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# Equal Employment Opportunity and Non-Discrimination

## 914.1 PURPOSE AND SCOPE

The purpose of this order is to prevent Department employees from being subjected to discrimination, harassment, sexual harassment, or retaliation.

## 914.2 POLICY

The Austin Police Department is committed to providing a work environment that is free of discrimination, harassment, sexual harassment, and retaliation and that ensures equal employment opportunities for all employees. Discrimination, harassment, sexual harassment, and retaliation based on a protected class, in any form, as defined in federal, state, or local law, will not be tolerated. 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.

Every employee is responsible for maintaining a professional environment free of discrimination, harassment, sexual harassment, and retaliation, and for bringing to the City's attention conduct that interferes with providing a work environment free of discrimination, harassment, sexual harassment, and retaliation.

Findings of discrimination, harassment, sexual harassment, or retaliation against an employee may result in discipline up to and including discharge or indefinite suspension.

## 914.3 PROHIBITED CONDUCT

### 914.3.1 DISCRIMINATION

Discrimination is the unequal or different treatment of an individual in any employment and/or personnel action based on a protected class, as per section 914.2. The Department will recruit, hire, train, compensate, discipline, provide benefits, and promote without regard to a protected class. The Department will employ positive business and personnel practices designed to ensure equal employment opportunity.

- (a) The Department will ensure:
  - 1. equal employment opportunities to all employees and candidates; and
  - 2. that employees covered by these policies are selected and promoted based on merit and fitness and without discrimination, and in accord with the requirements of state civil service laws and any applicable labor contract.
- (b) The Department 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 Department 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.

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- (c) Reasonable accommodations shall be provided for all employees and qualified applicants with a disability as defined by the Americans with Disabilities Act Amendments Act (ADAAA), 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 Department and City of Austin.

### 914.3.2 HARASSMENT

- (a) Harassment is unwelcome verbal or physical conduct toward an individual or a group because of a protected class. Harassment can create a hostile work environment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or otherwise adversely affects an individual's employment opportunities. Examples of prohibited conduct that constitute harassment include, but are not limited to:
  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; or,
  3. Distribution, display, viewing, downloading or discussion of any written or graphic material, including online content, voicemail, e-mail, text-messages, calendars, posters and cartoons, that are sexually suggestive or show hostility toward an individual or group based on a protected class.
- (b) Employees shall not engage in conduct which could reasonably create a hostile work environment at any time while on duty or on City premises, or even if not on duty, but participating in any work-related setting outside the workplace, such as traveling on City business or attending professional conferences.

### 914.3.3 SEXUAL HARASSMENT

- (a) Sexual harassment is any unwelcome sex or gender-based comments and/or conduct that occurs when:
  1. Submission to such conduct is made either openly or by implication a term or condition of an individual's employment;
  2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that person; or
  3. Such conduct unreasonably interferes with the individual's work performance or creates an intimidating, hostile, or offensive working environment.
- (b) Sex or gender-based and/or sexually oriented jokes, remarks, gestures, or pictures may be offensive to other employees and will not be tolerated.

### 914.3.4 RETALIATION

The Department is committed to maintaining a work environment that is free of retaliation and where an employee is free to raise a question or concern involving the terms and conditions of any employee's employment.

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- (a) Retaliation is defined as an action or inaction that adversely affects the terms and conditions of employment, and is taken in response to an employee's good faith complaint, participation in an investigation, proceeding or hearing, or an employee's exercise of rights or benefits authorized under this order. Unacceptable conduct that would likely deter an individual from reporting or supporting a claim may constitute retaliation. Retaliation can occur even if the underlying complaint is not substantiated. An adverse employment action includes, but is not limited to, discharge, indefinite suspension, demotion, and denial of promotional opportunity.
- (b) The Department prohibits retaliation against an employee who, in good faith, reports discrimination, harassment, sexual harassment, or retaliation; files a complaint regarding a law, policy, practice, or procedure; testifies, assists or participates in an investigation, proceeding, or hearing; or exercises rights or avails themselves of any benefit authorized under the personnel policies, (such as filing a worker's compensation claim, requesting Family and Medical Leave (FMLA), or requesting military leave).
- (c) An adverse action taken against an employee for filing a discrimination charge, testifying or participating in an investigation, proceeding, or lawsuit, or for opposing discriminatory employment practices is retaliation under this order.

### **914.4 BONA FIDE QUALIFICATIONS AND WORK-RELATED COMMUNICATIONS**

Discrimination, harassment, sexual harassment, and retaliation does not include actions that are in accordance with established rules, principles or standards, including the following:

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

### **914.5 RESPONSIBILITIES**

#### **914.5.1 EMPLOYEE'S RESPONSIBILITY**

- (a) Employees are expected and encouraged to promptly raise questions and concerns regarding alleged violations of City or Department policy or local, state or federal law. Any employee who believes that they, or another employee, have been subjected to discrimination or harassment based on a protected class, or retaliation based on a protected activity, shall report the matter to any of the following:
  1. Any supervisor, manager, Chief, or other member of the Department executive staff,
  2. APD Human Resources representative,
  3. Integrity Unit in the Office of the City Auditor,

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4. COA Human Resources Director,
  5. COA Employee Relations Division,
  6. APD Internal Affairs, or
  7. Office of Police Oversight for complaints against a sworn employee.
- (b) An employee is not required to follow the “chain of command” when reporting harassment, discrimination, sexual harassment, or retaliation.
- (c) A complaint can be anonymous or named.
- (d) Employees will not be discriminated against, harassed, or retaliated against as a result of making a good faith report of any City or Department policy violation, or for participation in the investigation of a complaint.
- (e) If a civilian employee is aware of a work-related threat of imminent physical harm to themselves, another employee, or member of the public, the employee should attempt to remove themselves from the situation and immediately notify appropriate emergency personnel by calling “911”. The employee should report this emergency call to their supervisor or management immediately.
- (f) If a sworn employee is aware of a threat of imminent physical harm to themselves, another employee, or member of the public, the employee should respond according to General Order 401 (Preliminary Field Investigations).

### 914.5.2 SUPERVISOR/MANAGER RESPONSIBILITIES

- (a) The first supervisor and/or manager who has observed or been notified of circumstances surrounding an allegation of discrimination, harassment, sexual harassment, or retaliation shall, without undue delay, notify APD Human Resources at [APDHREmployeeRelations@austintexas.gov](mailto:APDHREmployeeRelations@austintexas.gov) and their chain of command as well as the chain of command of the employees reportedly involved in the incident, unless members of the chain of command were identified in the incident.
- (b) Failure by a supervisor or manager to notify APD Human Resources may result in discipline up to and including discharge or indefinite suspension.

### 914.5.3 CHAIN-OF-COMMAND RESPONSIBILITIES

- (a) The chain of command receiving allegations against a sworn employee of discrimination, harassment, sexual harassment, or retaliation shall notify APD Internal Affairs.
- (b) Continually monitor the work environment and strive to ensure it is free from all types of discrimination, harassment, sexual harassment, and retaliation.
- (c) Take prompt, appropriate corrective action within the work units to avoid and eliminate the incidence of any form of discrimination, harassment, or retaliation.
- (d) Ensure subordinates attend any required training on discrimination and harassment.

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- (e) Ensure that employees 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.

### **914.5.4 APD HUMAN RESOURCES RESPONSIBILITIES**

APD Human Resources shall notify the COA Human Resources Director and/or the Human Resources Department Employee Relations Division for all complaints of discrimination, harassment, sexual harassment, or retaliation.

### **914.6 SUPERVISOR'S ROLE**

Discrimination, harassment, sexual harassment, or retaliation is viewed from the perspective of the victim, not the offender. 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 should consider whether a reasonable person in the victims place would consider the conduct to be inappropriate.

Supervisors and managers shall be aware of the following considerations:

- (a) Behavior of supervisors and managers should represent the values of the Department and professional law enforcement standards.
- (b) Supervisors and managers must act responsibly in the handling of such situations.

### **914.7 INVESTIGATION OF COMPLAINTS**

- (a) The Chief of Police has the authority to order an investigation alleging discrimination, harassment, sexual harassment, or retaliation regardless of whether the conduct involves sworn or non-sworn employees.
- (b) All complaints of discrimination, harassment, and retaliation where a sworn employee is the subject will be investigated according to General Order 902 (Administrative Investigations). APD Human Resources will consult and collaborate as needed to enforce City and Departmental Policy.
- (c) All complaints of discrimination, harassment, and retaliation where a civilian is the subject will be investigated according to City Personnel Policy.
- (d) All complaints of sexual harassment for both sworn and civilian will be investigated by COA Human Resources and/or according to City Personnel Policy.