

**SUBJECT: PROHIBITED HARASSMENT AND/OR DISCRIMINATION POLICY**

**I. Purpose**

The City of Madison's vision is Inclusive, Innovative, and Thriving. The City of Madison is committed to equity, diversity, inclusion, equal employment and participatory government for all. Our policy is to be welcoming, safe, and fair to all City officials, employees and members of the community. The goal of our policy is for City work and meeting environments to be free of harassment, discrimination, and retaliation.

It is the policy of the Madison Common Council to uphold, promote, and demand the highest standards of ethics from its elected officials. Accordingly, members of the Common Council shall maintain the utmost standards of personal integrity, trustfulness, honesty, and fairness in carrying out their public duties, avoid any improprieties in their roles as public servants, comply with all applicable laws, and never use their City position to disparage, harass or abuse others.

The City of Madison and its elected officials share a commitment to ethical conduct and service to the city and its residents. This Policy has been created to ensure that all officials have clear guidelines for carrying out their responsibilities in their relationships with each other, with City staff, with the residents of Madison. By adoption of this Policy it is the hope and expectation of the Common Council that Council Members individually, and the Council as a whole, will aspire to these high standards. In the event that these shared objectives are not met in any instance that self-correction will occur in most every case, with alternative enforcement measures a rare and last option.

**II. Scope and Covered Behaviors**

We expect all members of the Common Council to treat their colleagues, City employees and members of the public in a welcoming, fair, respectful, and equitable manner. The following behaviors are prohibited under this policy: discrimination, harassment, retaliation, hazing, quid pro quo or other types of sexual harassment, micro-aggressions (subtle acts of exclusion), and creating a hostile work environment due to protected class. Definitions of these behaviors as well as a full list of protected classes can be found in the APM 3-5 Resource Guide. <https://www.cityofmadison.com/mayor/apm/dcr/APM3-5ResourceGuide.pdf>

This Policy applies to all members of the Madison Common Council and their interactions with other Alders as well as with City employees and community members. This policy applies to conduct that occurs at the workplace and at any location or on any platform that can be reasonably regarded as an extension of the workplace, including but not limited to the use of a telephone, voicemail, text messages, and/or any social media or online platforms.

Members of the Madison Common Council shall refrain from engaging in any types of prohibited conduct (bullying, discrimination, harassment, intimidation, micro-aggressions, retaliation, etc.) directed at their colleagues, City employees or members of the public.

**A. Elected Official Conduct with One Another**

The Common Council has a responsibility to set the policies for the City. In doing so, certain types of conduct are beneficial while others are destructive. The Council has the responsibility to take the high road on Intra-Council conduct and to treat other Council members as they would like to be treated. The Council is composed of individuals with a wide variety of backgrounds, personalities, values, opinions, lived experiences and goals. Despite this diversity, all choose to serve in public office and, therefore, have the obligation to preserve and protect the well-being of the community

and its residents. In all cases, this common goal should be acknowledged, and the Council must recognize that certain behavior is counterproductive, while other behavior will lead to success.

The Council is committed to providing an environment that is free of discrimination and unlawful harassment. Unwelcome, intimidating, hostile or offensive actions, words, jokes or comments based on an individual's gender, race, ethnicity, age, sexual orientation, gender expression, gender identity, disability, religion or any other legally protected characteristic will not be tolerated. Harassment (both overt and subtle) is a form of misconduct that is demeaning to others and undermines the integrity of relationships. This type of behavior is strictly prohibited.

#### B. Elected Official Conduct with City Staff

Governance of the City relies on the cooperative efforts of elected officials who set policy and the City staff who implement and administer the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each other for the good of the community.

Council members shall treat all staff as professionals. Clear, honest communication that respects the abilities, experience, and dignity of each individual is expected. Poor behavior toward staff is not acceptable. Council members should refer to staff by their title or formal salutation followed by the individual's last name in public meetings when first introduced.

Council members shall never demean or personally attack an employee regarding the employee's job performance in public. All employee performance issues shall be forwarded to the Mayor, the Human Resources Director or the employee's Department/Division Head through private correspondence or conversation.

The Council's authority resides in its actions as a body and individual Council members shall not give orders to any City employee, other than Common Council Office staff. Alders may make requests of City staff and City staff may act upon those requests within the context of agency priorities, work plans, and directives of the Department/Division Head. Council members shall not attempt to unethically influence or coerce City staff concerning either their actions or recommendations to Council about personnel, purchasing, awarding contracts, selection of consultants, processing of development applications, or the granting of City licenses and permits.

Nothing in this section shall be construed, however, as prohibiting the Council while in session from fully and freely discussing with or suggesting to Department Heads or City employees anything pertaining to City affairs or the interests of the City.

Council members should not solicit any type of political support (financial contributions, display of posters or lawn signs, name on support list, collection of petition signatures, etc.) from City staff. City staff may, as private citizens within their constitutional rights, support political candidates, but all such activities must be done away from the workplace. Photographs of uniformed City employees shall not be used in political ads.

In order to provide equal employment and advancement opportunities to all individuals, employment decisions of the City of Madison are based on merit, qualifications, and abilities. The City does not discriminate in employment opportunities or practices on the basis of race, color, religion, gender, national origin, sexual orientation, age, disability, or any other characteristic protected by law. City policy governs all aspects of employment, including selection, job assignment, compensation, discipline, termination, and access to benefits and training. Council members shall treat employees and each other in a manner consistent with this City policy to prevent unlawful discrimination and promote an inclusive positive work environment and working relationships.

### C. Elected Official Conduct Towards the Public In Public Meetings

Making the public feel welcome is an important part of the democratic process and a City strategic objective to increase desired public participation and diverse viewpoints. No signs of partiality, prejudice, or disrespect should be evident on the part of individual Council members toward an individual participating in a public forum. Every effort should be made to be fair and impartial in listening to public testimony. The Council members are expected to demonstrate, both publicly and privately, their honesty and integrity, and to be an example of appropriate and ethical conduct. All Council members should convey to the public their respect and appreciation for the public's participation, input, and opinions.

For many citizens, speaking in front of the Council is a new and difficult experience. Under such circumstances, many are nervous. Council members are expected to treat citizens with care and respect during public hearings. Council members should commit full attention to the speakers or any materials relevant to the topic at hand. Comments and non-verbal expressions should be appropriate, respectful, and professional.

Only the Mayor or Presiding Officer, not other Council members, should interrupt a speaker during their remarks. However, other Council members may ask the Mayor or Presiding Officer for a point of order if the speaker is off the topic or exhibiting behavior or language the Council member finds does not meet Council's standards of conduct. Questions directed by Council members to members of the public testifying should seek to clarify or expand information, not to criticize or debate.

### III. Enforcement

This Policy is intended to be self-enforcing as the Common Council holds itself to a high ethical standard. Ethical and conduct standards shall be included in the New Alder orientation and in the Council Policy Guide. Elected or appointed Council members, upon entering office, shall be provided a copy of this Policy and shall sign an acknowledgement of receipt certifying that they have read and understand it, and pledge to comply with its requirements.

#### A. Points of Order During Meetings

Violations of this Policy, when made during a chaired public meeting, may be noted promptly after their occurrence by rising to a point of order and stating the violation or concern. The Council President or Chair of the meeting shall rule on the point of order, which does not need a second and is not debatable. The Chair's decision shall stand unless challenged and reversed by a majority vote of the members present and voting as an open session of the Common Council.

#### B. Communication and Reconciliation between Council Members

Any Council member who feels a violation of this Policy has occurred during or outside of a public Council meeting may raise the issue privately with the other Council member. Attempts should be made to resolve any issue in a professional, private manner. If unsuccessful, either Council member may ask for the assistance of the ~~Council President~~ **Common Council Chief of Staff or other appropriate City staff** in mediating the issue or conflict. ~~The Council President may request that the Mayor, Council Vice President, or appropriate City staff assist in attempting to resolve the matter. In the event the Council President is involved in the dispute, the Vice President shall attempt to mediate the issue or conflict. If both the President and Vice President are involved in the dispute, the immediate past President shall attempt to mediate the issue or conflict.~~

#### C. Matters Involving City Staff or Community Members

Any City employee who feels a violation of this Policy has occurred during or outside of a public Council meeting may consult with their Department/Division Head and together they may raise the issue privately with the Council member. Any member of the public who feels a violation of this Policy has occurred during or outside of a public Council meeting may raise the issue privately with the Council member. Attempts should be made to resolve any issue in a professional, private manner. If unsuccessful, the Council member, City employee or member of the public may ask for the assistance of the Council President in mediating the issue or conflict. The Council President may include the Mayor, Council Vice President, or appropriate City staff in attempting to resolve the matter. In the event the Council President is involved in the dispute, the Vice President shall attempt to mediate the issue or conflict.

#### **D. Censure – Complaint Process and Action by Common Council**

The censure process is anticipated to be rare and shall be utilized only after the methods of resolution outlined above are attempted. If the matter remains unresolved, the complaining Alder, City employee or community member may file a sworn written complaint with the City Clerk. The Clerk shall provide a copy of the complaint to the party alleged to be in violation. Complaints shall first be heard by the Common Council Executive Committee, giving each party to the dispute the opportunity to be heard. If the Common Council Executive Committee, by a majority vote, so recommends, a Censure resolution shall be prepared by the City Attorney stating the findings as directed by the Committee. If the Censure resolution is sponsored by an Alder, it shall be considered by the Common Council. Censure shall only be made upon a 2/3 vote of the entire Common Council (14 votes of 20 Council members).

#### **E. Other Possible Penalties or Sanctions**

Other possible forms of sanction are available statutorily to address specific harms. These possible sanctions include:

1. Compulsory attendance of a member. To ensure attendance and prevent or respond as necessary to neglect of duty pursuant to Wis. Stat. § 62.11.
2. Removal from a position on a committee, board or commission to which the member was appointed by the Common Council.
3. Removal from office. Removal from office may only occur by a  $\frac{3}{4}$  vote of the entire Common Council (15 of 20 Council members), and only for cause. Wis. Stat. § 17.12(1)(a). Cause is defined as “inefficiency, neglect of duty, official misconduct, or malfeasance in office.” Wis. Stat. § 17.001.

#### **F. Relationship to APM 3-5**

The Mayor has issued Administrative Procedure Memorandum 3-5 (APM 3-5) which prohibits harassment and discrimination by or of City employees. APM 3-5 authorizes and requires the City to investigate harassment, discrimination and hostile workplace complaints against elected officials by City employees. As a Mayoral directive, APM 3-5 does not authorize discipline or sanctions against Common Council members, and possible outcomes under APM 3-5 are limited to dismissal of a complaint or a public report issued by the Civil Rights Director and the Human Resources Director. The Council adopts this Policy independent of the procedures outlined in APM 3-5 and City employees may proceed under either this Policy or APM 3-5.

No employment or disciplinary action will be taken against any Alder, City employee or member of the public who makes a good faith complaint pursuant to this Policy even if the process fails to substantiate the allegations of the complaint. No employee may file a complaint in bad faith. Employees who witness a violation of this policy can also file a complaint. No employee shall be discouraged from filing a complaint under this policy. Prohibiting or discouraging an employee from filing a complaint under this Policy is itself a prohibited behavior subjecting the Alder to the complaint process and possible sanctions under this policy.