and retaliation
 - Provide guidance for employees seeking accommodation of physical or mental disabilities and
 - Provide an anonymous complaint mechanism

Update, Analysis and Recommendation

Human Resources staff, in conjunction with the Law Department, have completed a review of the City Personnel Policy regarding discrimination, harassment, and retaliation. The goal of this review was to ensure city policy is both legally compliant, as well as being clear, concise and "user friendly" to employees. Staff researched and incorporated the latest guidance from the Equal Employment Opportunity Commission (EEOC). Staff also conducted benchmarking of policies and practices in Dallas, Fort Worth, Houston, San Francisco, California, Chicago, Illinois, and Portland, Oregon. The proposed policy language reflects data from that benchmarking, including expanded definitions that

incorporate examples for illustration, and adds a section to the Personnel Policies regarding "Retaliation," which was previously addressed in an Administrative Bulletin.

The proposed draft to the City Personnel Policies has added language reinforcing the City's commitment to providing reasonable accommodations under the requirements of the Americans with Disabilities Act, and directs employees to the detailed procedures, guidance, and forms that support that process.

The Office of the City Auditor continues to maintain a 24 hour, 7 day a week anonymous violation reporting telephone and online reporting form. Reference to that anonymous reporting vehicle has been added to the proposed Personnel Policy draft language under "Reporting Discrimination, Harassment, or Retaliation."

The proposed updates to the City Personnel Policy concerning harassment, discrimination and retaliation added language reinforcing the City's commitment to providing reasonable accommodations under the requirements of the Americans with Disabilities Act. Furthermore, the proposed updates also add language referencing the anonymous reporting mechanism under the City Auditor, which is attached to this memorandum. **(Attachment B)**

- (2) The resolution directs the City Auditor to commission an external audit to review investigations of alleged discrimination, harassment, and retaliation filed between 2010-2015; to examine investigatory procedures and standards applied in these cases; to report on investigatory best practices used in other cities and other entities; and, if needed, to provide recommendations regarding improvements to processes and protocols for anti-discrimination investigations. The audit shall be presented to the Audit and Finance Committee no later than September 30, 2016.

Update, Analysis and Recommendation

The Office of the City Auditor has reported that they have initiated the process to select an external auditor to complete this review. Human Resources staff will support the audit process and evaluate and incorporate its findings and feedback.

- (3) The resolution directs the City Manager to recommend options for a third-party appeals process, including a potential role for the Municipal Civil Service Commission; to consider in the recommended options feedback from the Management Integrity Committee and the Municipal Civil Service Commission, as described below; and to provide those recommendations to Council by June 30, 2016.

Update, Analysis and Recommendation

Staff has evaluated several options for a third-party appeals process. An option for the Municipal Civil Service Commission is not provided given their own recommendation in item #3 above. The analysis for the top two options is summarized below.

- Time and cost estimates are provided and take into consideration the significance of these types of complaints, the nature, scope, personal and organizational impact, and the responsibility (legal implications, resource expenditure, and impact on the City's functions, operations and ability to maintain the public's trust) that the caretakers for

any process must accept to ensure that an unbiased, comprehensive process, and a detailed and objective fact-based review occurs. Benchmarking against current practices in Dallas, Ft. Worth, Houston, San Antonio, Corpus Christi and El Paso did not find any examples of an appeals process to a Board, Commission or outside third party related to the findings of an investigation. Similar to the City of Austin, appeals processes do exist for certain staffing and/or disciplinary actions related to those findings. Each benchmarked City uses the US Equal Employment Opportunity Commission as it's established outside third party administrative review process.

Options for Consideration for a 3rd party appeals process:

- A. Internal City Department (outside of Human Resources)** – Staff could be added to a current city Department such as the Office of the Police Monitor, Labor Relations, or the creation of an internal EEOC Office, where it's focus and skills align with providing an independent review of appeals of investigatory findings of harassment, discrimination, or retaliation.
- B. Outside Law Firm** – The city could contract with one or more outside Law firms who could complete an external review of investigatory findings where investigations of harassment, discrimination or retaliation are appealed.

Attachment C provides further analysis and costs estimates for each of these options.

- (4) The resolution directed the Municipal Civil Service Commission to consider a potential expansion of its role to include cases related to alleged discrimination, harassment, and retaliation for which an employee has sought relief through the grievance process; and further requests the Commission to advise on the nature of the responsibilities and scope of review that such a role might entail. The City Manager was directed to transmit this request to the Municipal Civil Service Commission and to report back to the City Council by June 15, 2016, on the results of those discussions.

Update, Analysis and Recommendation

Staff provided a copy of the approved resolution to the members of the Municipal Civil Service Commission on March 28, 2016. The Municipal Civil Service Commission met to discuss the resolution and the request for a recommendation. The Municipal Civil Service provided the attached written recommendation to staff which was provided to City Council on June 15, 2016. (**Attachment D**)

Overall Summary/Recommendation

Staff has worked diligently to provide responsive information to the request from Council. Staff has drafted (**Attachment B**) proposed updated policy language regarding discrimination, harassment and retaliation, along with updated guidance reporting violations to include the anonymous reporting feature maintained by the Office of the City Auditor.

Staff will support the external audit process being initiated by the Office of the City Auditor and looks forward to evaluating those results and incorporating feedback and enhancements to our current process.

Staff has reviewed the response from the Municipal Civil Service Commission, and agrees that the Commission is not well-suited to expand its role to include allegations of discrimination, harassment, and retaliation that do not result in discharge, suspension, demotion, disciplinary probation, or denial of a promotion. Staff is supportive of the recommendation from the Commission for the training of staff conducting investigations, and documenting/communicating reporting avenues to all employees.

The remaining action in the resolution directs the City Manager to recommend options for a third-party appeals process. Two options for consideration have been reviewed in this memo. Staff believes the current outside third party review option, the U.S. Equal Employment Opportunity Commission, which has jurisdiction to investigate employment complaints including complaints of discrimination, harassment or retaliation, based on a person's race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information remains the most appropriate and effective third party administrative review process.

Should CMO wish to recommend an alternate third party appeals process, in addition to the US Equal Employment Opportunity Commission, staff believes it will be critical to ensure that the selected method is devoid of any bias towards increasing or decreasing the number or percentage of findings of policy violations. The current mandate that all investigations follow is very straightforward; only the evidence dictates the outcome. Currently, while management, a complainant, respondent, witness or stakeholder may disagree with the finding of the investigation, or desire a different outcome, the evidence in the case is the sole determining factor in answering the question: "did a policy violation occur, and if so what policy?" While judgement calls will always need to be made where conflicting or competing evidence exists, the preponderance of the evidence, as guided by City policy and legal standards, drive the determination of a policy violation. Additionally, it appears that the current resolution only provides an appeals option for employees who complain about issues regarding discrimination, harassment or retaliation. Respondents who do not agree with the findings of an investigation, who are not disciplined at a level that is appealable to the Municipal Civil Service Commission, may not view a third party appeals process inaccessible to them as being fair and equitable.

To best protect the integrity of current processes, and offer a third party review, staff recommends Option A, an internal department outside of HRD, could provide a third party review process. Neutral, uninvolved staff, trained in related City policy and procedure could fill this role, and feedback from their reviews would serve to inform and improve the City's processes and actions to investigate complaints, ensure appropriate outcomes, and communicate with/train our workforce.

Staff also believes that Option B, an Outside Law firm with specialization in Labor and Employment Law, would provide informed, credible, objective, fact based analysis and assessment of questions of policy violations and legal risk. The feedback from these reviews would serve to inform and improve the City's processes and actions to investigate complaints, ensure appropriate outcomes, and communicate with/train our workforce.

I am available to answer or expand on any of these items should you have any questions.

Attachments

RESOLUTION NO. 20160324-014

WHEREAS, the City of Austin opposes discrimination in employment and encourages employees experiencing discrimination, harassment, or retaliation in the workplace to promptly report that conduct to their department director, assistant director, or to the Human Resources Director; and

WHEREAS, on March 27, 2015, speakers at a staff training session made broad generalizations and relied on stereotypes when discussing female leaders; and

WHEREAS, the training session prompted city-wide and community-wide discussions about gender equity in the workplace and, more specifically, about how the City could better promote equitable treatment of all employees regardless of race, creed, color, national origin, sex, gender identity, age, religion, veteran status, disability, or sexual orientation; and

WHEREAS, on May 27 and September 28, 2015, three female City staff members appeared before the Human Rights Commission alleging gender discrimination in the workplace; and

WHEREAS, the Human Rights Commission subsequently reviewed the City's personnel policies for civil and non-civil service personnel and the City Department Personnel Action and Employee Relations Protocols; and

WHEREAS, the Human Rights Commission recommended that the City Manager perform a comprehensive review of all anti-discrimination policies and protocols and consider the following:

- Updating definitions of discrimination, harassment, and retaliation
- Providing guidance for employees seeking accommodation of physical or mental disabilities
- Simplifying and clarifying the process by which employees may file complaints
- Providing descriptions of the city's investigatory procedures
- Providing an anonymous complaint mechanism; and

WHEREAS, the Human Rights Commission also studied detailed information about cases of retaliation, discrimination, and harassment filed since 2010 with the City's Human Resources Department as well as the Equal Employment Opportunity Commission (EEOC); and

WHEREAS, this additional information was provided to the Council on October 22, 2015; and

WHEREAS, according to the October 22, 2015, memo from the Human Resources Director, over a five-year period the Human Resources Department investigated 72 alleged cases of discrimination, harassment, retaliation, or hostile environment; and

WHEREAS, the department substantiated only 16 of 72 cases; and

WHEREAS, over the five-year period, staff members filed 162 employment complaints against the city: 37 involved gender discrimination, 84 involved some type of retaliation in addition to discrimination based on protected status, and 39 involved harassment, including gender-based harassment; and

WHEREAS, an employee alleging discrimination on the basis of race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, genetic information, or retaliation may file a charge with the EEOC or

Texas Workforce Commission and, at the appropriate point, pursue the case in court; and

WHEREAS, seeking relief through the EEOC, Texas Workforce Commission, and/or the court system can require a significant investment of time and resources on the part of the staff members themselves as well as the city; and

WHEREAS, the City Council seeks to ensure that discrimination, harassment, and retaliation on any grounds are not tolerated within the workplace; and

WHEREAS, the City Council seeks to ensure that protocols for addressing discrimination, harassment, and retaliation at the City promote accountability and instill confidence in a just process; and

WHEREAS, creating an additional option for staff members will signal the City's serious commitment to maintaining a just and fair workplace; and

WHEREAS, the Municipal Civil Service Commission (MCSC) was created by a citizen-initiated charter amendment adopted in November 2012 to recommend adoption of civil service rules to City Council, hear appeals and make final, binding decisions in the case of City employees who are discharged, suspended, demoted, denied a promotion or put on disciplinary probation, and to conduct any investigations it may consider desirable or which it may be required to make by the City Council or the City Manager concerning the administration of municipal civil service; and

WHEREAS, the City Charter further defines that the MCSC shall perform other duties regarding the municipal civil service, not inconsistent with Article IX of the City Charter, that the City Council may require; and

WHEREAS, in its three years of existence the MCSC has become a trusted, impartial body within the City structure and could provide a more

accessible vehicle for considering appeals related to allegations of discrimination, harassment, and retaliation in the workplace; and

WHEREAS, Article IX §4(C) of the City Charter states that civil service rules may be amended using a process defined in Article IX §4(8) with a recommendation from the Human Resources Director to the MCSC, notice and public hearing, a recommendation with modifications as necessary by the Commission to the City Council, and adoption by the Council; **NOW, THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager is directed to review all City anti-discrimination policies and protocols, particularly those contained within the City of Austin Personnel Policies, as recommended by the Human Rights Commission, and by June 30, 2016:

- Update definitions of discrimination, harassment, and retaliation;
- Provide guidance for employees seeking accommodation of physical or mental disabilities; and
- Provide an anonymous complaint mechanism.

BE IT FURTHER RESOLVED:

That the City Auditor is directed to commission an external audit to review investigations of alleged discrimination, harassment, and retaliation filed between 2010-2015; to examine investigatory procedures and standards applied in these cases; to report on investigatory best practices used in other cities and other entities; and, if needed, to provide recommendations regarding improvements to processes and protocols for anti-discrimination investigations. The audit shall be presented to the Audit and Finance Committee no later than September 30, 2016.

BE IT FURTHER RESOLVED:

That the City Council desires to create an objective, third-party appeals process for cases pertaining to allegations of discrimination, harassment, and retaliation for which an employee is dissatisfied with the action taken after seeking relief through the grievance process for discrimination as outlined in Section IV.C.3. of the City of Austin Personnel Policies.

BE IT FURTHER RESOLVED:

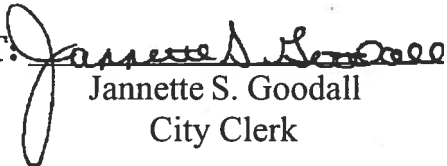
That the City Council directs the City Manager to recommend options for a third-party appeals process, including a potential role for the Municipal Civil Service Commission; to consider in the recommended options feedback from the Management Integrity Committee and the Municipal Civil Service Commission, as described below; and to provide those recommendations to Council by June 30, 2016.

BE IT FURTHER RESOLVED:

That the City Council directs the MCSC to consider a potential expansion of its role to include cases related to alleged discrimination, harassment, and retaliation for which an employee has sought relief through the grievance process; and further requests the Commission to advise on the nature of the responsibilities and scope of review that such a role might entail. The City Manager is directed to transmit this request to the Municipal Civil Service Commission and to report back to the City Council by June 15, 2016, on the results of those discussions.

ADOPTED: March 24 , 2016

ATTEST:


Jannette S. Goodall
City Clerk

<p>CHAPTER A: NON-CIVIL SERVICE EMPLOYEES</p> <p>I. CONDITIONS OF WORK</p> <p>A. DISCRIMINATION, HARASSMENT AND SEXUAL HARASSMENT</p> <p>1. Discrimination</p> <p>As an Equal Employment Opportunity (EEO) employer, the City will conduct its staffing activities: selection, promotion, demotion, transfer, training and separation, in accordance with established federal, state and local EEO laws and regulations as they affect the City. The City of Austin will employ positive business and personnel practices designed to ensure equal employment opportunity.</p> <p>The City of Austin will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, gender identity, age, religion, veteran status, disability, or sexual orientation. In addition, the City will not discriminate in employment decisions on the basis of an individual's AIDS, AIDS Related Complex, or HIV status; nor will the City discriminate against individuals who are perceived to be at risk of HIV infection, or who associate with individuals who are believed to be at risk.</p> <p>Every manager and supervisor is expected to implement this policy through uniform and consistent employment practices. Management is also responsible for maintaining a professional working environment free of intimidation, sexual harassment, racial harassment, other forms of harassment and discriminatory conduct.</p>	<p>EMPLOYEES</p> <p>I. CONDITIONS OF WORK</p> <p>A. Equal Employment Opportunity and Anti-Discrimination</p> <p>The City of Austin is an Equal Employment Opportunity employer and is committed to providing equal employment opportunity in its recruitment, hiring, training, compensation, discipline, benefits, promotions, and transfers. The City of Austin follows all applicable federal, state, and local laws and ordinances prohibiting discrimination. Discrimination, Harassment and Retaliation in any form will not be tolerated, and findings may result in disciplinary action up to and including discharge.</p> <p>City of Austin employees are expected and encouraged to promptly raise questions and concerns regarding alleged violations of City policy or local, State or Federal law. Promptly raising questions and/or concerns allows the opportunity for such concerns to be addressed quickly and can assist in preventing problems from occurring or escalating.</p> <p>1. Discrimination</p> <p>Discrimination is the unequal or different treatment of an individual in any employment and/or personnel action on the basis of a protected class. Protected classes include race, color, religion, creed, sex, gender, pregnancy status, genetic information, sexual orientation, gender identity, national origin, ethnicity, age, disability, and veteran status or other legally protected class.</p> <p>In addition, the City will not discriminate in employment decisions and/or personnel actions on the basis of an individual's AIDS, AIDS Related Complex, or HIV status; nor will the City discriminate against individuals who are perceived to be at risk of HIV infection, or who associate with individuals who are believed to be at risk.</p> <p>Reasonable accommodations may be provided for all employees and qualified applicants with a disability,</p>
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CURRENT POLICY LANGUAGE**PROPOSED POLICY LANGUAGE**

Attachment B

<p>2. Harassment</p> <p>The City is committed to promoting a work environment that is free of harassment. Harassment is abusive, obscene or threatening conduct or communication that is intended to harass, annoy, alarm, torment, embarrass or injure another. Employees who engage in such conduct while on duty or on City premises will be subject to immediate discipline.</p> <p>While on duty or on City premises, employees shall not use obscene or abusive language or offensive gestures in their communication with coworkers or members of the public; employees shall not by oral, written, electronic or other means of communication threaten or intimidate coworkers or members of the public; employees shall not physically endanger, intimidate or injure coworkers or members of the public. Such conduct will not be tolerated.</p>	<p>as defined by the Americans with Disabilities Act (ADA), as amended, provided that the individual is otherwise qualified to perform the essential functions of the job and such accommodations can be provided without undue hardship for the City of Austin.</p> <p>Every manager and supervisor shall implement this policy through uniform and consistent employment practices. Management is also responsible for maintaining a professional working environment free of discrimination, harassment, and retaliation.</p> <p>2. Harassment</p> <p>Harassment is unwelcome verbal or physical conduct toward an individual or a group because of a protected class when such conduct has the purpose or effect of offending a reasonable person or creating a hostile work environment.an individual's employment opportunities. Employees who engage in such conduct while on duty or on City premises, or off duty that has the effect of interfering with the Employee's job, will be subject to discipline.</p> <p>While on duty or on City premises, or in any work-related setting outside the workplace, such as business trips, professional conferences, etc., employees shall not engage in conduct which reasonably could create a hostile work environment or use obscene or abusive language or offensive gestures in their communication with coworkers or members of the public.. Such conduct will not be tolerated.</p> <p>Supervisors or managers receiving complaints of such harassment are expected to take prompt and appropriate action to stop the alleged conduct and to make departmental Human Resources aware of such complaints and/or conduct.</p> <p>Every employee shares the responsibility for bringing to the City's attention conduct that interferes with providing a work environment free of discrimination, harassment and retaliation.</p> <p>Prohibited Conduct:</p> <p>This list of prohibited conduct is meant to give some examples of inappropriate behavior and is not a</p>
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<p>3. Sexual Harassment</p> <p>Sexual harassment, which is any unwelcome sexual conduct that occurs under one or more of the following conditions, is prohibited and shall not be tolerated. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature will be considered harassment when:</p> <ol style="list-style-type: none">Submission to such conduct is made either openly or by implication a term or condition of an individual's employment;Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that person; orSuch conduct unreasonably interferes with the individual's work performance or creates an intimidating, hostile, or offensive working environment. <p>Any manager, supervisor or employee who engages in such objectionable conduct is subject to immediate discipline up to and including termination. Sexually oriented jokes, remarks, gestures, or pictures may be offensive to other employees and will not be tolerated.</p> <p>4. Reporting Violations</p> <p>Employees who experience discrimination, sexual harassment, another form of harassment or who become aware of a threatening situation as described in this policy should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact their</p>	<p>complete list of conduct prohibited under this policy.</p> <ol style="list-style-type: none">1. Use of epithets, innuendos, names, comments, foul language or slurs because of an individual's protected class;2. Jokes, pranks or other banter, including stereotyping based on a protected class;3. Unwelcome requests for sexual favors or other sexually oriented verbal or physical conduct; <p>3. Sexual Harassment</p> <p>Sexual harassment is any unwelcome sex-based stereotyping and/or sexual statements and/or conduct that occurs under one or more of the following conditions, is prohibited and shall not be tolerated. Unwelcome sex-based, stereotypical and/or sexual statements, conduct and/or sexual advances, requests for sexual favors, and other verbal or physical conduct of a gender-based or sexual nature will be considered harassment when:</p> <ol style="list-style-type: none">a. Submission to such conduct is made either openly or by implication a term or condition of an individual's employment;b. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that person; or,c. Such conduct unreasonably interferes with the individual's work performance or creates an intimidating, hostile, or offensive working environment. <p>Any manager, supervisor or employee who engages in such objectionable conduct is subject to discipline up to and including discharge. Gender-based and/or sexually oriented jokes, remarks, gestures, or pictures may be offensive to other employees and will not be tolerated.</p> <p>4. Retaliation</p> <p>It is the policy of the City to prohibit an adverse employment action against any individual who in good faith reports discrimination, harassment, or retaliation, testifies, assists or participates in an investigation, proceeding, or hearing, regardless of the outcome of the complaint. An adverse employment action includes, but is not limited to,</p>
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<p>Assistant Department Director or Department Director or the Director of Human Resources. If an employee is aware of a threat of imminent physical harm to him/herself, another employee or member of the public, the employee should attempt to remove him/herself from the dangerous situation and immediately notify appropriate emergency personnel by calling "911." The employee should report this emergency call to his/her supervisor or management immediately.</p> <p>No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting violations of this policy in good faith. The procedure for complaining about discrimination and harassment based on race, creed, color, national origin, sex, gender identity, age, religion, veteran status, sexual orientation, disability, AIDS or HIV status, is found in Section IV.C.3. of these policies. The procedure for addressing complaints about general grievance issues, including other forms of harassment, may be found in Section IV.C.2. of these policies.</p> <p>Retaliation (Administrative Bulletin 07-09)</p> <p>The City is committed to maintaining an environment in which an employee is free to raise a question or concern involving the terms and conditions of the employee's employment.</p> <p>The City prohibits retaliation against an employee, who has, in good faith, filed a complaint about a law, policy, practice or procedure, or has otherwise participated in good faith in an investigation, proceeding or hearing. In addition, the City prohibits retaliation against employees for engaging in any activity or availing themselves of any benefit authorized under the personnel policies, such as filing a worker's compensation claim, requesting family and medical leave or requesting military leave. Any employee who engages in retaliation is subject to disciplinary action up to and including immediate termination.</p> <p>DEFINITIONS</p> <p>Retaliation is an action or inaction that:</p> <ol style="list-style-type: none"> adversely affects the terms and conditions of employment; and, is taken in response to the affected employee's good faith complaint, participation in an investigation, 	<p>discharge, demotion, transfer, arbitrary change of schedule, a loss of compensation, and denial of a promotion. Conduct that would likely deter an individual from reporting or supporting a claim may constitute retaliation. Retaliation can occur even if the underlying complaint of harassment or discrimination is not substantiated.</p> <p>In addition, the City prohibits retaliation against employees for engaging in any activity or availing themselves of any benefit authorized under the personnel policies, such as filing a workers compensation claim, requesting family and medical leave or requesting military leave. Any employee who engages in retaliation, or who intentionally makes a complaint in bad faith or with malicious intent, is subject to disciplinary action up to and including discharge.</p> <p>5. Reporting Discrimination, Harassment or Retaliation</p> <p>Any employee who believes that they have been subjected to discrimination, harassment or retaliation based on a protected class is encouraged to report to any supervisor, manager, or Human Resources representative and/or make an anonymous complaint to the Integrity Unit in the Office of the City Auditor.</p> <p>Any supervisor, manager, Human Resources representative, or Audit staff who receives a complaint of such conduct must immediately notify the Employee Relations Manager in the Human Resources Department. The Employee Relations Manager, and the Department Director, or their designees, shall ensure that a prompt evaluation of each complaint is conducted, and an investigation initiated as appropriate.</p> <p>Any employee may file a complaint with the Director of Human Resources without first attempting to seek resolution within the employee's department. An employee is not required to follow the "chain-of-command" when reporting harassment, discrimination or retaliation, but instead may file a complaint directly with the Director of Human Resources.</p> <p>If an employee is aware of a threat of imminent physical harm to him/herself, another employee or member of the public, the employee should attempt</p>
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<p>proceeding or hearing, or exercise of rights or assertion of benefits authorized by personnel policies.</p> <p>ROLES AND RESPONSIBILITIES</p> <p>Any employee who experiences retaliation should immediately report it to any one of the following individuals:</p> <p>Supervisor Supervisor's supervisor Manager Assistant Department Director Department Director Departmental Human Resources Manager Director of Human Resources</p> <p>An employee is not required to report a violation of this policy to any person who is committing or implicated in the retaliatory conduct.</p> <p>The investigator will promptly investigate reports of retaliation, determine whether or not a violation of this policy has occurred and will recommend what, if any, corrective action should be taken.</p>	<p>to remove him/herself from the dangerous situation and immediately notify appropriate emergency personnel by calling "911." The employee should report this emergency call to his/her supervisor or management immediately.</p> <p>No employee shall be discriminated against, harassed, intimidated, nor suffer any retaliation as a result of the good faith reporting of any city policy violation.</p>
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Attachment C

Option	Pro's	Con's	Financial Impact *	Comments
Internal City Department - Ex: OPM, Labor Relations, or create a City EEOC Office	Current established staff roles, within an appropriate department, could be expanded	Some perceptions regarding neutrality could exist	Addition of one- two staff positions required (up to 200 - 225k estimated)	Independent, self directed review allows for a less public process into often times personal and sensitive matters
Law Firm	Outside neutral third party with deep subject matter expertise, credibility, responsibility and responsiveness	Cost. Aversion to lawyers among some employees	\$125,000- \$150,000 per year plus the addition of one staff position (75k estimated)	Independent, self directed review allows for a less public process into often times personal and sensitive matters
EEOC	Established outside third party review with credibility and trust	Intimidating process to some employees, perceived as requiring assistance from an attorney	built into current staffing model, no added costs	While anyone can file a complaint with the EEOC, complaints must do so within 300 days and the process requires a level of proof to support the allegations

* financial impact assumes 21 investigation appeals per year



MUNICIPAL CIVIL SERVICE COMMISSION

May 23, 2016 Response to Council Resolution 20160324-014

Dear City Manager Marc Ott:

Below is the response from the Municipal Civil Service Commission to Austin City Council Resolution No. 20160324-014. The resolution asked the Municipal Civil Service Commission to "consider a potential expansion of its role to include cases related to alleged discrimination, harassment, and retaliation for which an employee has sought relief through the grievance process; and further requests the Commission to advise on the nature of the responsibilities and scope of review that such a role might entail."

The Municipal Civil Service Commission was provided a briefing by the Human Resources Department on City of Austin employees' current avenues to make complaints of discrimination, harassment, and retaliation.

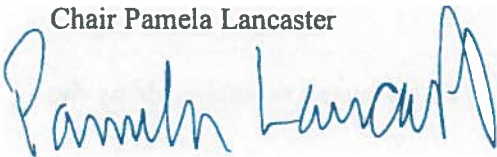
After the Municipal Civil Service Commission carefully considered its current responsibilities, its limitations under the City Charter, and the City of Austin's employees' current opportunities, the Municipal Civil Service Commission responds that:

- The Municipal Civil Service Commission is already empowered to hear complaints of alleged discrimination, harassment, and retaliation if the alleged discrimination, harassment, and retaliation resulted in discharge, suspension, demotion, disciplinary probation, or denial of a promotion.
- The Municipal Civil Service Commission's appeal process is well-functioning and gives employees an appropriate opportunity to make complaints of alleged discrimination, harassment, and retaliation that result in discharge, suspension, demotion, disciplinary probation, or denial of a promotion.
- The Municipal Civil Service Commission is not well-suited to expand its role to include allegations of discrimination, harassment, and retaliation that do not result in discharge, suspension, demotion, disciplinary probation, or denial of a promotion. The Municipal Civil Service Commission believes it is not well-suited for the following reasons:
 - It lacks the resolution tools available to other entities inside and outside the City to resolve complaints such as confidential mediation.
 - It lacks independent investigative staff and so it would merely be reviewing reports made by the City's current investigative staff.
 - It is subject to the Open Meetings Act, which makes it more difficult to investigate sensitive and inflammatory complaints than in a non-public investigation.
 - It is limited by the City Charter as a Council-appointed entity from directing the City Manager except in specific situations and so could only issue advisory opinions for allegations that do not result in discharge, suspension, demotion, disciplinary probation, or denial of a promotion.

- o An expansion of the Municipal Civil Service Commission's role to find that a City employee had harassed, retaliated against, or discriminated against another City employee would include a finding that discipline is required. If the Commission were to make such a finding and the disciplined employee disagreed with it, that employee would be placed in the position of appealing a decision to the Commission that the Commission itself issued, which would represent a conflict of interest.
- o The current Municipal Civil Service Rules set out the standards that the City is expected to follow. If the Commission's duties were expanded to include discrimination, harassment, and retaliation complaints that do not result in discharge, suspension, demotion, disciplinary probation, or denial of a promotion, a new standard would need to be adopted: for instance whether the Commission's decisions would be based on City policy, or State or Federal law.
- The Municipal Civil Service Commission's volunteer nature, and need to meet during normal working hours to minimize disruption to City operations makes it difficult for many Commissioners to meet more often than the Municipal Civil Service Commission's current schedule. An expansion of the number of cases it hears would restrict the pool of individuals that would be able to serve as Commissioners. Each Municipal Civil Service Commission meeting that includes an appeal begins at 9am and last until approximately 3pm to 6pm.
- The Municipal Civil Service Commission believes that the creation of an independent investigative staff, with specific training in discrimination, harassment, and retaliation investigations that resides in a City Department, with authority to direct its decisions be implemented, is necessary. Such a staff is necessary to enhance the credibility of the investigations performed by the City and the Commission encourages the City Manager to create and train such a staff.
- The Municipal Civil Service Commission supports equitable treatment of all employees regardless of race, creed, color, national origin, sex, gender identity, age, religion, veteran status, disability, genetic information, or sexual orientation. The Municipal Civil Service Commission further recommends the creation of a document, for use by employees, outlining all of the possible avenues for employees to make a complaint of discrimination, harassment, and retaliation inside the City, including an employee's chain of command up to his or her Department Director or Assistant City Manager, the City Auditor's office, the City Ethics office in the Law Department, and the City's corporate Human Resources Department.

Sincerely,

Chair Pamela Lancaster



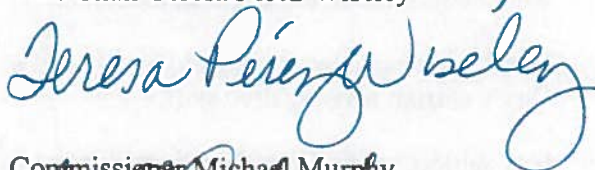
Commissioner Lottie A. Dailey



Commissioner Melissa Rogers



Vice Chair Teresa Perez-Wiseley



Commissioner Michael Murphy

