

THE CITY OF FREDERICK
MAYOR AND BOARD OF ALDERMEN

RESOLUTION NO. 21-13

A RESOLUTION concerning

An Anti-Harassment Policy for Elected Officials

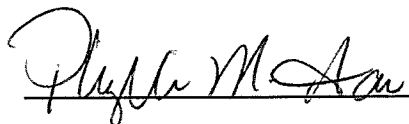
BACKGROUND


The Board of Aldermen wishes to adopt a policy in order to provide a framework to respond to complaints of harassment made against elected officials. The policy will operate in conjunction with the City of Frederick Ethics Ordinance to ensure that city officials, employees, and others are protected from harassing conduct by elected officials and that any official who violates this policy will be held accountable.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF FREDERICK, that the "Anti-Harassment Policy" attached hereto as Exhibit A and incorporated herein by this reference, is hereby adopted.

ADOPTED AND APPROVED THIS 11th DAY OF October, 2021.

WITNESS





Michael C. O'Connor, Mayor

APPROVED FOR LEGAL SUFFICIENCY:



City Attorney



**The City of Frederick
Mayor and Board of Aldermen
Anti-Harassment Policy**

I. Statement of General Policy

The City of Frederick (the “City”) is committed to ensuring that all individuals who interact with its officials and employees are treated with respect and are free from harassment. The purpose of this Policy is to protect all City officials, employees, and others from unwelcome sexual, discriminatory, or intimidating overtures or conduct, either physical or verbal, and any other behavior that creates a hostile or discriminatory environment.

II. Scope of Policy

This Policy applies to all elected officials of the City – i.e., the Mayor and all members of the Board of Aldermen. A city employee or any other individual wishing to file a complaint of harassment against an elected official shall use this Policy. The policy contained in the Policies and Procedures Handbook for Employees of the City of Frederick, which generally governs harassment complaints made by City employees, will not apply if the accused is an elected official.

This Policy takes effect on October 11, 2021. After that date, a complaint may be made hereunder with respect to conduct of an elected official that took place on or after the date that official first took office, either as mayor or a member of the Board of Aldermen, regardless of which such office it was, how many terms were served, or whether there was a lapse between terms.

This Policy is in addition to the Code of Civility that was adopted (by Resolution No. 14-01, and also incorporated into the Rules of Procedure of the Board of Aldermen) to promote civil discourse in the conduct of City meetings and other City business.

III. Harassment

For purposes of this Policy, harassment means any severe, pervasive, or continuing behavior that threatens, coerces, humiliates, or intimidates an individual. Harassment may be verbal, non-verbal, or physical in nature or may be behavior that creates an otherwise hostile or discriminatory environment. Harassment by an elected official is prohibited and will constitute a violation of the Ethics Ordinance (Chapter 21 of the Frederick City Code), as further described therein. Harassment includes sexual harassment, which is further defined in Section IV of this Policy. For purposes of this Policy, the term harassment also includes retaliation, which is further defined in Section V of this Policy.

IV. Sexual Harassment

For purposes of this Policy, sexual harassment means any unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical contact of a sexual nature, or conduct which is directed at an individual because of that individual’s sex. Sexual harassment may include a range of subtle or overt behaviors and may involve individuals of the same or a different gender. Depending on the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual’s body, sexual prowess, or sexual deficiencies; leering, whistling, or touching; insulting or obscene comments or gestures; displaying,

communicating, or distributing sexually suggestive objects, pictures, or messages; and other physical, verbal, nonverbal, or visual conduct of a sexual nature.

V. Retaliation

For purposes of this Policy, retaliation means intimidating, threatening, coercing, harassing, taking adverse employment action against, and/or otherwise discriminating against an individual in any way because the individual made a report or complaint under this Policy, participated in any way in the investigation or resolution of such a complaint, or exercised any right or responsibility under this Policy. Retaliation includes conduct that is reasonably likely to deter an individual from making a complaint or report under this Policy or from participating in the investigation or resolution of a complaint. An individual making a report will be advised of the prohibition against retaliation at the time the individual makes the report.

If the alleged harassment is ultimately not deemed to be a violation of law or this Policy, an individual is protected from retaliation if that individual had a good faith belief that there had been a violation. This provision is not intended to protect persons making intentionally false charges of harassment, as further described below. Retaliation by an elected official is prohibited and will constitute a violation of the Ethics Ordinance.

VI. Procedures for Reporting and Investigating Harassment

A. Generally. These procedures are designed to ensure fairness and objectivity in the investigation. At any point in this process, any person may elect to be represented by counsel or any other representative.

B. Confidentiality. The City will make every effort to preserve the confidentiality of all complaints alleging harassment. In the course of investigating complaints, it may be necessary to disclose information related to the complaint to persons who are involved in the process as witnesses, respondents, and investigators. Only those individuals who need to know will be provided information about the complaint and access to the confidential records.

C. Reporting Incidents. Early reporting and intervention are most effective in resolving actual or perceived incidents of harassment, regardless of the offender's identity or position. Therefore, the City encourages individuals who believe they have been subjected to or have witnessed harassment to promptly advise the offender that the behavior is unwelcome and request that it be stopped. Often this action alone will resolve the problem. The City recognizes, however, that an individual may prefer not to address the alleged offender directly. If, for any reason, an individual does not wish to address the offender directly, or if such action does not successfully end the offensive conduct, the individual should promptly report the incident.

The City encourages the prompt and good faith reporting of incidents or concerns so that rapid and constructive action can be taken before relationships become irreparably strained and before offensive conduct continues or escalates. Individuals who believe that they have been exposed to or witnessed prohibited conduct should discuss their concerns with the Director of Human Resources (the "Director") or the City Attorney. An alleged victim of harassment, or a person acting on the victim's behalf with or without the victim's consent, may report a claim to the Director or the City Attorney. Reports of prohibited conduct may be made verbally or in writing. If the initial complaint was verbal, the verbal communication shall be memorialized in writing by the person receiving the complaint, noting the date, time and circumstances of the verbal complaint.

D. Initial Meeting with Complainant. Following receipt of a complaint, the Director shall meet with the complainant as soon as mutually convenient. The Director shall inform the complainant that he or she may have a representative at the meeting. The Director shall fully inform the complainant about this Policy and shall answer any questions that the complainant may have. The Director shall also inform the complainant about the other available options, such as filing with state and federal compliance agencies. The Director shall listen to the complainant's allegations and discuss the complaint with discretion, sensitivity and due concern for the dignity of those involved. The complainant shall be asked what remedies he or she feels would resolve the complaint. The Director shall inform the complainant that while every reasonable effort will be made to protect the confidentiality and privacy of the individuals involved, the conduct of an investigation requires that the alleged harasser be informed of the allegations, and that witnesses be interviewed. The Director shall fully document the complaint and the requested remedies.

E. Initial Evaluation. Following the initial meeting with the complainant, the Director shall define the scope of a potential investigation. The Director has the discretion to determine whether or not to initiate a full investigation in light of the circumstances of any particular case. The Director shall not initiate a full investigation if there are no material facts in dispute, if the conduct alleged in the complaint would not constitute harassment as defined in this Policy even if proved, or if the Director believes the matter may be resolved quickly through informal discussions.

If the Director decides to resolve the matter informally, the Director shall speak with the relevant parties and document all efforts undertaken to address the matter and indicate the resolution reached and actions taken, if any. If a full investigation is not required but the Director is unable to resolve the matter, it will be referred to the Ethics Commission for further action in accordance with the Ethics Ordinance.

F. Assignment of Investigator. If the Director determines that a full investigation is warranted, the Director shall appoint one or more impartial, qualified investigators to investigate the allegations contained in the complaint. The investigators may be employees of the City or other attorneys or professionals retained by the City.

G. Investigation Process. Generally, an investigator will perform an investigation that includes the elements set forth in this section. It will be within the investigator's discretion to determine the extent of the investigation necessary, what information is relevant, and whether to modify any elements of this process based on the circumstances of a particular case. The investigator will:

1. Establish a timeline for the investigation, with a target deadline for completion that is reasonable and as prompt as practicable under all the circumstances;
2. Provide written notification to the elected official accused of harassment of the complaint and investigation;
3. Interview the elected official;
4. Interview all available, relevant witnesses who are willing to participate and conduct follow-up interviews as necessary;
5. If the investigation takes longer than one month, provide monthly status updates to the parties throughout the investigation; and

6. Prepare a written report fairly summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included. The report will set forth any conclusions drawn from the evidence as to whether the facts alleged by the complainant are true or what actually transpired, stating why such inferences were drawn and upon which evidence they are based. If no conclusion is apparent to the investigator, the report will explain in detail why a conclusion cannot be reached. After gathering, assessing, and synthesizing the facts and evidence, the investigator will apply the relevant legal standards to the facts and determine whether, based on a preponderance of the evidence (i.e., it is "more likely than not"), the elected official engaged in the alleged harassment. In determining whether an individual's conduct constitutes harassment, the investigator shall consider the record as a whole and the totality of the circumstances, such as the nature of the harassment and the context in which any alleged incident occurred. The report may include recommendations that the City's Ethics Commission conduct further proceedings or dismiss the complaint.

VII. Resolution

The Director shall refer the matter to the City's Ethics Commission by forwarding a copy of the written report to the Commission. The Commission will then proceed in accordance with the Ethics Ordinance.

VIII. False Claims

An elected official who knowingly and intentionally makes materially false statements or representations in relation to a harassment claim or investigation is in violation of the Ethics Ordinance, as further described therein.

IX. Training

The Director will ensure that elected officials receive sexual harassment training in accordance with current best practices at the beginning of their term and two years into the term. Officials elected or appointed during a term will receive individualized training within 30 days after they take office and again in two years, if applicable.

X. State and Federal Remedies

In addition to the process described in this Policy, if an individual believes the individual has been subjected to unlawful discrimination or harassment, the individual may file a formal complaint with the U.S. Equal Employment Opportunity Commission or the Maryland Commission on Civil Rights. Using the City's complaint process does not prohibit an individual from filing a complaint with one of these agencies.