



AR333 – ANTI-DISCRIMINATION AND NON-HARASSMENT POLICY

	Responsible Department:	Effective Date:
	Human Resources	June 1, 2022
	Approvals:	Date Approved:
	Jim Thompson, City Manager  Donna Brown, Human Resources Director	June 1, 2022 June 1, 2022

1.0 PURPOSE

- 1.1. The purpose of this Administrative Regulation is:
- 1.1.1. To provide employees with a work environment free from unlawful Discrimination, as provided by Title VII of the Civil Rights Act of 1964, other federal and state laws, including the Americans with Disabilities Act and the Age Discrimination in Employment Act, and provisions of the City Code.
 - 1.1.2. To inform employees of prohibited acts and inappropriate conduct, which constitute or contribute to unlawful Discrimination or harassment, or otherwise conflict with Employee Values.
 - 1.1.3. To provide employees with a complaint procedure that will allow the City:
 - to promptly and thoroughly investigate alleged acts of Discrimination and/or harassment, or inappropriate conduct or behavior;
 - to take any appropriate disciplinary action, based on the investigation;
 - to engage in preventative or corrective measures; and
 - to protect employees from a negative employment action as a result of bringing a complaint forward or participating in the process.

2.0 APPLICABILITY

- 2.1. This AR applies to all City employees and volunteers with the exception of Public Officials otherwise regulated by the City's Code of Ethical Behavior (Scottsdale Revised Code Sections 2-47 through 2-58 and 2-243).

3.0 POLICY

Part I

- 3.1. This part of the City's Anti-Discrimination and Non-harassment Policy is intended to comply with federal statutes prohibiting Discrimination in employment, as interpreted by federal courts, and to inform employees of legally enforceable rights and requirements.
- 3.1.1 Title VII of the Civil Rights Act of 1964, as amended, and other state and federal laws, including the Americans with Disabilities Act and the Age Discrimination in Employment Act, prohibit Discrimination in employment because of race, color, religion, sex (including gender and sexual harassment), age (over age 40), national origin, and/or disability. All

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employees are responsible for ensuring that the workplace is free from conduct or activities that constitute or contribute to such Discrimination or harassment.

- 3.1.2 In addition to the prohibitions against Discrimination found in Title VII and other federal and state laws, Scottsdale Revised Code ("SRC") Sections 14.1.1 and 14-2, as amended by Ordinance No. 3765, passed and adopted on December 4, 2007, made clear that sexual orientation and gender identity are Protected Classes for City employment purposes.
- 3.1.3 Discrimination and/or Discriminatory Harassment based on a Protected Class is prohibited when determining work assignments, working conditions, job classification, disciplinary actions, promotions, salaries, performance reviews, interpretation or application of City rules. Discrimination generally means any act or acts which negatively affects the terms and conditions of employment of another employee, when motivated by the affected employee's membership in a Protected Class. Discriminatory Harassment generally means unwelcome conduct that is based on membership in a Protected Class such as race, religion, gender, sex, national origin, age (40 or older) or disability. Harassment becomes discriminatory and unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of harassment. To be harassment, the conduct must create a work environment that would be intimidating, hostile, or offensive to a reasonable person. Discrimination under Part I of this AR does not include employment or workplace concerns that do not involve conduct prohibited by Title VII and state and federal laws, which are addressed separately in Part II of this AR.
- 3.1.4 Examples of prohibited conduct include, but are not limited to the following, because it either constitutes or contributes to Discrimination or Discriminatory Harassment:
 - Verbal or physical conduct that threatens or insinuates, either explicitly or implicitly, that the employee's submission to or rejection of sexual advances will in any way influence any decision, evaluation, duties, or any other condition regarding the employee's employment. Please note that this type of (quid pro quo) behavior is so serious that one isolated incident can constitute Discriminatory Harassment.
 - Unwelcome sexual advances, gestures, touches, asking for a date after repeated rejections, or requests for sexual favors.
 - Offering employment benefits in exchange for sexual favors, retaliating, or threatening Retaliation after having sexual advances rejected. Please note that this type of (quid pro quo) behavior is so serious that one isolated incident can constitute Discriminatory Harassment.
 - Unwelcome comments, remarks, or threats, including but not limited to comments about an individual's body, personal or private life, use

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of sexual words to describe an individual, offensive jokes, comments or compliments of a sexually suggestive nature, innuendoes, inappropriate terms of endearment such as “doll,” “honey,” “babe,” “hunk,” etc.

- Insulting, demeaning, derogatory remarks, communications and materials, including but not limited to posters, cartoons, magazines, directed at a member of a Protected Class, or relating to a person’s status as a member of a Protected Class.
 - Comments about ethnic, racial, age, disability or religious stereotypes.
 - Inappropriate body language, touching or verbal responses, including shoulder massaging, hugging, winking, throwing kisses, leering, or blocking exits.
 - Display of sexually suggestive objects, books, magazines, photos, pictures or cartoons.
 - Any act of harassment that may be construed as inappropriate to a reasonable person.
 - In addition, the City has a no tolerance policy regarding pornography in the workplace. This includes accessing sexually explicit Internet adult or X-rated sites, sexually oriented discs, or display of sexually suggestive objects, books, magazines, photos, pictures or cartoons. An employee who accesses or depicts any sexually explicit item, or material in the workplace at any time will be separated from employment (See also AR 127 and AR 165).
- 3.1.5. The legal standard used to determine if the conduct is inappropriate or objectionable is whether a reasonable person, as a member of the Protected Class, would view it in that way. For example, whether a comment of a sexual nature is offensive to a woman would be determined from the perspective of a reasonable woman (i.e., would the comment be offensive to a reasonable woman). The same standard applies to acts directed at members of any protective class.
- 3.1.6. Retaliation against employees is against the law and will not be permitted.
- 3.1.7. Violations of this section may result in disciplinary action, up to and including dismissal. Violations of these policies may also result in potential legal liability to the employee who has engaged in the prohibited acts, as well as the City, depending on the nature of the violation.

Part II

- 3.2. This part of the City’s Anti-Discrimination and Non-harassment Policy is intended to address the general conduct and behavior of employees and volunteers. It addresses behaviors that while not prohibited under federal law are inappropriate in the workplace and any work-related setting, because they violate Employee Values and otherwise have potential negative effects on employees and the work environment and may result in disciplinary action.
- 3.2.1 The City of Scottsdale is a values-based organization, which considers its employees its most important resource. It is the policy of the City to treat

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its employees fairly, respectfully, equitably and professionally, with the same respect and dignity that they are expected to demonstrate toward every citizen, customer and co-worker regardless of race, color, religion, sex, national origin, age, sexual orientation, gender identity or disability.

3.2.2 This section of the policy reflects a commitment to the City's values. Disrespectful and inappropriate behavior includes, but is not limited to, the following conduct:

- Gossiping about, using profanity toward, demeaning or defaming another employee, or otherwise acting in a manner that could negatively impact the workplace morale, service or productivity.
- Engaging in humor or bantering in the workplace that may intimidate, offend, embarrass, or demean another person.
- Using profanity in the workplace.
- Participating in a business decision, if the employee's judgment on the decision might be unduly affected by a personal relationship.
- Personal romantic relationships between supervisors and subordinates are not permitted. For example, a manager is prohibited from dating a subordinate within his/her chain of command.
- Supervisors and subordinates should not participate in a business relationship outside of the workplace, including operating a business, or engaging in a business of any kind for personal gain or profit.

3.2.3 Violations of this section may result in disciplinary action, up to and including dismissal.

3.2.4 Any negative employment action taken against a person **because** they reported, otherwise complained and/or participated in an investigation of violations of Sec. 3.2 is in violation of the Employee Values. Any such negative employment action under Sec. 3.2 is subject to disciplinary action, up to and including dismissal.

4.0 ANTI-DISCRIMINATION UNDER THE CITY CODE

The City's Anti-Discrimination Ordinance, Scottsdale Revised Code Chapter 15, prohibits discrimination and harassment by employees and volunteers acting within the scope of their City duties, based on actual or perceived race, color, religion, sex, age, disability, national origin, sexual orientation or gender identity and prohibits retaliation for reporting discrimination or harassment. The Anti-Discrimination Ordinance prohibits all conduct covered under Part I of this AR and certain conduct covered under Part II, including verbal, written or physical conduct that denigrates or shows hostility or aversion to an individual based on actual or perceived membership in a protected category. Complaints alleging a violation of the Anti-Discrimination Ordinance are handled under section 5.0.

5.0 PROCEDURES

5.1. The City of Scottsdale has a complaint procedure and controls in place to ensure that the City exercises reasonable care in handling allegations of Discrimination and/or Discriminatory Harassment, including providing reasonably prompt,

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thorough and impartial investigations, when reasonably warranted, under the circumstances presented.

- 5.2. Complaints relating to alleged incidents of unlawful Discrimination or harassment, or other inappropriate behaviors as described in this policy, either personally experienced or observed by an employee, or reasonably believed to have been experienced by another employee, should be reported to the employee's supervisor. Complaints involving the employee's supervisor, or someone in the employee's direct line of supervision, or complaints that for any other reason the employee may feel uncomfortable bringing to his or her immediate supervisor, or someone in the employee's direct line of supervision, should be brought to Human Resources and/or if the employee feels uncomfortable with that, the City Manager's Office or the City Attorney's Office. Complaints may be made orally, or the employee may use any written form or document.
- 5.3. Any supervisor receiving a complaint must inform Human Resources as soon as possible, in order to allow the City to investigate all complaints thoroughly, expeditiously and professionally. If the complaint involves the Human Resources Director, then the City Manager's Office should be notified. If the complaint involves the City Manager, or an Assistant City Manager, the City Attorney may be contacted as an alternative.
- 5.4. Information acquired in the course of an investigation, including the initial complaint, will be accorded the highest degree of confidentiality permitted by the circumstances and by law.
- 5.5. Any employee may be compelled to participate in an investigation. Knowingly or intentionally providing false information or refusing to provide information in respect to a complaint is prohibited and may subject an employee to disciplinary action.
- 5.6. Any violation of this policy may result in disciplinary action, up to and including dismissal. As provided in section 3.1.6, retaliation is strictly prohibited and any act of retaliation may result in disciplinary action, up to and including dismissal. City of Scottsdale employees are encouraged to speak up and confront an individual when offended.
- 5.7. Employees who file complaints will be notified about the status of their complaint, the results of the investigation and any corrective and preventative action taken as a result of the complaint at an appropriate time after the investigation has been finalized.
- 5.8. Employees who are the focus of a complaint will be notified about the status of the complaint, the results of the investigation and any corrective and preventative action taken as a result of the complaint at an appropriate time after the investigation has been finalized.

6.0 RESPONSIBILITIES

- 6.1. It is the responsibility of all City of Scottsdale employees to act to prevent discrimination, harassment and retaliation in the workplace. Employees are permitted to and should speak up and confront an individual when they are exposed to or observe conduct in violation of this policy. Employees are required to report what they perceive to be violations of this Administrative Regulation Part I (unlawful Discrimination) to their manager, supervisor or Human Resources,

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which can be done formally (handwritten or emailed) or informally (verbally) Any manager or supervisor who becomes aware of a violation or perceived violation of this policy has a duty to act and should contact Human Resources immediately to address the situation.

- 6.2. Human Resources is responsible to ensure training is available to City employees on this AR during New Employee Orientation. Additional training requirements will be at the discretion of the Human Resources Director.
- 6.3. It is the City's responsibility to provide reasonable accommodations to applicants and employees who need them for medical or religious reasons, as required by law.

7.0 OVERSIGHT/REVIEW

- 7.1. Human Resources is responsible for the administration and review of this AR, which should be reviewed at least once every three years.
- 7.2. All employees shall receive annual training concerning this AR, appropriate to their assigned duties. Employees in violation of this AR are subject to discipline up to and including termination.

8.0 DEFINITIONS

- 8.1. "Discrimination" generally means any act or acts which negatively affects the terms and conditions of employment of another employee, when motivated by the affected employee's membership in a Protected Class.
- 8.2. "Discriminatory Harassment" generally means unwelcome conduct that is based on membership in a Protected Class such as race, religion, gender, sex, national origin, age (40 or older) or disability. Harassment becomes discriminatory and unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of harassment. To be harassment, the conduct must create a work environment that would be intimidating, hostile, or offensive to a reasonable person.
- 8.3. "Employee" as used in this administrative regulation includes all city employees, contract workers, and volunteers with the exception of Public Officials otherwise regulated by the City's Code of Ethical Behavior.
- 8.4. "Gender identity" means an individual's various attributes as they are understood to be either masculine and/or feminine and shall be interpreted to include pre and post-operative transsexuals.
- 8.5. "Protected Class" means a group that lawmakers specifically protect from Discrimination. Protected Classes include race, color, religion, sex (including pregnancy, sexual orientation, or gender identity) age (40 or older), national origin, genetic information (including family medical history) or disability.
- 8.6. "Retaliation" means intentionally taking a negative employment action against a job applicant, employee or former employee **because** they reported Discrimination, participated in a Discrimination investigation or lawsuit (for example, serving as a witness), exercised any right guaranteed under federal or state anti-discriminations laws or City ordinance, or opposed Discrimination

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(for example, threatened to file a charge or complaint of Discrimination).) A negative employment action includes, but is not limited to, demotion, reduced hours, reassignment, discipline, harassment, being placed in assignments that are less favorable, discharged, or denied promotion.

- 8.7 "Sexual orientation" means an individual's heterosexuality, homosexuality or bisexuality.

9.0 RELATIONSHIPS TO ADOPTED POLICIES AND ORDINANCES

- 9.1. City Charter, Article 3, Sec. 2
- 9.2. Scottsdale Revised Code 14-2 Equal Employment Opportunity
- 9.3. Scottsdale Revised Code 14-4 Human Resources Director
- 9.4. Scottsdale Revised Code 14-72 Grounds for Discipline, Dismissal
- 9.5. Scottsdale Revised Code 14-73 Investigation; Non-disciplinary Suspension
- 9.6. Scottsdale Revised Code 14-76 Open Door Policy
- 9.7. Scottsdale Revised Code Chapter 15, Article 1, Anti-discrimination in City Services, Programs and Activities and Contracting
- 9.8. AR 127 Electronic Communications
- 9.9. AR 165 Internet Use
- 9.10. AR 306 Contract Workers and Temporary Employees
- 9.11. AR 308 Citywide Volunteer Program
- 9.12. AR 320 - Ethical Standards

10.0 LINKS TO SUPPORTING DOCUMENTS

- 10.1.

11.0 REVIEWED/AMENDED DATE(S) AND NOTES ON SIGNIFICANT CHANGES:

- 11.1. Original Effective Date – July 7, 2003
- 11.2. Amended - January 8, 2008.
- 11.3. Amended - May 2019 to delete out-of-date language, update the procedures, add an annual training requirement and more generally update the format.
- 11.4. Amended August 1, 2021 to be consistent with Scottsdale Revised Code Chapter 15, Article 1, Anti-discrimination in City Services, Programs and Activities and Contracting.
- 11.5. Amended June 1, 2022 to include references to the Age Discrimination in Employment Act of 1967.