ADMINISTRATIVE DIRECTIVE

DISCRIMINATION/HARASSMENT POLICY	NUMBER 2.05-8	PAGE 1 of 5
	EFFECTIVE DATE October 11, 2017	

I. PURPOSE

The purpose of this AD is to prohibit discrimination, harassment and retaliation in the workplace and to set forth the procedures for filing a complaint with the City's Office of Equal Opportunity Programs.

II. POLICY

Consistent with existing city, state, and federal laws, it is the policy of the City of Tucson to provide a work environment free from discrimination and to promote Equal Employment Opportunity (EEO) and equitable treatment of all employees.

Adverse employment action or harassment because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or any other protected class status under applicable law is considered employment discrimination and constitutes a violation of this directive. Employees are entitled to work in an environment free of harassment.

Retaliation against an employee because s/he has filed an EEO complaint, participated in any manner in an EEO proceeding, or opposed an unlawful discriminatory practice is also prohibited.

III. DEFINITIONS

A. **Complaint** - An oral or written allegation of conduct, behavior, policy or practice which violates this AD or applicable federal or state anti-discrimination laws.

B. **Complainant** – A City of Tucson employee, of any status or classification, or applicant for employment, except elected officials.

C. **Discrimination** - An act or failure to act (whether by itself or as a part of a practice), the effect of which is to adversely affect or differentiate the terms and conditions of employment against individuals or a group of individuals by reason of their protected class status.

D. **Harassment** - Verbal or physical conduct toward an individual because of her/his protected class status set forth in Section II preceding, that:

1. Has the purpose or effect of creating a hostile, intimidating, or offensive working environment;

2. Has the purpose or effect of unreasonably interfering with an individual's work performance;

3. Otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to:

1. Epithets, slurs, negative stereotyping including that of language or accents, or threatening, intimidating, or hostile acts;

2. Written or graphic material that denigrates or shows hostility or aversion toward an individual or group's protected class status set forth in Section II preceding. This includes materials placed on walls, bulletin boards, electronic bulletin boards, e-mail, or elsewhere on the employer's premises, or circulated in the workplace.

D. **Protected Class Status** – A member or group afforded legal protection under federal, state, or local law on the basis of race, color, religion, national origin, gender identity, sex, sexual orientation, age, or disability.

E. **Respondent** – The department against which a complaint has been lodged.

F. **Retaliation** - Any adverse action taken against an employee or the employee's relative or significant-other because s/he has inquired into or complained about discrimination, cooperated in a discrimination investigation, or otherwise participated in any discrimination complaint proceeding.

Retaliation can potentially include: job transfers or discharges; changes in job duties, assignments, privileges, or performance evaluations; laughing at, ignoring, or failing to take seriously an employee who experiences discrimination; acting in ways that blame the victim for causing the problem; continuing or escalating discriminatory behaviors after an employee has objected to the behavior.

G. **Sexual Harassment** - Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment includes, but is not limited to:

1. Sexually suggestive, obscene, or lewd comments and jokes
2. Sexual innuendoes and gestures

3. Sexually suggestive pictures or written materials (e.g. posters, cartoons)
4. Gender related labels such as "honey" or "sweetie"
5. Leering, ogling, or drawing attention to a person's body
6. Unwelcome touching
7. Sexual intimidation or exploitation
8. Sexual assault

IV. GENERAL PROVISION

Delegated Authority – The Office of Equal Opportunity Programs (OEOP) shall have the authority to administer and investigate violations of this Directive. In the event of a conflict of interest or when appropriate, the City Manager shall delegate authority to investigate a specific complaint to a qualified third party.

Access to Records - To carry out its responsibilities, the OEOP shall have expeditious and unrestricted access to and copies of all records, reports, investigations, audits, reviews, documents, papers, recommendations, or other relevant material that are authorized by law and policy. Investigators are authorized access to all documents and all other evidentiary materials needed to discharge their duties.

Referrals – The City Manager, City Attorney or Department Director may initiate a request for OEOP to assist or investigate a matter or allegation brought to their attention.

Confidentiality - Except as required by law or this Directive, all written or verbal contacts with the OEOP shall be treated as confidential. Notwithstanding the outcome of the investigation, details of the complaint and/or any verbal or written resolution are considered confidential and should be shared only with those who have a need to know.

V. REPORTING REQUIREMENTS

A. Employees shall promptly report all incidents of discrimination, including sexual and/or other harassment to their immediate supervisor or department director or the Office of Equal Opportunity Programs (OEOP).

B. All complaints of discrimination and harassment shall be resolved as quickly as possible. An employee who is experiencing unwanted discrimination or sexual and/or other harassment is encouraged, when practical, to discuss and attempt to resolve the complaint at the department level before filing a complaint with OEOP.

C. Supervisors, who become aware of discriminatory practices, offensive behavior, jokes, comments, or other forms of sexual and/or other harassment within the workplace, shall take immediate and appropriate action to stop the discriminatory behavior. Failure to take action to stop the discrimination may subject the supervisor to disciplinary action, up to and including termination.

D. An employee conferring with OEOP, or assisting in the investigation of a complaint of discrimination or harassment filed with the OEOP, may do so on city time. The complainant must give reasonable advance notice to their supervisor(s) when time off is required; however, the specifics of the complaint need not be discussed with the supervisor.

E. All employees are required to cooperate in complaint proceedings and/or investigations whether as complainant, witness, or respondent. Knowledge of a complaint or information regarding the details of a complaint shall to be kept confidential and shared only with those who have a need to know.

VI. FILING A COMPLAINT

A. Employees may file a complaint of discrimination with OEOP. The "EEO Discrimination Complaint" form is available at the OEOP or may be downloaded via the Intranet.

B. Complaints must be filed with the OEOP within ninety (90) calendar days of the date the complainant knew or should have known of the alleged discrimination or harassment. If the alleged discrimination is a continuing act, the 90 calendar day period shall apply from the date of last harm. If the alleged discrimination is retaliatory in nature, the 90 calendar day period shall apply from the date of the retaliatory action.

C. Respondent shall have twenty (20) calendar days from date of notice to submit its response to OEOP.

D. An employee may withdraw a complaint or any part thereof, at any time during the complaint process. The Request for Withdrawal Form must be completed and submitted to the OEOP. An employee's withdrawal of a complaint does not limit OEOPs right to proceed with an investigation.

VII. INVESTIGATION OF COMPLAINTS

A. Upon receipt of a discrimination complaint, the OEOP shall determine if there are reasonable grounds to pursue an investigation of the allegation(s). If OEOP determines that there are no reasonable grounds to pursue an investigation, the complaint shall be administratively closed.

B. OEOP shall have one hundred twenty (120) calendar days from the date the complaint was filed to complete its investigation. The OEOP Director or designee may extend the 120 days for good cause.

C. At the completion of the investigation, if it is determined that there is no reasonable cause to believe that discrimination occurred, OEOP shall issue a no-cause finding. If it is determined that there is reasonable cause to believe that discrimination occurred, OEOP shall issue a cause finding and notify the City Manager or designee.

D. Following the issuance of a cause finding by OEOP, the department shall have ten (10) business days to submit a written response to OEOP, identifying where applicable, specific actions that shall be taken and an implementation schedule for resolution of the complaint.

In the event a resolution cannot be reached, OEOP shall submit a copy of its written findings to the City Manager for a determination. The decision of the City Manager shall be final.

Appendices

1) EEO Discrimination Complaint form
2) Withdrawal of Complaint Form

References

None

Review Responsibility and Frequency

The Office of Equal Opportunity Programs Director will review this directive annually, based on date of publication.

Authorized

City Manager
Michael J. Ortega

1/8/18
Date

Attachment A

CASE # _____ DATE RECEIVED: _____ OEOP STAFF: _____

CITY OF TUCSON
OFFICE EQUAL OPPORTUNITY PROGRAMS
INTERNAL DISCRIMINATION COMPLAINT FORM

NOTE: It will be necessary to show that persons of a different group than yours (*race, color, religion, sex, age, disability, national origin, sexual orientation, gender identity)* have been treated in a manner different from you and that the difference in treatment has had an adverse impact on your employment. Sexual harassment, whether physical or verbal, is illegal sex discrimination under Title VII of the Civil Rights Act of 1964 and violates city policy.

In accordance with Administrative Directive 2.05-8, complaints must be filed with the Office of Equal Opportunity Programs (OEOP) within ninety **(90)** calendar days of the date you knew or should have known of the alleged discrimination. If you believe you have been treated unfairly but not differently from others that are not in your protected group, do not complete this form. Your concerns might be addressed by using the City of Tucson Grievance Procedure (Administrative Directive 2.02-2). If you require assistance in completing this complaint form, contact OEOP at 791-4593.

PLEASE COMPLETE AND SIGN. (INCOMPLETE, UNSIGNED FORMS WILL NOT BE ACCEPTED AND WILL BE RETURNED.) ATTACH ADDITIONAL PAGES IF NECESSARY.

I. COMPLAINANT INFORMATION

Name: _____ City I.D. No. _____

Home Address: _____ Home Telephone No. _____

City/State: _____ Zip_____ Work Telephone No. _____

Current Job Title: _____ Department: _____

Immediate Supervisor: _____

II. NAME, TITLE, DEPARTMENT, AND TELEPHONE NUMBER OF PERSON(S) DISCRIMINATING AGAINST YOU.

_____

_____

_____

III. TYPE OF COMPLAINT. On what basis do you believe you are being discriminated against?

[ ] Race _____
[ ] Color _____
[ ] Religion_____
[ ] Gender Identity
[ ] Age (40 +) DOB: _____

[ ] National Origin _____
(e.g. Hispanic, Italian)
[ ] Sexual Orientation
[ ] Disability

[ ] Sex
[ ] Sexual Harassment
[ ] Sex, Pregnancy
[ ] Retaliation*

* Retaliation must be based either on your opposition to a perceived discriminatory act or on your participation in any manner in a discrimination investigation or proceeding.

IV. DESCRIBE HOW YOU WERE DISCRIMINATED AGAINST. (Beginning with the most recent incident, please list events in reverse chronological order by date of occurrence. Be specific.)

_____

_____

_____

_____

_____

_____

_____

V. NAME, DEPARTMENT, POSITION TITLE, AND TELEPHONE NUMBER OF PERSONS WHO HAVE DIRECT KNOWLEDGE OF THE EVENTS LISTED ABOVE.

_____

_____

_____

_____

_____

_____

_____

_____

_____

VI. WHAT WOULD YOU CONSIDER AN APPROPRIATE RESOLUTION TO YOUR COMPLAINT?

_____

_____

_____

VII. ACTION YOU HAVE TAKEN REGARDING YOUR COMPLAINT. (Please describe any steps you have taken internally to resolve this complaint. Be specific.)

_____

_____

_____

_____

_____

VIII. HAVE YOU FILED A COMPLAINT <u>EXTERNALLY</u>? *YES* [ ] *NO* [ ]

If yes: *EEOC* [ ] *ACRD* [ ] *OTHER* [ ] _____

OATH OF AFFIRMATION:

I affirm that the information I have provided in this complaint and attachments is true and accurate to the best of my knowledge.

Signature: _____ **Date:** _____

CONFIDENTIALITY NOTICE TO COMPLAINANTS
CITY OF TUCSON OFFICE OF EQUAL OPPORTUNITY PROGRAMS
INTERNAL COMPLAINTS

As per City of Tucson Administrative Directive 2.05-8 and to the extent possible, the Office of Equal Opportunity Programs will protect the confidentiality of any employee who contacts the Office to seek information, assistance, or guidance, or to file a complaint. Except as required by law or this directive, all written or oral contacts between the Office of Equal Opportunity Programs and any employee and/or witness shall be treated as confidential.

Interviews of any employee conducted by this Office in accordance with an investigation shall be treated as confidential, to the extent possible.

As a complaining party, your cooperation in protecting the confidentiality of the investigation is necessary. In order not to jeopardize the credibility of witness testimony, do not discuss this complaint with any of the parties involved (potential witnesses, supervisors).

I have read this notice and agree to cooperate in maintaining confidentiality.

Signature_____ Date _____

Please return to:
City of Tucson
Office of Equal Opportunity Programs
201 N. Stone Avenue, 3rd Floor North
Tucson, Arizona 85701
Phone: 791-4593

Attachment B

WITHDRAWAL OF COMPLAINT FORM

You recently indicated a desire to withdraw your discrimination complaint. Please sign and date this form and return the original to the Office of Equal Opportunity Programs (OEOP). Please note that your complaint is presently open with OEOP and we are prepared to proceed with the investigation of your complaint. Withdrawal of your complaint does not limit OEOPs right to proceed with an investigation.

Complainant **Respondent**

v.

COMPLAINT #

IV. Assigned to Senior Equal Opportunity Specialist: _____

COMPLAINANT: COMPLETE THE INFORMATION BELOW

I am aware that the City of Tucson OEOP will protect my right to file a discrimination complaint.

I have been informed that it is unlawful, under Tucson City Code, to threaten, intimidate or harass me because I have filed a discrimination complaint. I have not been forced to request this withdrawal. I request the withdrawal of my complaint because .

I wish to formally withdraw my discrimination complaint, as identified above, with the City of Tucson, OEOP.

_____ _____

DATE **SIGNATURE**

Please return to:
City of Tucson
Office of Equal Opportunity Programs
201 N. Stone, 3rd Floor, North
P.O. Box 27210, Tucson, Arizona 85726-7210