

Prepared by: City Clerk's Office

RESOLUTION NO. 2018-08

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF VENICE, SARASOTA COUNTY, FLORIDA, AMENDING THE CITY OF VENICE PERSONNEL PROCEDURES AND RULES, 2013 EDITION, SECTIONS 1.21 EMPLOYEE CONDUCT AND DISCIPLINE AND 1.23 POLICY AGAINST HARASSMENT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, Sec. 50-35 of the Code of Ordinances provides that amendments to the City of Venice Personnel Procedures and Rules may be made and adopted by resolution; and

WHEREAS, city council wishes to amend the City of Venice Personnel Procedures and Rules, 2013 edition.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA, as follows:

SECTION 1. The whereas clauses above are ratified and confirmed as true and correct.

SECTION 2. Section 1.21, Employee Conduct and Discipline, of the City of Venice Personnel Procedures and Rules, 2013 edition is hereby amended as follows:

1.21 EMPLOYEE CONDUCT AND DISCIPLINE

Employees of the city are considered to be members of a team working together to achieve one common goal, which is to serve the citizens of Venice by enhancing the quality of life in the city in the most effective and efficient manner possible. Employees who fail to follow necessary policies, procedures, rules and directives or fail to exhibit proper employee conduct not only penalize themselves, but they render a disservice to the rest of the team and to the city.

As set forth in Section 1.5, Non-Bargaining Unit employees serve at the will and pleasure of the city manager and, as such, may be disciplined and discharged at any time, with or without cause. Therefore, Sections 1.21, 1.21a and 1.22 do not apply to such employees.

Discipline

If any employee engages in activity detrimental to the best interests of the City of Venice, its citizens, supervisors or co-workers, then that employee will receive appropriate discipline. The city reserves the right to make all disciplinary decisions. Employees may receive progressive discipline including oral reprimand, written reprimand, demotion, suspension or discharge based on the type, frequency, and severity of the offense. Progressive discipline may not be appropriate for more serious offenses.

Oral or Written Reprimand

Oral or written reprimands may be issued by city supervisors, subject to the prior approval of the department director and director of human resources.

Suspension, Demotion or Discharge; Pre-Determination Hearing

An employee who is being considered for suspension, demotion or discharge shall be given a written statement of the specification or charge prepared by the department head or director of human resources and approved by the city manager, before any final determination is made. The employee will be given the opportunity to respond in an informal hearing conducted by the department head or a hearing official designated by the city manager. Upon conclusion of the hearing, the hearing official shall inform the employee of the decision. At this pre-determination hearing, the employee may be accompanied by a representative, but the hearing will not be unreasonably delayed to accommodate the schedule of any particular representative. The employee may explain any vindicating or mitigating circumstances or reasons which the employee feels should be known or considered before a determination is reached. Within a reasonable time after the hearing, the hearing official shall inform the employee of the decision. The employee may request a Formal Evidentiary Hearing, as provided in these procedures, if he or she contests the decision. However, bargaining unit employees covered by a collective bargaining agreement may elect to use this procedure only if they choose not to pursue a grievance to arbitration under the collective bargaining agreement; and the request for arbitration shall constitute a waiver by the employee of the right to utilize this Formal Evidentiary Hearing procedure.

Employee Conduct

There are two (2) groups of example offenses for which employees may be disciplined. Nothing contained herein shall be construed to limit disciplinary action to these sample offenses. Each violation shall be evaluated upon its individual merits and a particular violation may be so severe as to warrant more serious discipline than is illustrated below:

Group One Offenses

1st Offense – verbal or written reprimand

2nd Offense – up to ten (10) days suspension without pay

3rd Offense – up to and including termination

1. Taking more than specified time for meals or breaks.
2. Being absent or late without proper notice, authorized leave or excuse. If the absence is for more than two consecutive workdays, the employee will have been deemed to have abandoned the job and resigned from city employment.
3. Leaving the job or the regular working area during working hours for any reason outside of the employee's job duties without authorization from the supervisor.
4. Chronic absenteeism.
5. Making or publishing of any false, vicious, inappropriate or malicious statements or gestures to or concerning any employee, vendor or citizen.
6. Soliciting or collecting contributions for any purpose on city premises during working hours unless approved by the city manager.
7. Soliciting signatures for petitions while on city premises during working hours without approval by the city manager.
8. Conflict of interest other than specifically listed in these rules and regulations.

9. Receipt of any gift in the course of work when such gift is solicited or given in the hope or expectation of receiving a favor.
10. Removal of another employee's property or city property without permission.
11. Failure to timely report any accident or claim.
12. Violating a safety rule or safety practice.
13. Reporting to work or working while unfit for duty either medically, mentally or physically.
14. Mistakes due to carelessness.
15. Improper use of city computers regarding e-mail and Internet usage.
16. Inefficiency, unsatisfactory performance, or lack of application or effort on the job.
17. Failure to report the loss of or damage to city equipment or other city property entrusted in the employee's custody.
18. Losing or causing damage to city property or property of another by actions not contained in the employee's job description.
19. Failure to keep the city and department notified of the employee's current proper address and telephone number.
20. Violation of published city or departmental policies, rules, standards, orders, operating procedures or regulations.
21. Abuse of leave privileges.
22. Sleeping during work hours unless approved by the department head.
23. Engaging in unprofessional behavior, such as horseplay, scuffling, wrestling, distracting the attention of others, demonstrations on the job, obscene language or gestures, or loud or abusive behavior.
24. Any activity detrimental to the city.
25. Being verbally abusive to any employee, supervisor or citizen.
26. Exhibiting conduct unbecoming a city supervisor or employee.
27. Creating or condoning a work environment that is not conducive to the operational aspects or goals and objectives of the city.

Group Two Offenses

1st Offense – up to and including termination

1. Misrepresentation of any facts in seeking employment.
2. Falsification of personal or city records, accident reports, work records, purchase orders, time sheets or any other report, record or application.
3. Making false claims or misrepresentations to obtain any sick or accident benefits, workers compensation or unemployment payments.
4. Making, posting or publishing of any threatening or intimidating statements, photographs/pictures, or gestures to or concerning any employee, vendor or citizen, or creating or condoning a hostile work environment.
5. Failure to return at the end of an authorized leave of absence.
6. Refusal to fully and truthfully cooperate in an investigation conducted by or at the direction of the city.
7. Improper racial or sexual comments, harassment or acts directed to any city employee or the general public.

8. Unauthorized use of the city's tax-exempt number for any reason.
9. Communicating or imparting confidential information either in writing or verbally to any unauthorized person.
10. Loss of or failure to maintain a current license or certification required by the city, state or other governmental entity to perform the job for which the employee is assigned.
11. Deliberately or negligently misusing, destroying, damaging city property or property of an employee.
12. Theft of any amount of money or property from the city, co-workers, citizens or visitors.
13. Gambling, lottery or engaging in any other game of chance at city work locations at any time. (This does not include benevolent fund-raising efforts as approved by the city manager).
14. Insubordination or refusal to perform work assigned or to comply with written or verbal instructions of the supervisor or management.
15. Conviction of any crime, physical violence, theft, or drug related matter or a serious traffic offense.
16. Committing actions that affect the safety of equipment or personnel.
17. Creating unsafe working conditions.
18. Being under the influence of or being in possession of any alcohol or illegal drugs while on duty.
19. Refusal to take a drug or alcohol test when required to do so by the city.
20. Unauthorized possession of fireworks or explosives on city property.
21. Possession of firearms or weapons on city property except as provided by section 1.25
22. Disorderly, immoral or indecent conduct causing any negative reflection on the city.
23. Participating in or initiating physical altercations.
24. Throwing objects, malicious mischief or similar types of disorderly conduct.
25. Provoking or instigating a fight or fighting at any time on city property or on city time.
26. Failure to report an arrest for driving under the influence within 72 hours of the arrest.
27. Suspension of the employee's driver's license if driving a vehicle is an essential function of the employee's position.
28. Operating a city vehicle while under the influence of alcoholic beverages, a chemical substance or a controlled substance when affected to the extent that the employee's normal faculties are impaired.
29. Found to be at fault for a traffic accident that results in personal injury or property damage in excess of \$1,000.00.

The above lists do not include all of the reasons for which an employee may be subject to disciplinary action, but as stated earlier, is intended to provide examples of inappropriate conduct.

Other Occasions for Resolving Factual Disputes

In addition to disciplinary suspension, demotion or discharge, there may arise other occasions when material facts are in dispute and those facts significantly impact a constitutional property right of one or more employees. A pre-determination hearing is not warranted in such cases unless the

determination is based on an employee's misconduct. In cases not involving an employee's misconduct, but which do involve disputed facts and do materially affect one or more employee's constitutional property rights, the employee may request a formal evidentiary hearing to resolve disputed issues of fact.

SECTION 3. Section 1.23, Policy Against Harassment, of the City of Venice Personnel Procedures and Rules, 2013 edition is hereby amended as follows:

1.23 POLICY AGAINST HARASSMENT AND DISCRIMINATION

Policy

The City of Venice is committed to providing a work environment that is free from harassment or discrimination. In keeping with this commitment, the city maintains a strict policy prohibiting any kind of unlawful harassment or discrimination, ~~including racial, sexual, ethnic,~~ based upon race, gender, sex, color, national origin, genetic information, disability, age, or religious harassment, religion or other legally protected class. This policy prohibits harassment in any form, such as verbal, physical and visual.

~~The definition of sexual harassment includes: (1) quid pro quo sexual harassment where employment or continuing employment is based on the granting of a sexual favor, and (2) the creation of a hostile work environment to the extent that an employee feels coerced or intimidated. A hostile work environment can be created by words and/or actions. Words or actions are considered unlawful sexual harassment if, among other things, they are sexual in nature and unwelcome. Examples of sexually harassing conduct include, but are not limited to, the following:~~

~~(1) unwelcome sexual flirtations, advances, touching or propositions; (2) verbal abuse of a sexual nature; (3) offensive comments of a sexual nature; (4) sexually degrading words, gestures or images; and (5) the display in the workplace of sexually suggestive objects or pictures.~~

~~Examples of other types of harassment include but are not limited to: (1) nicknames pertaining to any ethnic, religious, or age characteristics or stereotypes; (2) racial, ethnic, age or religious jokes; (3) overtly or covertly distributed materials, signs, magazines, or bulletin board notices that are found offensive; and (4) use of any racial slurs.~~

Definitions and Examples

Unwelcome sexual advances, requests for sexual favors and any other physical, verbal or visual conduct of a sexual nature constitute sexual harassment when:

1. Submission to the conduct is an explicit or implicit term or condition of employment or continued employment; or
2. Submission to or rejection of the conduct is used as a basis for employment decisions affecting an employee, such as promotion, demotion or evaluation; or

3. The conduct has the purpose or effect of interfering with an employee's work performance or creating an intimidating, hostile or offensive work environment.

Sexual harassment may include, but is not limited to:

1. Unwelcome sexual propositions;
2. Sexual innuendo;
3. Sexually suggestive remarks;
4. Vulgar or sexually explicit comments, gestures or conduct;
5. Sexually oriented kidding, teasing or practical jokes;
6. Physical contact such as brushing against another's body, pinching or patting;
7. The publication, to anyone, of documents (including pictures and text) in the workplace that contain any material that is of a sexual nature; and
8. Using a city computer to access any web site, newsgroup, CD or any other resource, that contains material that is of a sexual nature.

Sexual harassment may occur when the intended target of the conduct is not offended, but others reasonably find the conduct to be intimidating, hostile, or abusive.

Other unlawful harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of their race, color, religion, gender, national origin, age, marital status, sexual orientation, disability or other protected class when it:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working environment; or
2. Has the purpose or effect of unreasonably interfering with an individual's work performance; or
3. Otherwise adversely affects an individual's employment opportunities.

Unlawful harassment includes, but is not limited to, the following:

1. Epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts that relate to race, color, religion, gender, national origin, age, marital status, sexual orientation, disability or other protected status; and,
2. Written or graphic material that denigrates or shows hostility toward an individual or group because of race, color, religion, gender, national origin, age, marital status, sexual orientation, disability or other protected class and that is placed on walls, bulletin boards, or elsewhere on the city's premises, or circulated in the workplace. This also includes acts that purport to, or are meant to be, "jokes" or "pranks," but that are hostile or demeaning, such as hate mail, threats, defaced photographs, or other such conduct.

Unlawful discrimination includes, but is not limited to, an adverse action taken by an employer or its agent which affects an employee's pay, benefits, or other terms and conditions of employment because of their race, color, religion, gender, national origin, age, marital status, sexual orientation, disability or other protected class.

Every Employee is Responsible for Making the City Aware of Any Complaints of Sexual or Other Unlawful Harassment or Discrimination.

The city is committed to promptly and thoroughly investigating all complaints of sexual and other unlawful harassment. All employees are responsible for making management aware of any reports that sexual or other unlawful harassment or intimidation is occurring in the workplace.

Any employee who believes they have been harassed by a coworker, manager or agent of the city should promptly report the facts of the incident or incidents and the names of the individuals involved to their supervisor and the director of human resources. However, if the employee's complaint involves their supervisor or they otherwise feel uncomfortable reporting to their supervisor, the employee may report the allegations solely to the director of human resources. Managers who know or who become aware of potential harassment ~~should~~ have an affirmative duty to report all complaints of harassment to the director of human resources, to ensure that they are resolved promptly and effectively. The City will investigate all complaints and advise the interested parties of the conclusions.

The city will conduct all actions to resolve complaints of harassment or discrimination through internal investigations as confidentially as possible and practical. Any manager or other employee who is found, after appropriate investigation, to have engaged in harassment of another employee will be subject to disciplinary action, up to and including dismissal. Employees who utilize the complaint procedure outlined in this policy will not be retaliated against and will not have their employment adversely affected by making such a complaint.

Complaint and Investigation Procedure

Initial Complaint

Any employee who believes he or she has been the subject of sexual or other unlawful harassment or discrimination must report the alleged act immediately to their supervisor and the director of human resources. Employees are not expected to report harassment to the person they believe is harassing them. Anonymous complaints of harassment or discrimination will be investigated to the extent they contain sufficient information to warrant investigation.

Nature of Investigation

Investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. All persons who participate in such an investigation shall be protected from coercion, intimidation, retaliation, interference or discrimination for filing a complaint or participating in an investigation.

Conclusion of Investigation

If, after a thorough investigation, it is determined that sexual or other unlawful harassment or discrimination has occurred, immediate and appropriate disciplinary action up to and including discharge will be taken. Follow-up steps will be taken to ensure that the harassment has stopped or as otherwise appropriate.

SECTION 4. This Resolution shall take effect immediately upon its adoption.

APPROVED AND ADOPTED AT A REGULAR MEETING OF THE VENICE CITY COUNCIL HELD ON THE 10TH DAY OF APRIL 2018.

John W. Holic, Mayor

ATTEST

Lori Stelzer, MMC, City Clerk

I, **LORI STELZER**, MMC, City Clerk of the City of Venice, Florida, a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of a Resolution duly adopted by the City Council of said city at a meeting thereof duly convened and held on the 10th day of April 2018, a quorum being present.

WITNESS my hand and the official seal of said City this 10th day of April 2018.

(SEAL)

Lori Stelzer, MMC, City Clerk

Approved as to form:

David Persson, City Attorney