

CITY OF CORVALLIS

ADMINISTRATIVE POLICY MANUAL

POLICY AREA 3 - PERSONNEL

AP 96-3.11 Discrimination

<u>Adopted</u>	<u>February 1991</u>
Revised	January 1997
Reviewed	September 1997
Revised	September 2001
Revised	January 2004

3.11.010 Purpose

Corvallis is a "community that honors diversity," and the City celebrates the importance of diversity to the success of the organization and the community. The City is committed to the principles of equality of opportunity for all residents of the community. This policy seeks to prevent and to eliminate discrimination in employment practices based upon any employee status protected by statute (ex. race, color, national origin, religion, sex, age, mental or physical disability, sexual orientation, source of income) and to ensure complaints of such discrimination are investigated and dealt with fully and expeditiously.

3.11.020 Definitions

3.11.021 Affirmative Action Office: The City Manager's Office is responsible for implementation of the City's Affirmative Action Program, including receipt and investigation of complaints of discrimination. The City Manager has delegated responsibility for Equal Employment Opportunity and Affirmative Action to the Personnel Division.

3.11.022 Affirmative Action Officer: The Human Resources Administrator is designated as the Affirmative Action Officer.

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- 3.11.023 Complainant: An individual or group who is employed by the City of Corvallis; is a volunteer, a visitor, or a customer of the City; or who has submitted an employment application to the City.
- 3.11.024 Complaint: A claim or allegation by an individual or group of unfair treatment, including but not limited to harassment, placement, promotion, disciplinary action, etc., because of race, color, national origin or ancestry, religion, sex, age, mental or physical disability, sexual orientation, source of income, marital status, or any other employee status protected by statute.
- 3.11.025 Discrimination: Any policy, practice, or procedure which directly or indirectly makes a distinction with respect to any person or persons based on race, color, religion, sex, age, national origin or ancestry, mental or physical disability, sexual orientation, source of income, marital status, or any other employee status protected by statute.
- 3.11.026 Employee: An individual employed by the City of Corvallis, under and subject to the rules of the City of Corvallis. This definition of employee shall include the following employees: regular, full-time, part-time, probationary, seasonal, casual, and temporary. The term employee shall not include any person elected to office or any person appointed by an elected official to an advisory body. In addition, persons appointed to positions in City government by a majority of the governing body (that is, the City Manager, the City Attorney, and the Municipal Judge), shall not be included.
- 3.11.027 Inquiry: Any request of the Personnel Division for information, assistance, or counseling which may have equal employment opportunity implications.
- 3.11.028 Respondent: The City, department, division, office, group of employees, or individual employee against whom an allegation has been lodged.
- 3.11.030 Policy
- 3.11.031 It is a policy of the City of Corvallis to maintain and exhibit a stature of non-discrimination in all personnel-related matters. All personnel actions, including recruiting, hiring, compensation, benefits, transfer, promotions, layoffs, return from layoffs, termination, training, City-sponsored education, tuition assistance, social and recreational programs, and all other privileges, terms, and conditions of employment will be administered without regard to race, color, ethnicity, religion, sex, sexual orientation, source of income, age, national origin, physical or mental disability, marital status, or veteran status. All employees are encouraged to participate in programs sponsored by the City.

This commitment is the responsibility of each employee and will be supported by positive, practical efforts to ensure equal opportunity in employment for all City employees or applicants for employment with the City. Employees found not to have reported a problem of which they were aware could be subjected to disciplinary action. Managers and supervisors will take prompt, corrective action when they become aware of discrimination. Such action may include discipline up to and including termination of the offending employee(s). Managers and supervisors who know or should have known of discrimination and fail to report such behavior, or fail to take immediate and appropriate corrective action, will be subject to disciplinary action up to and including dismissal.

- 3.11.032 It is the expressed intent of the Personnel Division to settle all complaints of discrimination as quickly as possible; therefore, a complainant who is a City employee is encouraged to discuss and attempt to resolve his or her complaints initially with the supervisor or Department Director before a formal complaint is filed with the Personnel Division.
- 3.11.033 Complaints may be initiated by employees, volunteers, customers, contractors, visitors, or job applicants.
- 3.11.034 Any employee or job applicant may inquire of the Personnel Division as to his or her rights and responsibilities under existing civil rights legislation or executive orders. Such inquiries will not be treated as formal complaints and will be kept in strict confidence, as allowed by Oregon public records laws, between the Personnel Division and the person or persons making the inquiry.
- 3.11.035 Retaliatory action of any kind taken by any employee of the City of Corvallis against any complainant as a result of that person seeking redress, making an informational inquiry, participating in or cooperating in an investigation, or otherwise participating in any proceedings under this policy, is strictly prohibited and shall be regarded as a separate and distinct violation of policy and will be subject to disciplinary action up to and including dismissal.
- 3.11.040 Complaint Procedures
- 3.11.041 An employee is encouraged to discuss and attempt to resolve his or her complaint initially with their supervisor or Department Director before a formal complaint is filed with the Personnel Division. However, any employee or applicant for employment claiming to be aggrieved by a discriminatory practice may make, sign, and file a written complaint through the Personnel Division.

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- 3.11.042 Any person claiming that he or she has been treated unfairly with respect to discharge, promotion, etc., or otherwise discriminated against by an appointing authority/hiring supervisor because he or she has filed a complaint, testified, or assisted in any proceeding may make, sign, and file a complaint in writing requesting remedial action.
- 3.11.043 Complaints must be filed with the supervisor, Department Director, or Personnel Division within 30 calendar days of the alleged infraction. The only exception to this provision is where a complaint is based on a continuing violation or alleged retaliatory action against the complainant or his or her representative because he or she filed the original complaint with the Personnel Division. A continuing violation results where a person believes that he or she is the victim of unfair treatment as a result of a permanent City policy or practice. In the case of a continuing violation, the complainant may file a charge at any time after the alleged unlawful employment practice takes place.
- 3.11.044 Complaints shall, if possible, be in writing, signed and verified by the complainant. If possible, complaints shall be on forms utilized by the Personnel Division which are available upon request, are attached to this policy, are accessible from the following City network directory: L:Common/CMO/Citywide/Personnel/Forms, and from the City's Internet site, www.ci.corvallis.or.us. Verbal complaints may be taken by Personnel, and Personnel staff will collect the information and complete the form to be signed by the complainant.
- 3.11.045 Complaints shall, at a minimum, include the following information:
- Full name, address, telephone number, and job title of the complainant (if the complainant is a job applicant, include the job title applied for);
 - The full name and job title of the respondent;
 - A plain and concise statement of the facts constituting the alleged, unlawful employment practice or practices;
 - The date or dates of the alleged discriminatory employment practice or practices;
 - The place where the incident occurred and, if there were any witnesses to the alleged discriminatory practice, their names and telephone numbers; and
 - The remedy sought.

Complaints or any part of a complaint may be withdrawn at any time; however, the request for such withdrawal shall set forth the reasons for such a request. The request to withdraw must be signed and notarized in the

Personnel Division by the complainant. The Personnel Division will review the withdrawal and determine whether or not the request was the result of restraint, interference, coercion, discrimination, or reprisal. If it is the result of restraint, interference, coercion, discrimination or reprisal, the Personnel Division will investigate and proceed accordingly.

3.11.050 Affirmative Action

3.11.051 The Personnel Division, upon receiving the complaint, shall form an Investigation Team including representatives of Personnel, the City Attorney's Office, and other departments as appropriate (such as the employee(s)' department). Personnel shall also advise complainants of their rights and the operational manner of this discrimination complaint procedure, as well as other avenues of recourse (such as EEOC, Department of Labor, among others), and refer complainants to Appendix One in the event that a complainant is not satisfied with the results obtained through this grievance.

Where necessary due to the serious nature of the allegation(s), the supervisor or Department Director may take temporary action prior to the conclusion of the investigation to protect the public and/or City employees. This may include leave with or without pay or temporary reassignment of work duties or location.

3.11.052 The investigation shall proceed as follows.

a. No one involved in the investigation, whether as a complainant, respondent, team member, or interviewee, should discuss the matter under investigation outside of that investigation (with the exception of their authorized representative), until the investigation is complete. Violation of this provision may subject the offending employee to disciplinary action. If the respondent employee is a represented employee and has a reasonable expectation that the investigation may result in disciplinary action, he or she may request to have representation at the interview, but the investigation shall not be unduly delayed awaiting a particular representative when other representatives are available. Nothing in this section is intended to abridge an employee's first amendment right to free speech.

b. A written record of the investigation will be made by the Investigation Team. The record shall include a summary of the alleged behavior, results of the investigation, recommendations, and, if applicable, any recommended action taken, including any disciplinary action. Every reasonable effort will be made to file this information with the Assistant City Manager within fifteen working days of the date when the complaint was first filed. The written complaint and related investigative materials will be maintained in the

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Personnel Division, and no notations will be placed in either the respondent's or the complainant's personnel file.

c. If the Investigation Team at any time determines the nature of the complaint is such that, if substantiated, it could constitute a crime, the Investigation Team shall not investigate the complaint further, but shall forward the complaint to the Corvallis Police Department, through the office of the Chief of Police.

d. If, after review by the Investigation Team, it is determined that there is merit to the complaint, then immediate and appropriate discipline and/or remedial action will be taken. Depending on the seriousness of the misconduct and the employee's overall record, disciplinary action, including discharge of the offender, may be taken regardless of prior disciplinary action. The resolution of the complaint will be defined as one of the following:

EXONERATED – The investigation confirmed that the alleged behavior did occur, but that it was not a violation of City policy.

UNFOUNDED – The investigation demonstrated that the alleged actions did not occur, or did not involve City personnel.

UNSUBSTANTIATED – The investigation did not present sufficient evidence to clearly prove or disprove the allegations.

SUSTAINED – The investigation concluded that sufficient evidence did exist to clearly prove the allegations.

e. Furthermore, the City will make every effort to correct any loss the complainant may have suffered in job title, pay, or other term or condition of employment. Any offensive material, behavior, and/or language will cease to occur.

f. The Assistant City Manager will make every reasonable effort to review the findings with the complainant within ten working days of the date the written record of the investigation is received. All records of findings, recommendations, and resulting actions will be shared on a "need to know" basis in keeping with Personnel Policies and the Oregon Public Records Laws.

3.11.060 Investigation

3.11.061 The Investigation Team will make every reasonable effort to reach its findings and make recommendations to resolve the matter within 15 working days from the date the complaint is filed.

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- 3.11.062 Notification of receipt of a complaint will be sent to the appropriate Department Director within two working days of receipt of the complaint, and before the investigation has begun. The notification shall contain the name of the complainant, date(s) of the incident(s), and circumstances of the alleged discriminatory practice or practices. The respondent department must then submit to the Personnel Division within three working days a statement of its position with respect to the discrimination charge. To the maximum extent feasible, the Investigation Team will delay conducting an investigation until after the statement of position has been received.
- 3.11.063 The investigation shall include a review of all pertinent information or circumstances under which the alleged discrimination occurred. This information may include: review of the recruitment files, the treatment of the complainant as compared with his or her co-workers or co-applicants in the department or division in which the alleged discrimination occurred; and any other policies, practices, or actions, whether verbal or written, related to work situations which may constitute discrimination because of sex, race, color, religion, national origin or ancestry, age, physical disability, sexual orientation, source of income, marital status, or any other employee status protected by statute, even though they may not have been expressly cited by the complainant. The investigation shall include an opportunity for the respondent to respond to the information contained in the complaint and to present his or her perspective and any additional clarifying information.
- 3.11.064 If the Personnel Division determines, after the investigation, that there exists no reasonable cause to believe that discrimination occurred, the Assistant City Manager shall dismiss the complaint and promptly notify the complainant, the respondent, and the Department Director by memorandum.
- 3.11.065 If the Personnel Division determines, after an investigation, that there exists reasonable cause to believe that discrimination did, indeed, occur, and that there is reasonable cause to believe the complaint is valid, the Investigation Team's recommended findings shall contain the following remedy and recommendation:
- a. Minimum remedy – What will be necessary to resolve the discriminatory employment practice or practices?
 - b. Recommend alternatives – What procedural or policy changes can be made to help prevent matters of this nature from recurring?
- 3.11.066 The Assistant City Manager will attempt to resolve all complaints by mutual agreement. The Investigation Team will present a summary of the investigation by highlighting the facts and appropriate conclusions and

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findings related to the applicable local and Federal laws. The director of the respondent department will have the opportunity to discuss or challenge the findings and present evidence that would tend to put the conclusions in a different perspective to support its contentions.

- 3.11.067 If there appears to be no possibility of agreement as to a remedy between the complainant and the respondent department, a proper remedy to the complaint will be decided by the City Manager, who is the ultimate authority in these matters. The decision of the City Manager shall be final under this procedure.
- 3.11.067 Confidentiality: Information given to the City in the course of an internal investigation is not confidential. However, except as required by Oregon Public Records Laws, or the requirements of a thorough investigation, the City will only release information gathered in the course of internal investigation on a "need to know" basis. If an employee has questions about personal safety or personal privacy, they should discuss these questions with the Personnel Division, the City Attorney's Office, their union representative, or their own attorney prior to providing information. If they have concerns relating to the potential for violence in the workplace as a result of filing a complaint or participating in an investigation, they should contact Personnel immediately.
- 3.11.070 Compliance Procedure
- 3.11.071 In the event of successful mediation between the complainant and the respondent department, and if a mutually acceptable agreement is reached as to the proper remedy, the agreement shall be reduced to writing, and copies of the same will be retained by the respondent department and the Personnel Division.
- 3.11.072 In the event the City Manager accepts the recommendations of the Investigation Team, the respondent Department Director will have ten working days to report, in writing, to the Personnel Division the implementation of the accepted remedial provisions of the settlement.
- 3.11.073 It will be the responsibility of the Personnel Division, upon receipt of the compliance implementation report from the respondent department, to contact the complainant in writing and verify that the remedial recommendation is being followed.
- 3.11.074 If at any time the remedial recommendation is not being followed, the complainant may contact the Personnel Division. The Personnel Division

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shall notify the City Manager of this non-compliance for the purposes of any remedial enforcement.

3.11.080 Review and Update

The Personnel Division will biannually review this policy in October to ensure compliance with applicable Federal and State legislation and to ensure a nondiscriminatory work environment. Organizational training will be provided on an ongoing basis to all departments.

Review and Concur:

Jon S. Nelson, City Manager

Date

CITY OF CORVALLIS

DISCRIMINATION

SECTION I. Complainant Information

Name: _____

Address: _____

Home/Business Phone: _____

Job Title/Job Title Applied For: _____

Supervisor: _____

SECTION II. Respondent Information

Name: _____

Job Title: _____

Department: _____

Supervisor: _____

SECTION III. Complaint

Please print or type a plain and concise statement of the facts constituting the alleged discrimination. Include time or times/ date or dates of the alleged discrimination and where it occurred, the employee(s) involved, description of the incident(s), names and telephone number(s) of any person(s) who may have knowledge of the incident(s). (Attach additional sheets if necessary.)

The Personnel Division and the Investigation Team will make every reasonable effort to reach its findings and make a recommendation to resolve the matter within 15 working days from the date the complaint is filed.

Please print or type below the remedy sought for this complaint.

SECTION IV. Withdrawal of Complaint

The complaint, or any part of the complaint, may be withdrawn at any time; however, the request for such withdrawal will set forth the reasons for such a request. The request to withdraw must be signed and notarized in the Personnel Division by the complainant. The Personnel Division will review the withdrawal and determine that the request was not the result of restraint, interference, coercion, discrimination, or reprisal.

SECTION V. Confidentiality

It is the intention of the Personnel Division to protect, to the extent possible, the confidentiality of any employee who contacts the Personnel Division for the purpose of seeking information, assistance, or counseling regarding this Policy. Information given to the City in the course of an internal investigation is not confidential. However, except as required by Oregon Public Records Laws or the requirements of a thorough investigation, the City will only release information on a "need to know" basis. Questions about personal safety or personal privacy should be discussed with the Personnel Division, the City Attorney's Office, an appropriate union representative, or a private attorney prior to providing information.

Signature of Complainant: _____ Date: _____

Complaint Received by: _____ Date: _____

Discrimination Complaint Response Policy Form

PART TWO

Summary of Investigation and Determination

The final summary and determination report is attached. Copies of the summary report and determination were sent to complainant and respondent (and Department where applicable) on this date: _____

By (Name and Department): _____

APPENDIX ONE

Other Resources

Oregon Bureau of Labor and Industries

<http://www.boli.state.or.us/civil/crcompl.html> – Civil Rights How to File a Complaint
1 (503) 731-4075

Equal Employment Opportunities Commission

<http://www.eeoc.gov/> – Home Page
1 (800) 669-4000 or 669-6820 TDD

Oregon Employment Relations Board

<http://www.erb.state.or.us/ulpinfo4c.htm> – How to File an Unfair Labor Practice
Complaint
1 (503) 378-3808

City of Corvallis Affirmative Action Plan

<http://www.ci.corvallis.or.us> – City Manager's Office, Personnel
City of Corvallis Personnel Office, 1-(541)-766-6902

Other Web Links

<http://www.dol.gov/dol/wb/welcome.html> – Women's Bureau Home Page

<http://www.usdoj.gov/crt/ada/adahom1.htm> – US Department of Justice ADA Home
Page

<http://www.odc.state.or.us/odctac.htm> – Oregon Disabilities Commission Technical
Assistance Center

<http://www.dol.gov/dol/asp/public/programs/handbook/fmla.htm> – US Department of
Labor Information Page on the Family Medical Leave Act

<http://www.eeolaw.com/Links.html> – More Links from BOLI