

SOUTH PORTLAND POLICE DEPARTMENT

STANDARD OPERATING PROCEDURES

Subject:	Non-Discrimination / Anti-Harassment	Policy #	5-52-A
Effective Date:	November 14, 2018	Review:	Annually
Distribution:	All Personnel	# of pages:	5

I. PURPOSE:

To prevent workplace discrimination and illegal harassment by establishing procedures for reporting, investigation and / or resolution of complaints.

II. POLICY:

Employees are the most important part of this organization and must be treated with respect and dignity. The South Portland Police Department is committed to providing a work environment that is free from discrimination and illegal harassment, as such conduct is illegal and seriously undermines the atmosphere of professionalism, trust and respect that is essential to a healthy workplace and law enforcement environment. All employees will abide by this directive and the City's policies regarding harassment, discrimination and workplace violence. The department expects that all relationships among employees, managers, contractors, vendors and the public will be professional and free of bias, prejudice, intimidation, coercion and harassment. This shall apply to all work-related settings, activities and property, and will cover conduct between male/female, female/male, and members of the same sex. Harassment and discrimination are strictly prohibited, and all employees should promptly report complaints about discriminatory and / or harassing behavior and actions.

- A. **NON-DISCRIMINATION STATEMENT:** The department is committed to providing equal employment opportunities, equitable treatment, and advancement opportunities for all of its employees. Any verbal, physical, or visual conduct that belittles, demeans, denigrates, or shows hostility toward an individual or group on the basis of race, creed, color, age, gender, sexual orientation, national origin, religion, physical or mental handicap (except where such handicap manifestly disqualifies an individual from a particular position), worker's compensation history, whistleblower's history, use of tobacco products outside the course of employment, previous or present union activities or affiliation with respect to tenure, promotion, transfer, compensation, term, conditions or privileges of employment, or any other matter directly or indirectly related to employment is prohibited.
- B. **ANTI-HARASSMENT STATEMENT:** The department will not allow employees to initiate or participate in behavior or activities of illegal harassment, including sexual harassment, as defined below, that may create a hostile work environment. Sexual harassment is a form of illegal discrimination. Any behavior that is discriminatory, coercive, intimidating, harassing, or sexual in nature is inappropriate and prohibited.

III. DEFINITIONS:

- A. **Harassment (General):** Any repeated act of intimidation, harassment, physical force, or threat of force directed against any employee with the intention of causing fear or intimidation which is sufficiently severe or pervasive to alter the conditions of a victim's employment and create an abusive and hostile working environment.
- B. **Sexual Harassment:**
 - 1. Conduct or behavior of a person of either sex, against a person of the opposite or same sex, constituting unwelcome sexual advances, unwelcome requests for sexual favors and other unwelcome verbal or physical behavior of a sexual nature where:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an employee's employment or performance; or

- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual's welfare; or
 - c. Such conduct has the purpose or effect of substantially interfering with an individual's welfare or work performance or creates an intimidating, hostile, offensive or demeaning work environment.
2. Prohibited acts that constitute sexual harassment may take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:
- a. **Prohibited Expressive Behavior:** Behavior commonly considered by persons of a particular gender to be demeaning to members of that group; where the person engaging in such conduct has previously been asked not to engage in such conduct or conduct of substantially the same kind; and the conduct either interferes with the mission or performance of law enforcement activities; or makes the work environment hostile, intimidating or demeaning to members of the group of average sensibilities.
 - b. **Epithets, comments, or gestures:** Repeated use of epithets, comments, or gestures that explicitly demean a particular gender as a whole or an individual based on gender, where the epithets, comments, or gestures are commonly considered by members of the group demeaned to be disparaging to members of that group; and repetition of such conduct either interferes with the mission or performance of law enforcement activities; or makes the work environment hostile or intimidating or demeaning to members of average sensibilities of the group disparaged.
 - c. Unwelcome sexual advances, propositions, invitations, solicitations and flirtations
 - d. Threats, promises or insinuations that a person's employment, wages, performance evaluations, promotional opportunities, work assignments or other conditions of employment may be adversely affected by not submitting to sexual advances.
 - e. Unwelcome verbal expressions of a sexual or lewd nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, jokes, or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene phone calls.
 - f. Sexually suggestive objects, pictures, videotapes, audio recordings, or literature, placed in the work or study area that may embarrass or offend individuals, unless such material is approved and used for law enforcement or instructional purposes.
 - g. Unwelcome and inappropriate touching, patting, or pinching; obscene gestures.
 - h. Retaliatory actions for complaining about sexual harassment

IV. LEGAL AUTHORITY / IMPLICATIONS:

- A. Discrimination is prohibited by the Civil Rights Act of 1964, the 1991 Civil Rights Act, the Americans with Disabilities Act of 1990, the Maine Human Rights Act, the Maine Whistleblowers Protection Act, Maine's Protection from Harassment Law, and the Personnel Policy of the City of South Portland. Sexual harassment is a form of sex discrimination, which is prohibited by Title VII of the Civil Rights Act of 1964, the Maine Human Rights Act, and the Personnel Policy of the City of South Portland.
- B. Under certain circumstances, discrimination, harassment and sexual harassment may constitute a criminal act under Maine statute(s). In such situations, those incident(s) shall be forwarded to the appropriate law enforcement agency for criminal investigation and possible prosecution. Nothing in this policy will prohibit the police department or the City Manager from taking immediate action to protect victims of alleged discrimination or harassment activity.

V. PROCEDURES:

A. Responsibility:

1. Any employee who is aware of - or has experienced - an incident of discrimination or harassment should promptly report the matter to one of the officials designated below under "Filing a Complaint."
2. Supervisors and managers are responsible for monitoring conduct which can be construed to be harassment and for promptly taking corrective action to eliminate such behavior.
3. Any supervisor or manager who is aware of a request by any employee for some sort of a reasonable accommodation that may implicate state or federal law (e.g., physical or mental disability or religion), will so notify the Chief of Police, in writing, through the chain of command. The Chief of Police, in consultation with Human Resources, will consider the impact(s) and feasibility of the request and render a decision to the employee.
4. Each year the department will provide supervisors and new employees an in-service training program and information concerning sexual harassment and the department's Sexual Harassment Policy.

B. Confidentiality:

1. Persons seeking general information or guidance about discrimination or harassment may be concerned about the confidentiality of the information they are seeking. While the department is committed to creating a safe environment in which individuals can be unafraid to discuss concerns and make complaints, the department may be legally obligated to take some action once it is informed that discrimination or harassment may be occurring. The department and the city will protect the privacy and confidentiality rights of the parties to the extent such protection is practically feasible and legally permissible; however, complete confidentiality and privacy cannot always be guaranteed.
2. In the event that at the conclusion of a formal complaint process, a disciplinary action is taken against an employee, the letter describing the disciplinary action and the reasons for the disciplinary action are a matter of public record under the laws of the State of Maine.
3. If the complaint is determined to be unfounded, the entire file shall remain confidential.

C. Non-Reprisal / Protection of Complainant and Others:

1. No employee or member of the public may be subject to restraint, interference, coercion, or reprisal for action taken in good faith to seek advice concerning a discrimination or harassment matter, to file a complaint, or to serve as a witness or panel member in the investigation of a complaint.
2. In general, investigations will be initiated only with the complainant's consent. The complainant will be fully informed of steps taken during the investigation. Steps to avoid retaliation may include lateral transfers or arrangements that employment evaluations may be made by an appropriate individual other than the accused. The department, however, does reserve the right to initiate an investigation based upon observations or documented actions of sexual harassment without an employee's written or verbal complaint.
3. In extraordinary circumstances, an employee may be suspended from duties, with pay, pending or after an investigation where, after a preliminary review of the allegations and interviewing the accused, the Police Chief or City Manager finds that it is reasonably certain that the alleged discrimination or harassment has occurred and that serious harm will ensue if the person continues in his or her duties.

D. Malicious, False Accusation / Protection of Accused:

1. Consistent with SOP #5-52, ADMINISTRATIVE INVESTIGATION / INTERNAL AFFAIRS, At the time a formal investigation commences, the accused will be informed of the allegations, the identity of the complainant, and the facts surrounding the allegations. In the event the allegations are not

substantiated, all reasonable steps will be taken to restore the reputation of the accused, if it was damaged by the proceeding.

2. A complainant whose allegations are found to be both false and brought with malicious intent or in reckless disregard to the truth will be subject to disciplinary action which may include, but is not limited to, an oral or written reprimand, transfer, suspension, demotion, dismissal, and / or potential civil or criminal liability.

E. Filing a Complaint:

1. Information, Counseling and Informal Resolution:

- a. An initial course of action for any employee who feels harassed or discriminated against is to tell the discriminating party or the person who is harassing that the conduct is inappropriate and unlawful and must stop. In some circumstances this course of action may not be feasible or may be unsuccessful.
- b. Employees may alternatively seek advice, information or counseling on matters related to discrimination or harassment without having to lodge a formal complaint. Persons who feel they are being harassed or discriminated against are encouraged to talk with whomever they feel comfortable within the department. At this stage of the informal resolution process, the person to whom the complaint is brought will counsel the person seeking information and advise as to the options available under this policy and, at the complainant's request, may either help the complainant resolve the complaint informally, or help the complainant draft a formal complaint, if desired. Any supervisory or command officer receiving such an inquiry for an informal resolve will take affirmative steps to ensure the behavior is promptly addressed to the satisfaction of the complainant and appropriately documented.
- c. Informal procedures for resolution of a complaint include, but are not limited to, the complainant's writing a confidential letter to the accused explaining their perceptions and feelings and requesting the cessation of the offensive behavior; the arranging of an informal meeting between the complainant and the accused; or the arranging of an informal meeting between the accused and the person to whom the complaint is brought.
- d. The aim of the informal complaint resolution is not to determine whether there was intent to harass but to ensure that the alleged offending behavior ceases and that the matter is resolved promptly at the lowest possible level. The person to whom the informal complaint is brought will not inform the accused of the complainant's action without the consent of the complainant. Because the informal process is not fact finding in nature (which would allow for reasonable due process for the accused), no disciplinary action will be taken against the accused.
- e. To the extent possible, information disclosed through this advising process will be held in confidence, unless and until the initiating individual agrees that additional people must be informed in order to facilitate a solution. At any time during the informal process or upon the completion of the informal complaint process, an employee may initiate a "formal complaint" under the procedure described below.

2. Formal Complaint Resolution:

- a. Any employee who feels harassed or discriminated against shall file such a complaint with their immediate supervisor, who shall initiate the complaint in accordance with SOP #5-52 (ADMINISTRATIVE INVESTIGATION / INTERNAL AFFAIRS).
- b. If the employee is not comfortable reporting their complaint to their supervisor, or if the offending party is that supervisor or within the employee's chain of command, the employee should submit a complaint directly to the Chief of Police. In the event that employee is not comfortable reporting their complaint to the Chief, or a claim is being made against the Chief, the complaint should be submitted to the City Manager or that person's designee.
- c. The City Manager, Police Chief, or designee will conduct a full, impartial and timely investigation in accordance with SOP #5-52 (ADMINISTRATIVE INVESTIGATION / INTERNAL AFFAIRS).

To the extent possible, complaints will be handled in a manner calculated to protect the privacy and confidentiality interests of both parties, with the facts made available only to those who have a compelling need to know for purposes of investigation or resolution.

- d. At the conclusion of the investigation of a complaint against an employee, the Police Chief will present a written report which will include the allegations, the investigatory process, the evidence, the consistency of the testimony, and the credibility of the witnesses.
- e. The Police Chief will make a determination as to whether there was a violation of policy, will take necessary action, and will inform the complainant and the respondent of the facts developed in the course of the investigation and the final disposition of the complaint.

3. **Appeal Options:**

- a. Within thirty days of the presentation of the Police Chief's report, either the complainant or the respondent may appeal the findings and / or decision of the Police Chief to the City Manager, who will designate a person to hear and consider the appeal.
- b. The designee shall hold a hearing to determine. Before the hearing, the designee will meet to determine procedures for the conduct of the hearing in consultation with the parties involved. The designee will hear the complainant, the respondent, and witnesses identified by each party, and will examine all necessary evidence. The privacy and confidentiality rights of both parties will be observed to the extent possible.
- c. At the conclusion of the investigation, the designee will issue a written report of their findings and conclusions to the City Manager, the Police Chief, and to both parties.
- d. In the event that a respondent has received a suspension, demotion, or has been terminated from employment under the rules of the Civil Service Ordinance, appeals may only be brought to the Civil Service Commission within ten days of the notice of disciplinary action.
- e. In lieu of the formal complaint resolution process and appeal to the City Manager, an employee may pursue a complaint by filing a complaint to the Maine Human Rights Commission (207.624.6290) no later than six months after the alleged act of unlawful discrimination, or to the Equal Employment Opportunity Commission (617.565.3200) within 300 days of becoming aware of the alleged discriminatory action.

4. **Anti-Retaliation:**

- a. An employee may not be punished or penalized in any way for reporting, complaining about, or filing a claim concerning unlawful harassment, regardless of nature or category, or for cooperating with or testifying in any proceeding brought by anyone else.
- b. If any employee feels they have been retaliated against for opposing or reporting what they reasonably believe to be unlawful harassment, or cooperating in any investigation of the same, please follow the same reporting/complaint procedure set forth above.

By Order Of:

Timothy B. Sheehan
Chief of Police