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**VIA EMAIL**

David.Rabbino@jordanramis.com

**ATTORNEY-CLIENT PRIVILEGE**

David A. Rabbino  
Jordan Ramis  
1211 SW Fifth Ave, Suite 2700  
Portland OR 97204

Re: City of West Linn Investigation

Dear David:

This report documents my fact-finding investigation into a complaint made by Mayor Rory Bialostosky pursuant to Ordinance 1704 regarding conduct by Councilor Steve Erwin. This report contains detailed information, witness accounts, relevant documentation, analyses, and findings related to the complaint raised. My investigation was completed in accordance with the terms of the Engagement Letter between the City of West Linn and Barran Liebman LLP, the Association of Workplace Investigators' Guiding Principles for Conducting Workplace Investigations, and applicable laws and rules.

**I. INTRODUCTION AND SCOPE**

Effective September 19, 2023, the City of West Linn retained the undersigned to conduct a fact-finding investigation into a complaint made by Mayor Rory Bialostosky pursuant to Ordinance 1704 regarding conduct by Councilor Steve Erwin. (Exhibit 1.)

The issues for fact finding are as follows:

1. What occurred at the Sisu Brewing Company where Mayor Rory Bialostosky, Councilor Mary Baumgardner and Councilor Scott Erwin were present on April 25, 2023.
2. What was the discussion between Councilor Erwin and the candidate for the City Attorney position alleged to have taken place on August 14, 2023.
3. What was Councilor Erwin's conduct during the Executive Session on August 31, 2023.

4. Why did Councilor Erwin send an email on September 1, 2023, expressing his concerns about Councilor Baumgardner.
5. Does any of the foregoing conduct constitute workplace harassment pursuant Ordinance 1704.

## **II. STANDARD OF PROOF**

I analyzed the facts under a preponderance of the evidence standard. “Preponderance of the evidence” for purposes of this report means that the evidence on one side simply outweighs, or is more than, the evidence on the other side. This is a qualitative standard, not a quantitative standard.

## **III. INVESTIGATION BACKGROUND**

### **A. Statement of Independence**

I identified a process for this investigation based upon the complaint raised, my analysis of the issues, and the information provided by the complainant, subject, and other witnesses. I obtained information as necessary from the City of West Linn and relevant witnesses and they provided me everything that I requested. I was able to conduct this process independently and nobody interfered with the process or my approach.

### **B. Witness Interviews**

The following individuals were interviewed on the date noted:

1. Mayor Rory Bialostosky, September 21, 2023
2. Recruiter [REDACTED], September 25, 2023, via Zoom, with follow up via email
3. City Council President Mary Baumgardner, September 26, 2023
4. City Attorney Peter Hicks, October 6, 2023
5. City Councilor Carol Bryck, October 10, 2023
6. City Manager John Williams, October 16, 2023
7. City Councilor Scott Erwin—respondent, October 25, 2023

I offered all individuals the opportunity to offer additional information or documentation subsequent to the interviews and provided sufficient time after each interview to allow any such additional information to be submitted.

On September 26, 2023, and October 11, 2023, I emailed City Attorney candidate [REDACTED] requesting to interview him but received no response. On October 25, 2023, I received a message from [REDACTED] confirming that [REDACTED] did not want to be interviewed.

On October 3, 5, and 10, 2023, I emailed Councilor Lou Groner regarding scheduling a time for an interview. He responded on October 12, 2023, that he was not sure what he may have witnessed that may be relevant. I let him know that I would still like to speak with him but he did not respond

again. After reviewing my notes, I decided that Councilor Groner would not have material information so did not further pursue scheduling his interview.

**C. Admonitions**

With each witness, I explained my role as an outside investigator and that I had been tasked with fact-finding only, made clear that I am an attorney functioning as an outside investigator in a limited representation role for this matter, made clear that I could not provide any of the witnesses with legal advice, provided information about the allegations raised to the extent needed to ask the necessary and relevant questions, asked each individual to try to be as candid and detailed in their responses as possible to allow me to reach these findings, explained that the report would be provided to the City of West Linn and that the investigation process was not completely confidential, emphasized the City's anti-retaliation policy, and instructed witnesses not to divulge any privileged information.

I provided each witness the opportunity to ask any questions after the admonitions and before my questions began, as well as throughout the interview, and invited them to follow up with me if any other questions or details arose subsequent to their interviews. I took notes of each witness interview on a laptop during the course of the interview itself and audio recorded each interview.

**D. Credibility Determinations**

During the investigation, I assessed the credibility of the witnesses by comparing their statements to available evidence, including other witness accounts and documents, as well as evaluating the inherent plausibility of statements, the motive to falsify, the ability to recall specific facts, their responsiveness to my questions, including whether they were cooperative during the process and forthcoming with providing information, and the reasoning they provided in answering my questions.

**E. Documentation**

I reviewed the following documents, which were provided by the City and witnesses:

1. Ordinance 1704 Complaint by Rory Bialostosky
2. Ordinance 1704 and Exhibit A, Policy Statement
3. Legal Memorandum re Complaint Received
4. September 1, 2023 email from Councilor Erwin to Mayor Bialostosky and City Manager Williams re My concern & perspective
5. Video of August 31, 2023 City Council executive session
6. Text message re candidate withdrawing
7. ██████████ notes re Debrief with ██████████
8. Scott Erwin's Facebook post re ██████████

#### IV. ORDINANCE 1704 AND POLICY

Ordinance 1704 adopted a policy and procedure seeking to prevent workplace harassment. Pursuant to the Ordinance, the City adopted the following relevant policies that apply to and are enforceable against board and commission members, elected officials and volunteers:

**Discrimination:** Making decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, and other terms and conditions of employment, based on or because of a person's protected class status. (See also Workplace Harassment.)

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**Sexual Harassment:** Unwelcome, unwanted or offensive sexual advances, requests for sexual favors, and 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 the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.);
- (2) such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment include but are not limited to: unwelcome, unwanted or offensive touching or physical contact of a sexual nature, such as closeness, impeding or blocking movement, assaulting or pinching; gestures; innuendoes; teasing, jokes, and other sexual talk; intimate inquiries; persistent unwanted courting; sexist put-downs or insults; epithets; slurs; or derogatory comments. (See also Workplace Harassment.)

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**Workplace Harassment:** Conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that is prohibited by ORS 659A.082 or 659A.112.

**Workplace Intimidation:** Unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status. Workplace intimidation may occur between a manager/supervisor and a subordinate, between employees, and among non-employees who have business contact with employees. A complainant does not have to be the person harassed, but could be a person affected by the

offensive conduct. Examples of intimidation include, but are not limited to, derogatory remarks, slurs and jokes about a person's protected class status.

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### **Section 3. Policy Statement.**

The City of West Linn believes that all volunteers have the right to work in an environment free from discrimination, harassment, workplace intimidation based on or because of volunteer's protected class, and sexual harassment and assault (collectively identified hereinafter as "workplace harassment"). All volunteers are expected to conduct themselves in a business-like and professional manner at all times with concern for the well-being of their co-workers.

#### **Policy Objective**

The objective of this policy is to define workplace harassment and to outline procedures for filing complaints, investigating workplace harassment claims and issuing appropriate disciplinary measures in the case of violations.

#### **Policy Scope**

This policy applies to all volunteers of the City of West Linn, including board and commission members and elected officials. This policy seeks to prevent discrimination and harassment that occurs in the workplace or at City-related events that are off the workplace premises and coordinated by or through the City. This policy shall be made available to all volunteers in the workplace. This policy shall be included in any orientation materials that are provided to new volunteers at the time of appointment or other commencement of service to the City. All volunteers shall be required to complete discrimination and harassment training upon their initial appointment or other commencement of service to the City, and annually thereafter. All volunteers must sign an acknowledgement indicating they have read the policy and have had an opportunity to ask questions relating to the policy. The City shall maintain signed acknowledgements, including electronic signatures, on file.

#### **Defining Workplace Harassment**

Workplace harassment of volunteers, as defined by that conduct prohibited by ORS 659A.030, 659A.082 and 659A.112, is not permitted regardless of their working relationship or supervisory status. Volunteers who engage in this behavior are subject to disciplinary action, up to and including dismissal.

Specifically forbidden is unwelcome, unwanted or offensive conduct related to a person's race, color, religion, national origin, age, sex, marital status, mental or physical disability, sexual orientation, gender identity or expression, whistleblower,

expunged juvenile record, injured worker or any other protected class as defined by applicable federal, state or local laws. This includes, and is not limited to, the following examples:

- sexual advances, gestures or innuendos;
- requests for dates;
- touching (other than handshakes);
- making jokes or derogatory comments related to sexual issues, or related to the gender, race, ethnicity, religion, age, etc., of a particular person or group;
- displaying sexual pictures or images in the workplace;
- using abusive or profane language;
- using City equipment or communication systems to access, send, receive or store sexual or derogatory material;
- making fun of a person's mental or physical limitations, religious beliefs or sexual orientation; or
- engaging in any other verbal, graphic, electronic or physical conduct of a sexual or derogatory nature which has the purpose or effect of creating an offensive work environment or interferes with a volunteer's performance of his or her job.

Volunteers should assume that conduct of this nature is unwelcome and will offend other volunteers. Therefore, volunteers will refrain from engaging in this type of conduct at all times, regardless of the circumstances. It is not an acceptable excuse that others participated in the conduct or did not appear to be offended.

Inappropriate conduct by business visitors, vendors, suppliers, and other members of the public is also prohibited if it creates an offensive environment for City volunteers. Likewise, it is also prohibited for volunteers to subject business visitors, vendors or suppliers, or members of the public to conduct that is prohibited by this policy.

No one should suggest or threaten a volunteer's cooperation, tolerance or objections to conduct of this nature will have any effect on a volunteer's continued association with the City. The City strictly prohibits managers and supervisors from making voluntary service decisions based on a volunteer's tolerance or resistance to harassment. This type of conduct is considered to be a violation of the City's harassment policy.

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### **Retaliation Prohibited**

The City respects the rights of its volunteers to raise harassment and discrimination concerns and to participate in investigations. Retaliation against any volunteer for

making a complaint or for providing information in an investigation is prohibited, and any such action may be subject to disciplinary action, up to and including dismissal.

“Retaliation” is broadly construed and can include any adverse action against a volunteer for opposing harassment or discrimination. It may include any on-duty or off-duty conduct, whether related to employment or not, that could discourage a volunteer from making a complaint of discrimination or harassment, or from testifying, assisting or participating in an investigation, proceeding or hearing. It can include obvious conduct such as changing a person's job duties, giving a negative employment reference, or refusing to work with a person. It can also include more subtle conduct such as “cold shoulder” treatment.

If a volunteer believes they have been subjected to retaliation for making a complaint or participating in an investigation, the volunteer should immediately report their concerns to the Human Resources Director. If the volunteer is not comfortable reporting the concerns to the Human Resources Director, then the volunteer should report the concerns to the City Manager. If the complaint of retaliation is directed towards the City Manager, then the volunteer should report their concerns to the Human Resources Director, who will refer the complaint to the City Attorney.

(Exhibit 2.)

## **V. SUMMARY OF THE COMPLAINT**

On September 9, 2023, Mayor Rory Bialostosky submitted a complaint regarding Councilor Steve Erwin that alleged the following:

1. On April 25, 2023, while attending the League of Oregon Cities conference in Seaside, Oregon, he, Council President Mary Baumgardner and Councilor Scott Erwin met at a brewery to socialize to get to know one another. Mary was sharing a story about someone she had a crush on and Scott interrupted her and asked her, “did you fuck him?” When she continued her story without answering him, he interrupted her a second time and again asked, “did you fuck him?”

On May 16, 2023, in hopes that Scott would apologize to Mary, Rory called Scott and informed him that his comments made Mary very uncomfortable. Scott never apologized to Mary.

2. The finalist for the City Attorney position [REDACTED] withdrew his candidacy after his one-on-one interview with Scott based on remarks that Scott made. In response to a comment about diversity and the City Council, [REDACTED] stated that Councilor Groner is

Jewish and that Scott responded by saying, “I have Palestinian friends who wouldn’t give a shit that he is Jewish.” The Mayor later learned that [REDACTED] is also Jewish.

3. On August 31, 2023, during an executive session, Mary questioned what should be done if there was a pattern of behavior in which a member of City Council has made inappropriate comments (alluding to Scott) and the City Attorney advised her that she could file a complaint pursuant to Ordinance 1704. Scott then looked at Mary and stated that the Council should focus on its agenda and that the City did not need this kind of distraction. Rory felt that Scott was trying to intimidate Mary into not filing a complaint about him.
4. On September 1, 2023, Scott sent an email titled “My concern & perspective” to Rory and City Manager John Williams in which he detailed a meeting from May 10, 2023, during which he looked up and saw “Mary’s eyes fixated” on him, “as if in the middle of a daydream,” and that he was “immediately uncomfortable” and he “felt ogled.” He went on to say that “there have been times I have seen judgement a disdain in her eyes” and that “yesterday, I believe she deliberately acted in a manner to make me uncomfortable and disparaged.”

## VI. FINDINGS

### A. Scott’s Comments to Mary at the Seaside Conference

#### 1. Rory and Mary’s recollection of the comments

Mary and Rory explained that they met Scott at a brewery after the first day of the League of Oregon Cities spring conference in Seaside, Oregon. They decided to meet up to get to know each other a bit as Scott had recently been elected to the Council in a special election. This was the first time the three of them had gotten together socially.

Mary told a story about a crush she had on a childhood friend. She shared that she was 10 years old and “her crush” was finishing 8<sup>th</sup> grade. Scott interrupted Mary and asked, “did you fuck him?” Mary ignored his question, and he said it again.

Mary stated that she felt very uncomfortable and was offended but she chose to move on rather than address the comment and the offensiveness of it. She does not remember answering Scott’s questions, but she would have said no.

Rory did not know how to react and may have said “Oh wow” and laughed nervously. He described that Mary answered the question by saying, “no,” and then changed the subject. Rory described the interaction as “weird and inappropriate.” Rory stated that he later found out that she was 10 or 12 at the time of the story but, he does not remember if Mary shared that in her story.



2. Scott confirmed that he made the comments

Scott agreed that, after the daily program at the League of Oregon Cities conference in Seaside had finished for the day, they agreed to get dinner and a drink so he could get to know them. Mary was telling a story about her family farm and that there was a family friend. Based on the story, he said, something like “I am envisioning a secret garden” and he believed that Mary said yes. Mary continued to share more about the relationship when Scott “impulsively said...so you fucked him?” Mary responded, “No,” and Scott said, “Come on.” Mary then said, “No, I didn’t,” and then finished her story.

Scott stated that they stayed a while longer and went for a walk on the beach afterwards to enjoy the sunset before they went back to their respective hotel rooms.

Scott explained that this was not something that he does normally, and he does not like to say things like that. He then explained that he has [REDACTED] and he impulsively will say things without his filter. It was evening, his [REDACTED] was wearing off, he had a drink, and his filter was off.

When asked if he recalled how old Mary was at the time of the story or if he knew that the boy was graduating from the eighth grade, he stated that he did not recall the age relation.

3. Scott agreed that Rory called him but that he did not apologize to Mary as he did not find an opportune time to do so

On May 16, 2023, Rory called Scott to address his comments to Mary as Rory had hoped that they could talk at his election night party to discuss what had happened and to make amends. Rory described it as “an uncomfortable conversation.” Rory shared that he told Scott that Mary was uncomfortable with him asking if she had fucked someone when they were at the brewery. He told Scott, “I’m not going to tell you to apologize but do what you think is right. Be advised that she is uncomfortable.” Rory described Scott as “kind of surprised.” Scott called Rory back later that afternoon and asked for clarification. He felt that Mary should have contacted him and he was upset that she went to Rory. Rory told Scott that he did not think that Mary felt comfortable talking to him directly. At one point, Scott said it sounded like Mary may be building a sexual harassment claim against him. He acknowledged to Rory that he has these issues and it was “just me being me.” Despite them both being at the election night party, Rory did not see Scott and Mary speak. Rory later asked Mary if Scott apologized and she told him that he had not.

Mary stated that Scott did text her and asked, “will you call me?” Not wanting to have a conversation one-on-one with him, she responded that she would be at the Clackamas County Cities dinner on May 18. At the dinner, Mary had hoped he would apologize to her but he didn’t. She noted that he was hovering nearby but he did not come and talk with her. She never asked Scott why they didn’t talk but she held out hope that he would apologize, but time went by and he did not address it. There was noticeable tension on the Council about it. They didn’t speak or interact much, if at all.

Scott stated that Rory texted him that he wanted to talk. When they spoke, Rory brought up Scott's comments. Scott was surprised. Rory told Scott that Mary wanted him to know that it offended her. Scott felt that was understandable and that he should try to apologize.

Rory asked Scott why he said what he had said and Scott told Rory something like "I didn't have a good read on her so wanted to say something shocking to see how she would respond." However, Scott explained to me that that wasn't true. He spent his whole life not knowing he had [REDACTED] and had a habit of doing things as a result of [REDACTED]. It is possible he told Rory, "it's me being me." Scott did recall telling Rory that it sounds like she's trying to setup a sexual harassment claim but Rory told him, "no, it's all good."

Scott stated that he did attempt to apologize to Mary. He went to Rory's election night party and Mary was there but there were between 30 and 40 people there and the moment didn't present itself.

Scott texted Mary the next day asking if she could talk and Mary replied that there was a Cities meeting at the Ale House. Scott explained that there were many representatives there from other cities and he didn't have the conversation with a lot of people around. Additionally, there was a neighborhood association meeting at the same time, and they had asked him to be present. The neighborhood association meeting went long so he was unable to return to the Cities meeting so he felt that he didn't have the opportunity to interact with her then.

He stated that a few times he thought he would try to catch her, but it didn't happen. It eventually got to a point where he decided to just let it lie and just be aware that she had said that she was offended and that he would try to avoid any interaction that would lead to anything comparable.

In hindsight, he recognizes that it would have been good to make sure he could have had the conversation to apologize, and he could have contacted HR to facilitate it. He didn't think she wanted an apology though as Rory said she wanted him to know that she was offended, and she sent Rory as the messenger.

In the end, Scott never directly apologized to Mary as the moment didn't present itself and Mary never followed up, so Scott just let it go.

#### 4. Conclusions

I find that, on April 25, 2023, while socializing at the Sisu Brewery, Scott interjected and asked Mary, "did you fuck him?" twice while she was sharing a story about her childhood crush. However, I find Scott's representations credible that he impulsively asked this of Mary due to his [REDACTED], that his "filter was off," and he agreed that it was offensive. Further, I find that Scott did intend to apologize to Mary but was not able to find an ideal time to speak to her about it so ultimately did not say anything to her about it.

I find that Scott's questions were unwelcome and offensive "jokes" related to sexual issues and, therefore, meet the definition of "workplace harassment" pursuant to the City's policy.

**B. The Discussion between Councilor Erwin and the Candidate for the City Attorney Position Alleged to Have Taken Place on August 14, 2023**

1. [REDACTED] statement and notes

[REDACTED] is an Executive Recruiter with [REDACTED] hired by the City of West Linn to handle the recruitment for the City Attorney position. The search committee narrowed down the search to one candidate, [REDACTED], and requested that he meet one-on-one with each of the Councilors and the Mayor. The last one-on-one was with Scott, and it occurred the evening of Monday, August 14, 2023.

Prior to Scott's one-on-one meeting, Rory received an update from [REDACTED] that [REDACTED] was really excited, the one-on-ones that had happened so far had gone well, and everything seemed to be positive.

On Friday, August 18, 2023, [REDACTED] received a text message at 11:54am from [REDACTED] withdrawing as a candidate for the position:

Hey [REDACTED] Happy Friday. I'm formally withdrawing from the West Linn process. My last Councilor meeting gave me way too many red flags and reservations. I have, however, enjoyed meeting you in this process. Good luck with your search.

[REDACTED] subsequently spoke with [REDACTED] to understand her concerns. Her notes from that conversation state in full:

**DEBRIEF WITH [REDACTED]  
August 18, 2023**

**MEETING WITH COUNCILOR ERWIN**

- Councilor Erwin talked about his desire to have a BIPOC candidate, he's the only BIPOC candidate. He's half Korean.
- Well, Lou is Jewish.
- Clever retort.
- I have Palestinian friends that don't give a shit about that.
- Talking about Drake not being as good as his wife going to XXXX.
- Most of our conversation was about him trying to become a Financial Planner.
- He had to be cajoled by multiple people to even meet up.
- Weirdness, racism, antisemitism.
- He got extra aggressive.
- He made me go to a bar and order a beer.
- Inappropriate laughing (interviews and Council meetings.)
- Democrats encouraging him to run for Commission.
- Late afternoon.

- Caught up in his own swagger.
- Belittling.

## 2. Scott's recollection of the conversation

Scott stated that he suggested that they meet at Arch Bridge Tapouse at 6:30pm, as [REDACTED] lives in Canby so he thought it would be convenient for him. They each got a beer. They first talked about how Scott was ramping up his career as a financial planner. [REDACTED] then shared his experience in Canby. Scott then shared some of the challenges they face in West Linn such as trying to meet needs of families with young children while not burdening those on fixed incomes.

Scott does not recall there being any conversation regarding diversity. Scott did state that he was hoping there would be more candidates, but he did not recall if he said that to [REDACTED]. When asked if [REDACTED] noted that there is diversity on the council in that Leo Groner is Jewish, Scott responded, "I don't think so." When asked whether he told [REDACTED] "I have Palestinian friends that don't give a shit about that?" he again said, "I don't think so. That's really odd. I only have one person who is Palestinian and don't know they have issues with Jewish people." Scott then added that he didn't know that Leo was Jewish.

Scott thought his interview with [REDACTED] went fine. He felt he got an understanding of [REDACTED] and that [REDACTED] got an understanding about him. He didn't feel like anything was off about it and [REDACTED] didn't draw attention to anything that would have been an issue.

Scott thought they were on the same level. By that, he meant that it was a casual conversation and they shared some opinions. Scott didn't think he said anything derogatory about any protected class and emphasized that he doesn't say things about Jewish people or Palestinians. When asked whether he may have said it and didn't remember saying it, Scott responded, "No. I did not say that."

## 3. Scott's conversation with Rory in advance of the Executive Session

Rory received a text from Scott the morning of August 31, 2023, asking to talk about a memo [REDACTED]. Rory spoke with Scott and Scott was upset that the memo related to him. Rory stated that Scott said that he couldn't believe the candidate would withdraw based on anything he said. Rory asked Scott, "Did you say anything inappropriate?" Rory stated that Scott didn't deny it but said, "We were on the same level and were having a frank conversation."

Rory told Scott that he didn't know if Mary might bring up the comment he said to her. Rory felt that the purpose of the call (from Scott's perspective) was to see how much Rory wanted to look into it and try to convince him to not explore it further. "Do we really want to focus our time on this?"

Scott shared that it would have been really nice if Peter [REDACTED] [REDACTED] Scott did feel like the memo was pretty pointed at him and it made him pretty anxious. As an example, [REDACTED]

Scott stated that he reached out to Rory to touch base to see what was going on. Rory pressed him on his conversation with [REDACTED] during the one-on-one. Scott stated that he tried to reflect on his conversation with [REDACTED] as Rory was very insistent to know what their conversation was about, which increased his [REDACTED]. Scott stated that he could not remember, which only increased his [REDACTED] further.

#### 4. Conclusions

I find that, more likely than not, Scott did make the comment to the candidate: “I have Palestinian friends that don’t give a shit about that.” I make this finding based on the credibility of the recruiter, including the fact that she took contemporaneous notes on her conversation with [REDACTED] and those notes were consistent with [REDACTED] text message saying he was withdrawing his candidacy based on his interaction with Scott. Additionally, when confronted by Rory about the conversation on August 31, 2023, Scott stated that he could not remember the conversation.

I find that Scott’s comment was an unwelcome and offensive “joke” related to religion and, therefore, meets the definition of “workplace harassment” pursuant to the City’s policy.

### C. The conduct of Councilor Erwin that occurred during the Executive Session on August 31, 2023.

#### 1. Rory’s statement

Rory shared that, going into the Executive Session, that Scott knew it was about him and he was not happy about it. Rory described that Mary and Scott were sitting across from one another during the Executive Session. She brought up that she was concerned about an incident that happened with her and a pattern of behavior. Peter Hicks [REDACTED]

Rory stated that, in response to Mary’s comments, Scott started trashing the candidate by saying he had a lot of baggage, was not the perfect candidate, and that he may not have been what they wanted. He stated that they needed to focus on the City’s agenda and that the City has been distracted by these types of things in the past. Scott then looked right at Mary and said, “I don’t think we need to look into this further.” Mary responded, “why are you looking at me?” and Scott answered, “because you brought this up.” Rory stated that he was very uncomfortable with the exchange and said, “the city’s agenda is important but it is also important that we all feel safe.” Rory felt that Scott was intimidating and trying to discourage Mary from reporting her concerns.

At that point, Rory looked at Scott and asked, “does any member of council want to own up to the council the comments they made.” Leo responded that he asked him about his family. Rory thought to himself, “How are you [Scott] letting Leo think it was him?” Scott never owned up to anything.

Rory was frustrated that Scott wasn't accountable, so he adjourned the meeting. Rory described that, once the meeting ended, Mary ran out of the room.

2. Mary's statement

Mary explained that the Executive Session was for the City Attorney [REDACTED]. She noted that it was complicated because the candidate requested that the details not be disclosed. She wanted to give Scott the opportunity to explain his conduct and to allow him the grace and space to respond without backing him into a corner. She suggested that they could investigate further via the recruiter and suggested that they needed to look into what had happened. She asked, "do we have a duty to report a pattern of behavior as I experienced something." In response, she stated that Scott said, "We all need to move on" while staring right at her, and he then said, "We don't want to distract from the city business." It made Mary so uncomfortable that she said, "why are you looking at me?" Scott responded, "because you said we needed to look into it."

3. Other witnesses' observations

Carol felt that the exchange was very awkward. She described that Mary was trying to express a concern without being direct and clear. Carol could not see Scott from where she was sitting but she felt like Mary was trying to avoid looking at him.

Peter confirmed that Scott was looking directly at Mary when he was making comments. Peter described that there was some tension, a bit more than normal, and while it wasn't normal discourse, he wouldn't say that it made him significantly uncomfortable.

4. Scott's response

In the Executive Session, Scott described that he "was borderline having a [REDACTED]" and that it was "not another shining moment." He disclosed that he has an [REDACTED] in addition to [REDACTED].

In retrospect, he stated that it would have been good to say something about it (being about him). At the time, he stated that he had a very high level of [REDACTED]. He knew that Rory was not happy that he had no recollection of his conversation with [REDACTED]. He stated that it was very uncomfortable in that room and he felt very defensive.

Scott knew there was the issue from the League of Oregon Cities meeting and that Mary had something she could use as a foundation of a claim against him. He felt that she was saying, "I have this from before and I'm going to use it with this and will file a complaint against you." We had received the advisement regarding future interviews so Scott felt that they could move forward and, looking at Mary, he said that is what he would like to do. Scott felt that she was looking at him like she knew this was the moment that she knew she had what she needed to file a complaint against him as she had said this could be a pattern and Peter said [REDACTED].

██████████ He described it as “a ██████████ moment.” At the end of the meeting, she narrowed her eyes at him as if to say, “I got you,” and then she got up and stormed out of the room.

5. Conclusion

I find that Scott did try to deter Mary from making a complaint against him.

I find that Scott’s conduct violated the City’s anti-retaliation policy in that Scott was attempting to discourage Mary from making a complaint of discrimination or harassment.

**D. Why Councilor Erwin Sent the Email on September 1, 2023, with a Complaint about Councilor Baumgardner**

1. Rory’s statement

Rory explained that the City Attorney ██████████. Accordingly, on September 1, 2023, he was sitting in a coffee shop talking to Mary when he received an email from Scott. Rory described it as Scott beating Mary to the punch. He was shocked at what he was alleging and questioned what Scott’s motivation was behind sending the email. Rory described Scott sending this email as “DARVO”—deny, attack, and reverse victim and offender. Rory noted that Scott was meant to feel uncomfortable during the Executive Session. Rory told Mary about the email as it came in while they were having coffee. Once she was aware of the email, she was scared and concerned where this was going.

2. Scott’s response

Scott stated that it was not a complaint about Mary but a concern. When asked why he sent the email with his concern, he stated it was, “Because of what had happened and how the meeting ended with her storming out of the room and I felt like she was going to do something.”

After the Executive Session, Scott recalled that at the water board budget meeting he had looked up and Mary was staring at him in a daydreamy way. He thought it was odd and looked down. When he looked back up, Mary was still looking at him. He stared back at her and she broke out of it. He stated that he “felt ogled.” In his heightened ██████████, he sent that email because he didn’t know what she was going to do and he didn’t want her to reflect on that moment and turn it back on him. When he sent the email, he was convinced that she was going to file a complaint. He explained that since she had made Rory her intermediary back in April, he made Rory his intermediary regarding this issue.

3. Conclusion

I find that Scott sent Rory the email on September 1, 2023, in an attempt to protect himself from a complaint that he felt was forthcoming from Mary.

I find that Scott's conduct violated the City's anti-retaliation policy in that Scott was attempting to discourage Mary from making a complaint of discrimination or harassment.

## VII. SUMMARY STATEMENT

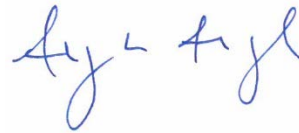
It should be noted that, during his interview, Scott talked about there being a social stigma to having [REDACTED]. He noted that he is still learning about it so he tried not to say anything about having [REDACTED] or generalized [REDACTED]. He stated that difficult experiences did not need to be so difficult. He stated that he has taken steps to address his [REDACTED] including [REDACTED].

Scott stated that he wished it had not turned into this situation. He would have liked to have sat down and had a conversation, either mediated or a direct conversation, about everything that happened. He stated that he is still hoping to have a conversation and to get to a place where we can all move forward and be comfortable.

Should you have any questions regarding anything in this report, please do not hesitate to contact me.

Very truly yours,

BARRAN LIEBMAN LLP



Amy L. Angel

Enclosures: Exhibits



September 9th, 2023

**RE: Ordinance 1704 Complaint**

Dear Director Preston,

Pursuant to Ordinance 1704 § 4, I am notifying the Human Resources Director that I have become aware of two incidents that I am obligated to report under that Ordinance. Section 4 of the Ordinance provides that “any volunteer who is subjected to or **aware of** incidents of workplace harassment should report the incidents to the Human Resources Director or Alternate.” In my role as Mayor, I am concerned about ensuring that every member of Council feels safe and comfortable participating in City business, and I feel duty-bound under our policies to make this report. I do not make this decision lightly, but I feel that it is in the best interest of our Council that the incidents detailed herein be investigated, as the incidents have not been able to be resolved internally without this formal process.

**Incident #1: Seaside, Oregon - League of Oregon Cities Conference**

Occurred on the evening of April 25, 2023 while attending the Seaside League of Oregon Cities Conference. Council President Mary Baumgardner, Councilor Scott Erwin, and myself met after the conference activities had concluded for the day at a brewery to socialize (Sisu Brewing Company, located at 133 Broadway St, Seaside, OR 97138). It was the first time that the three of us had the opportunity to meet together to get to know each other as a group in a social setting. At some point during the conversation, Council President Baumgardner told a story about her childhood. Councilor Baumgardner referenced a male acquaintance. During the story, Councilor Erwin interjected and asked Councilor Baumgardner, “did you fuck him?” referencing the friend she mentioned during the story. As I remember the incident, Mary did not respond to the question at first and continued to tell the story. When the question was not answered, Councilor Erwin asked the question again, asking “did you fuck him?” a second time. At this time I think Councilor Baumgardner answered the question, and the subject was changed.

The evening continued and the group continued to socialize the rest of the evening, and eventually the three of us returned to our separate hotel rooms for the evening. In the days that followed, Mary confided in me that the comments made at the brewery made her feel uncomfortable. I had also thought about the comments as well in the days that followed. Mary and I discussed how the situation could be addressed. I then discussed the incident with the City Manager in May. The City Manager mentioned at this time that he was planning to talk to Councilor Erwin about an instance of inappropriate language used with staff. The result of these discussions was that I was to call Councilor Erwin as the mayor and inform him that the inappropriate comments he made at the brewery made Councilor Baumgardner feel very uncomfortable and let him know that it was inappropriate and not acceptable.

I made the aforementioned call on May 16th, 2023. It was my hope that Councilor Erwin would take the opportunity to make contact with Councilor Baumgardner and remedy the situation with an apology and plan of corrective action to ensure that Councilor Baumgardner

felt safe and that the behavior would not occur again. On information and belief, the situation remains unresolved, as to my knowledge Councilor Erwin did not apologize to Baumgardner or address the situation with her. I am concerned that the comments made at the Seaside brewery violated our policy against harassment, and the comments and lack of remedying the situation by the person who made the comments have contributed to a hostile working environment that is actively worsening as a result of events that have occurred since that time detailed below.<sup>1</sup>

**Incident #2: Inappropriate comment I became aware of stemming from a city attorney finalist one-on-one interview that occurred August 14th, 2023.**

Each member of the City Council conducted a one-on-one interview with the finalist candidate for the City Attorney position following an earlier executive session interview. The City engaged a recruiter to coordinate the process and has been seeking to hire an in-house attorney. Based on my understanding, the one-on-one interviews occurred between Wednesday, August 9th, 2023 and Monday, August 14th, 2023. The final one-on-one interview took place Monday evening. I met with the candidate on Wednesday, August 9th for lunch. On information and belief, Council President Mary Baumgardner met with the candidate on Friday, August 11th, 2023 for coffee. Councilor Leo Groner met with the candidate on Monday, August 14th, 2023 around lunchtime for coffee, and Councilor Scott Erwin met with the candidate on Monday, August 14th, 2023 in the evening hours. Prior to the final one-on-one with Councilor Erwin, the candidate spoke with the City's executive recruiter, [REDACTED]. I received a report from the recruiter on the afternoon of Monday, August 14th that all went well with the three one-on-one interviews that had occurred at that time and that the candidate was eager to know about the next steps but that one meeting remained in the one-on-one stage with Councilor Erwin. Later that week on Friday, August 18th, I was very surprised to learn from the recruiter that the candidate had withdrawn from the process. I was sent a screenshot of a text where the candidate stated to the recruiter, in part, "I'm formally withdrawing from the West Linn process. My last Councilor meeting gave me way too many red flags and reservations." I then spoke with the recruiter by phone that afternoon.

At this time, I was told by the recruiter that the final one-on-one interview was set up by Councilor Erwin in a bar on the evening of Monday, August 14th. I was then made aware of an inappropriate comment alleged to have been made to the candidate by Councilor Erwin. At some point during the one-on-one interview, it was told to me by the recruiter that the topic of diversity came up in relation to the City Council. The candidate told the recruiter that the candidate had mentioned that Councilor Groner was Jewish as an example of diversity on Council during the one-on-one with Councilor Erwin, and it was relayed to me by the recruiter that Councilor Erwin had allegedly responded by saying something to the effect of "I have Palestinian friends who wouldn't give a shit that he is Jewish." The existence of the comment was relayed to me on two occasions, once by the recruiter and once by the City Attorney Peter Hicks who I believe also heard about the comment from the recruiter. It was told to me that the comment was not authorized to be disclosed because the candidate had told the comment to

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<sup>1</sup> Ordinance 1704 prohibits, among other things in a list provided therein, "unwelcome, unwanted or offensive \* \* \* intimate jokes, and other sexual talk, [and] intimate inquiries[.]" *Ord. 1704, Pg. 4.*

the recruiter on the phone when asked what was said that made him uncomfortable but had not expressly authorized the recruiter to share the comment as he had accepted another position and wanted to move on. The recruiter let me know that she was relaying this comment to me out of a sense of duty due potential employment law liability brought onto the City by the existence of and nature of the comment.

After reviewing Ordinance 1704, I am aware that the previous comment would likely violate the City's ordinance against workplace harassment, which prohibits "making jokes or derogatory comments \* \* \* related to the gender, race, ethnicity, religion or age of a particular person or group." I later learned from the recruiter that the finalist candidate himself was Jewish, which compounded the severity of the situation and revealed how hearing that comment would have negatively impacted his view of the City in a way that was not previously known. Because the inappropriate comment would likely violate our policy detailed previously, and because of the potential liability brought onto the City by the comment, I am reporting this comment for investigation in accordance with my obligations under Ordinance 1704 detailed on Page 1.

### **The Executive Session and Follow Up Communication**

On Thursday, August 31, City Council held an executive session to discuss a confidential memorandum prepared by the City Attorney's office to receive legal advice about the do's and don'ts of interviews in response to what was alleged to have occurred in the final one-on-one at the bar, and give the Council an opportunity to ask questions about what happened and what inappropriate comments were made that caused the candidate to feel uncomfortable, as referenced in the confidential memorandum. During the meeting, Council President Baumgardner raised the issue of a potential pattern of behavior regarding inappropriate comments made by a member of City Council and told the full Council about an incident that happened to her that involved Councilor Erwin (Incident 1 detailed above) without providing specific graphic details to Council. Baumgardner was then advised by the City Attorney about the complaint process available through Ordinance 1704 and was advised to follow that process as the remedy to her concerns. At this time, the City Attorney also mentioned the duty upon the City to ensure potential violations of our harassment policy are addressed. Councilor Erwin responded to Baumgardner's remarks and the City Attorney's comments by saying something to the effect of, the City Council should focus on its agenda and doesn't need this sort of distraction that has plagued the City in the past. Erwin made these comments as he looked at Baumgardner, and Baumgardner interjected and inquired as to why he was looking directly at her as he spoke about why the matters were not worth further inquiry. Erwin responded with something to the effect of, because you brought this issue up. I felt uncomfortable at this point, as it appeared to me that Erwin may have been attempting to discourage Council President Baumgardner from reporting the incident that she experienced and/or discouraging her and the Council from inquiring further into the comments in both incidents through a complaint or investigation which could also violate our policy against retaliation and discouraging a complainant from coming forward.<sup>2</sup> Following this exchange, I stepped in as chair of the meeting and said that I felt very uncomfortable with what had just happened and stated that the City's

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<sup>2</sup> See Ord. 1704, Pg. 9 (Retaliation Prohibited; broadly defining retaliation.)

agenda is important but more important is ensuring that everybody on Council feels safe participating.

On Friday, September 1st, (the morning after the previously mentioned meeting), I received an email addressed to myself and City Manager Williams from Councilor Erwin. The email contained hostile work environment allegations that Councilor Erwin decided to raise against Council President Baumgardner. A copy of the email will be provided to Human Resources and the investigator. The timing of Councilor Erwin raising these allegations was concerning in that Erwin had just been put on notice the previous day that a complaint could be filed against him under the Ordinance. I have been uncertain how to respond to the email sent to me given our policy that broadly defines retaliatory conduct that would have the effect of discouraging a person from making a complaint or participating in an investigation. I am seeking formal guidance about how to handle that correspondence as well given the circumstances.

**Requested remedy:**

An investigation into the incidents detailed above is conducted to determine whether City policies were violated and recommending a plan of corrective action to remedy the situation. Councilor Erwin demonstrates accountability for the comments, thereby ensuring that all members of Council feel safe participating in City affairs.

Submitted by Mayor Rory Bialostosky

**ORDINANCE No. 1704  
CITY OF WEST LINN, OREGON**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST LINN SETTING  
FORTH THE POLICY AND PROCEDURE FOR REPORTING AND INVESTIGATION  
OF WORKPLACE HARASSMENT.**

**WHEREAS**, on June 20, 2019, Governor Kate Brown signed Senate Bill 479 relating to workplace harassment; and

**WHEREAS**, the newly enacted legislation requires public employers to establish and adopt a written policy that seeks to prevent workplace harassment, and that applies to all employees, as well as board and commission members, elected officials, and volunteers, in the workplace or at work-related events that are coordinated by or through the employer, or between an employer and an employee off the employment premises; and

**WHEREAS**, the newly enacted legislation requires public employers to develop written policies and procedures for the prompt investigation of a report of workplace harassment; and

**WHEREAS**, the City of West Linn believes all employees, and others protected by the newly enacted legislation, have the right to work in an environment free from discrimination, harassment, workplace intimidation; and

**WHEREAS**, the City of West Linn desires to comply with the newly enacted legislation requiring the adoption of written policies and procedures for the reporting and investigation of allegations of workplace harassment; and

**WHEREAS**, the policies and procedures for reporting and investigation of allegations of workplace harassment apply to all employees of the City of West Linn, including limited duration/temporary employees and interns, through the City of West Linn Personnel Policies; and

**WHEREAS**, the City Council wishes to apply the newly enacted legislation to board and commission members, elected officials, and volunteers by ordinance.

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

**Section 1: The Council enacts Exhibit A, Policy Statement, as an ordinance of the City of West Linn.**


**Section 2: The Council declares an emergency exists because the City of West Linn must establish and adopt written policies and procedures seeking to prevent workplace harassment and prompt investigation of reports of workplace harassment prior to January 1, 2020, as required by Senate Bill 479. Therefore, this**

ordinance shall be in full force and effect on January 1, 2020 after its passage by the Council.

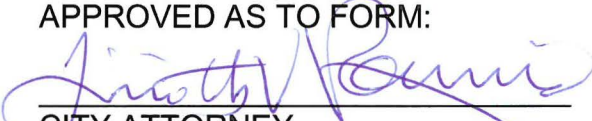
ADOPTED this 9th day of December, 2019.

  
\_\_\_\_\_  
RUSSELL B. AXELROD, MAYOR

ATTEST:

  
\_\_\_\_\_  
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

## EXHIBIT "A"

### Section 1. Applicability.

Through this Ordinance, Section 2 Definitions, Section 3 Policy Statement and Section 4 Compliance and Reporting apply to and are enforceable against board and commission members, elected officials and volunteers. Similar provisions apply to employees through the City of West Linn Personnel Policies, however, employees are not subject to this Ordinance.

### Section 2. Definitions.

**Complainant:** A person (or persons) allegedly subjected to, or who witnessed or observed, discrimination, workplace harassment or sexual harassment and who files a complaint.

**Discrimination:** Making decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, and other terms and conditions of employment, based on or because of a person's protected class status. (*See also Workplace Harassment.*)

**Non-disclosure agreement:** An agreement not to disclose information related to complaints or personnel actions related to violations of this ordinance.

**Non-disparagement agreement:** An agreement not to make negative statements related to complaints or personnel actions related to violations of this ordinance.

**Protected Class Under Federal Law:** Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses military leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

**Protected Class Under Oregon State Law:** All federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act; marital status; family relationship; sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

**Sexual Harassment:** Unwelcome, unwanted or offensive sexual advances, requests for sexual favors, and 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 the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or

- (2) such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment include but are not limited to: unwelcome, unwanted or offensive touching or physical contact of a sexual nature, such as closeness, impeding or blocking movement, assaulting or pinching; gestures; innuendoes; teasing, jokes, and other sexual talk; intimate inquiries; persistent unwanted courting; sexist put-downs or insults; epithets; slurs; or derogatory comments. (*See also Workplace Harassment.*)

**Sexual assault:** Unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation; or a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525. (*See also Workplace Harassment.*)

**Workplace:** A location where people work, such as an office or factory.

**Workplace Harassment:** Conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that is prohibited by ORS 659A.082 or 659A.112.

**Workplace Intimidation:** Unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status.

Workplace intimidation may occur between a manager/supervisor and a subordinate, between employees, and among non-employees who have business contact with employees. A complainant does not have to be the person harassed, but could be a person affected by the offensive conduct.

Examples of intimidation include, but are not limited to, derogatory remarks, slurs and jokes about a person's protected class status.

**Volunteer:** Any individual who is performing work on behalf of the City and is not paid for their service. This may include board and commission members and elected officials.

### **Section 3. Policy Statement.**

The City of West Linn believes that all volunteers have the right to work in an environment free from discrimination, harassment, workplace intimidation based on or because of volunteer's protected class, and sexual harassment and assault (collectively identified hereinafter as "workplace harassment"). All volunteers are expected to conduct themselves in a business-like and professional manner at all times with concern for the well-being of their co-workers.



## **Policy Objective**

The objective of this policy is to define workplace harassment and to outline procedures for filing complaints, investigating workplace harassment claims and issuing appropriate disciplinary measures in the case of violations.

## **Policy Scope**

This policy applies to all volunteers of the City of West Linn, including board and commission members and elected officials.

This policy seeks to prevent discrimination and harassment that occurs in the workplace or at City-related events that are off the workplace premises and coordinated by or through the City.

This policy shall be made available to all volunteers in the workplace. This policy shall be included in any orientation materials that are provided to new volunteers at the time of appointment or other commencement of service to the City.

All volunteers shall be required to complete discrimination and harassment training upon their initial appointment or other commencement of service to the City, and annually thereafter. All volunteers must sign an acknowledgement indicating they have read the policy and have had an opportunity to ask questions relating to the policy. The City shall maintain signed acknowledgements, including electronic signatures, on file.

## **Defining Workplace Harassment**

Workplace harassment of volunteers, as defined by that conduct prohibited by ORS 659A.030, 659A.082 and 659A.112, is not permitted regardless of their working relationship or supervisory status. Volunteers who engage in this behavior are subject to disciplinary action, up to and including dismissal.

Specifically forbidden is unwelcome, unwanted or offensive conduct related to a person's race, color, religion, national origin, age, sex, marital status, mental or physical disability, sexual orientation, gender identity or expression, whistleblower, expunged juvenile record, injured worker or any other protected class as defined by applicable federal, state or local laws. This includes, and is not limited to, the following examples:

- sexual advances, gestures or innuendos;
- requests for dates;
- touching (other than handshakes);
- making jokes or derogatory comments related to sexual issues, or related to the gender, race, ethnicity, religion, age, etc., of a particular person or group;
- displaying sexual pictures or images in the workplace;
- using abusive or profane language;

- using City equipment or communication systems to access, send, receive or store sexual or derogatory material;
- making fun of a person's mental or physical limitations, religious beliefs or sexual orientation; or
- engaging in any other verbal, graphic, electronic or physical conduct of a sexual or derogatory nature which has the purpose or effect of creating an offensive work environment or interferes with a volunteer's performance of his or her job.

Volunteers should assume that conduct of this nature is unwelcome and will offend other volunteers. Therefore, volunteers will refrain from engaging in this type of conduct at all times, regardless of the circumstances. It is not an acceptable excuse that others participated in the conduct or did not appear to be offended.

Inappropriate conduct by business visitors, vendors, suppliers, and other members of the public is also prohibited if it creates an offensive environment for City volunteers. Likewise, it is also prohibited for volunteers to subject business visitors, vendors or suppliers, or members of the public to conduct that is prohibited by this policy.

No one should suggest or threaten a volunteer's cooperation, tolerance or objections to conduct of this nature will have any effect on a volunteer's continued association with the City. The City strictly prohibits managers and supervisors from making voluntary service decisions based on a volunteer's tolerance or resistance to harassment. This type of conduct is considered to be a violation of the City's harassment policy.

#### **Section 4. Compliance and Reporting**

The City identifies and designates its Human Resources Director as the Designated Individual responsible for receiving reports of workplace harassment. The City Council shall also identify an Alternate Individual to receive such reports.

Any volunteer who is subjected to or aware of incidents of workplace harassment should report the incidents to the Human Resources Director or Alternate.

Upon receipt of a report of workplace harassment, the Human Resources Director or Alternate shall provide a copy of the City's workplace harassment policy to the volunteer. All records of workplace harassment must be maintained.

A complaint, whether oral or written, by a volunteer shall:

- identify the name of the complainant and the name(s) of the person(s) subjected to the alleged workplace harassment, if they are not the same person;
- identify the names of all parties involved, including any and all witnesses to the alleged workplace harassment;
- set forth a specific and detailed description of the alleged workplace harassment, including date and time; and
- request a desired remedy.

Any complaint for workplace harassment must be filed with the Human Resources Director or Alternate within five (5) years from the date on which the alleged workplace harassment occurred; however, failure to file a complaint within the stated time period does not remove the City’s obligation for conducting an investigation.

**Other Reporting Options**

A volunteer may first discuss an issue with the Human Resources Director as a manner of notifying the City that harassment may have occurred, to acquire information and obtain options, while allowing the volunteer the opportunity to consider whether they wish to pursue a formal complaint.

Nothing in this policy prevents a volunteer from filing a formal grievance with the Bureau of Labor and Industries (“BOLI”) or the Equal Employment Opportunity Commission (“EEOC”); or, if applicable, the United States Department of Labor (“USDOL”) Civil Rights Center.

A complaint filed with BOLI alleging an unlawful practice as described in ORS 659A.030, 659A.082 to 659A.865, 659A.112 or section 2 of Senate Bill 726 (2019) must be filed no later than five (5) years after the occurrence of the alleged unlawful practice.

Nothing in this policy prevents any person from seeking remedy under any other available law, whether civil or criminal.

A claimant must provide advance notice of claim against the City as required by ORS 30.275.

**Investigation of Complaints**

The City will coordinate and conduct, or delegate the responsibility for coordinating and conducting, an investigation of the alleged workplace harassment.

All complaints will be taken seriously and handled in a discreet and confidential manner, to the extent possible.

The City will provide information to connect a victim of workplace harassment with legal resources and counseling and support services, including any available assistance services.

The City will take, if necessary, appropriate steps to ensure volunteers are protected from further potential workplace harassment, including notifying the accused and witnesses that any retaliation against the reporting volunteer will not be tolerated.

All volunteers are expected to cooperate with the investigation and maintain all information regarding the investigation confidential.

The City Council shall adopt standards and criteria for the selection of an independent investigator unaffiliated with the City of West Linn. The City shall maintain a list of potential independent investigators who meet the standards and criteria.

The City Manager may enter into one or more contracts with investigators who meet the standards and criteria.

All investigations shall be conducted promptly and shall be completed as soon as is practicable.

The City shall provide notice to the complainant and the accused that an investigation has commenced.

The City will follow up with the victim of alleged workplace harassment, unless the victim objects to such action in writing, once every three (3) months for the calendar year following the date on which the City received a report of workplace harassment, to determine whether alleged workplace harassment has stopped or if the victim has experienced retaliation.

If an investigation does not substantiate the behavior alleged to be workplace harassment, then the investigator shall notify the Human Resources Director, or Alternate, the complainant and the accused of the results of the investigation and that no further action will be taken.

If an investigation does substantiate the behavior alleged to be workplace harassment, then the investigator shall provide a report of findings to the Human Resources Director, or Alternate, the complainant and the accused. The report shall set forth the facts as determined through the investigation and the investigator's determination that such facts result in a violation of the City's workplace harassment policy.

Upon receipt of the investigator's findings that a violation of the City's workplace harassment policy has occurred by a volunteer, the Council shall impose a remedy that is sufficient and appropriate to reprimand the member and deter future conduct that violates the policy. Such remedies may include public reprimand, censure, or other remedy the Council deems appropriate, including removal from an appointed position.

When an investigation is regarding a member of the City Council or a person in an appointed position and the person resigns at any time after the complaint is made, the investigation shall nevertheless take place, including the imposition of remedial measures, if appropriate.

The City will notify the complainant and the accused when the investigation has concluded and whether the alleged workplace harassment has been substantiated. If the investigation substantiates the alleged workplace harassment, the City will take

immediate and appropriate action against the accused. The City will not, however, provide the details of the action to the complainant.

The City will follow up with the victim of alleged workplace harassment, unless the victim objects to such action in writing, once every three (3) months for the calendar year following the date on which the employer received a report of the workplace harassment, to determine whether alleged workplace harassment has stopped or if the victim has experienced retaliation.

A victim of workplace harassment may voluntarily disclose information regarding an incident of workplace harassment that involves the victim.

Conduct in violation of this policy will not be tolerated. Volunteers engaging in conduct that violates this policy may be subject to termination of their working or volunteer relationship with the City.

### **Retaliation Prohibited**

The City respects the rights of its volunteers to raise harassment and discrimination concerns and to participate in investigations. Retaliation against any volunteer for making a complaint or for providing information in an investigation is prohibited, and any such action may be subject to disciplinary action, up to and including dismissal.

“Retaliation” is broadly construed and can include any adverse action against a volunteer for opposing harassment or discrimination. It may include any on-duty or off-duty conduct, whether related to employment or not, that could discourage a volunteer from making a complaint of discrimination or harassment, or from testifying, assisting or participating in an investigation, proceeding or hearing. It can include obvious conduct such as changing a person’s job duties, giving a negative employment reference, or refusing to work with a person. It can also include more subtle conduct such as “cold shoulder” treatment.

If a volunteer believes they have been subjected to retaliation for making a complaint or participating in an investigation, the volunteer should immediately report their concerns to the Human Resources Director. If the volunteer is not comfortable reporting the concerns to the Human Resources Director, then the volunteer should report the concerns to the City Manager. If the complaint of retaliation is directed towards the City Manager, then the volunteer should report their concerns to the Human Resources Director, who will refer the complaint to the City Attorney.

### **Non-Disclosure Agreements and Non-Disparagement Agreements**

It is an unlawful employment practice under ORS Chapter 659A for the City to enter into an agreement with a volunteer or prospective volunteer, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a non-disparagement provision or any other provision that has

the purpose or effect of preventing the volunteer from disclosing or discussing workplace harassment:

- a) that occurred between volunteers or between an employer and volunteer in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer; or
- b) that occurred between an employer and a volunteer off the employment premises.

The City may enter into a settlement, separation or severance agreement with a volunteer only when a volunteer claiming to be aggrieved by workplace harassment requests to enter into such agreement. The agreement must include:

- a) the provision described above;
- b) a provision that prevents the disclosure of factual information relating to the claim of discrimination or conduct that constitutes sexual assault; or
- c) a no-rehire provision that prohibits the volunteer from seeking reemployment with the employer as a term or condition of the agreement.

Any such agreement must provide the volunteer with at least seven (7) days after executing the agreement to revoke the agreement. Any such agreement may not become effective until after the revocation period has expired.

The City may enter into a settlement, separation or severance agreement after a good faith determination has been made that a volunteer has engaged in workplace harassment. The agreement must include:

- a) the provision described above;
- b) a provision that prevents the disclosure of factual information that relates to the workplace harassment; or
- c) a no-rehire provision that prohibits the volunteer from seeking reemployment with the employer as a term or condition of the agreement.