

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(B) 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