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January 28, 2018

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Sponsor: Kohl-Welles and Balducci

Proposed No.: 2019-0033

phh

JKW → passed

1 **AMENDMENT TO PROPOSED MOTION 2019-0033, VERSION 1**

2 On page 2, beginning on line 39, after "~~disability~~)" strike through "law" on page 2, line  
3 41 and insert "race, color, gender, age, creed, disability, marital status, national origin,  
4 religion, pregnancy, gender identity or expression, domestic violence victimization,  
5 sexual orientation, honorably discharged veteran or military status, use of a service or  
6 assistive animal by a person with a disability, or any other status protected by federal,  
7 state or local law"

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9 Delete Attachment A and insert Policies and Procedures Against Harassment and  
10 Discrimination dated January 28, 2019.

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12 ***EFFECT: makes changes to the motion to be internally consistent and match the***  
13 ***attached policy and WHEREAS clause in the motion.***

**METROPOLITAN KING COUNTY COUNCIL**  
**Legislative Branch**

**POLICIES AND PROCEDURES AGAINST HARASSMENT AND DISCRIMINATION**

**I. Policy**

The Metropolitan King County Council is committed to providing a respectful, productive, inclusive, and equitable work environment for everyone. The Council specifically prohibits:

- Discrimination or harassment of, or inappropriate conduct toward, anyone on the basis of race, color, gender, age, creed, disability, marital status, national origin, religion, pregnancy, gender identity or expression, domestic violence victimization, sexual orientation, honorably discharged veteran or military status, use of a service or assistive animal by a person with a disability, or any other status protected by federal, state or local law;
- Sexual harassment; and
- Retaliation against anyone who reports a potential violation of this policy or participates in any process related to investigating or resolving a report made under this policy.

**II. Application**

This policy applies to all Councilmembers, employees, agents, and contractors of the council. All employees, anyone meeting with or appearing before the Council and the public are expected to comply with this policy.

Employees with supervisory responsibilities (including Councilmembers) shall model appropriate behavior and strive to cultivate and maintain a work environment that is free from discrimination, harassment, sexual harassment, inappropriate conduct, and retaliation.

This policy is supplemental to other procedures available under federal, state, and local laws, including but not limited to the Whistleblower Ordinance (KCC chapter 3.42), the Ethics Code (KCC chapter 3.04), and the Fair Employment Practices Code (KCC chapter 12.18). Individuals are encouraged to report pursuant to this policy, but continue to have the right to utilize other processes established by law including the federal Equal Employment Opportunity Commission, the state Human Rights Commission, the county Office of Civil Rights, and private legal action.

**III. Definitions & Examples**

The following definitions and examples are intended to include and supplement those found in King County Code chapter 12.18:

- A. "Disability" means a sensory, mental, developmental, or physical impairment that: (1) is medically recognized or diagnosable; (2) exists as a record or history; or (3) is perceived by the employer to exist, whether or not it actually exists. A disability exists whether it

is temporary or permanent, common or uncommon, mitigated or unmitigated, limits the ability to work generally or work at a particular job, or limits any other activity.

- B. "Discrimination" occurs when a person is treated differentially or adversely affected, overtly or covertly, by an action of or the failure to act by another person on the basis of protected status.
- C. "Harassment" is unwelcome conduct in violation of this policy. Harassment can take many forms and may include innuendoes, unwelcome compliments, suggestive or insulting noises, through the use of digital media and social media, facial expressions, vulgar language, nicknames, slurs, derogatory comments, cartoons, epithets, jokes, pranks, written materials, offensive gestures or touching, and any other verbal or physical conduct relating to an individual and based on a protected status. It is a violation of this policy and may be illegal when:
  - 1. The conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment or interferes with a person's performance;
  - 2. Enduring the conduct becomes, either explicitly or implicitly, a condition of continued employment; or
  - 3. The conduct otherwise unreasonably affects an individual's employment opportunities.
- D. "Inappropriate conduct" is conduct that may not rise to the level of unlawful discrimination, harassment, or retaliation but nonetheless sends a negative message or results in a hostile, derogatory, or negative environment based on protected status.
- E. "Protected status" includes an employee's sex, age, creed, disability, ethnicity, marital status, national origin, race, color, religion, pregnancy, gender, gender identity or expression, genetic information, sexual orientation, veteran or military status, use of a service animal, and any other status protected by federal, state, or local law.
- F. "Retaliation" means taking an adverse action against someone because that person made a good faith report of a possible violation of this policy or participated in any process related to investigating or resolving a report under this policy. Retaliation is strictly prohibited.
- G. "Sexual harassment" is a specific type of harassment and a form of discrimination. It includes unwelcome sexual advances, requests for sexual favors, displays of sexually oriented materials, and other verbal or physical conduct of a sexual nature. It is a violation of this policy and may be illegal when:
  - 1. The conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment or interferes with a person's performance;
  - 2. Enduring the conduct becomes, either explicitly or implicitly, a condition of continued employment; or
  - 3. The conduct otherwise unreasonably affects an individual's employment opportunities.

#### **IV. Procedures**

The Council's paramount interest under this policy is to ensure a respectful, productive, inclusive, and equitable work environment for everyone. Discrimination and harassment are unacceptable and will not be tolerated at the Council.

Anyone who experiences or observes any potential violation of this policy is strongly encouraged to bring questions or concerns to a supervisor (a list of supervisors is appended to this policy). Every attempt will be made to keep matters confidential to the extent permitted by law. Any employee who is unsure as to options, actions, and remedies may wish to start by contacting the County's Employee Assistance Program (described further in the external procedures set forth, below). Anyone may file a complaint or make a report of possible violations of this policy using the external or internal procedures provided in this policy. The procedures and remedies provided in this policy are in addition to all other federal, state, and local processes provided by law.

#### **Internal Council Procedure.**

- A. Members of the public and those not employed by the Council are not expected to know the internal supervisory structure of the Council, and they may report any potential violation of this policy to any Councilmember or employee of the Council, who shall then report that potential violation to the chief of staff (or, if the alleged violation involves the chief of staff, to the Council's chief legal counsel) for further action pursuant to this policy.
- B. Employees who experience, observe, or learn of any potential violation of this policy are encouraged to report the behavior to any of the following individuals:
  1. the employee's own supervisor;
  2. any other supervisor;
  3. the chief of staff; or
  4. the Council's chief legal counsel.

Lists of supervisors shall be made available to all employees and also be included with copies of the policy and materials provided in training.

- C. Supervisors, including Councilmembers, who observe or learn of possible violations of this policy or who receive a complaint or concern from an employee regarding such allegations, must promptly report the potential violation to the chief of staff. If the complaint or concern involves the chief of staff, then the supervisor shall promptly report to the Council's chief legal counsel. The EAC may designate a person in addition to the chief of staff to perform the duties set forth in the following sections. That designation shall be made as an amendment to this policy. Supervisors who fail to comply with this responsibility may be subject to censure or discipline, up to and including discharge. Every attempt will be made to keep matters confidential to the extent permitted by law.

In addition, supervisors shall notify employees at the beginning of any related conversation that they may wish to first contact the County's Employee Assistance Program to fully understand the array of options available to the employee.

- D. Once a report of an alleged violation by staff is received by the chief of staff (or, in the case of an alleged violation by the chief of staff, by the chief legal counsel), then the chief of staff shall promptly and appropriately determine whether the complaint or concern can be addressed without formal investigation and referral to the Employment and Administration Committee, or whether it instead requires formal investigation and referral to the Employment and Administration Committee (EAC). The employee will be consulted regarding the nature of the investigation in terms of formal or informal.
- E. If a report of an alleged violation by a Councilmember is received by the chief of staff, then the chief of staff shall promptly and appropriately determine whether the complaint or concern can be addressed without formal investigation and referral to the Employment and Administration Committee, or whether it instead requires formal investigation and referral to the Employment and Administration Committee (EAC). Under all circumstances and regardless of referral, they shall notify the Chair of the Council. If the allegation applies to the Chair of the Council, chief of staff shall alert one of the Council Vice Chairs.

The Council notes the power disparity between staff and elected officials and intends that all serious allegations in which violations may have occurred by Councilmembers be handled by other Councilmembers, starting with referral to EAC. Such allegations would constitute ones that rise above possible misunderstandings or one-off comments and must meet the threshold of systematic, repetitive discriminatory or harassing behavior or the perception of such.

- F. If the chief of staff (or, in the case of an alleged violation by the chief of staff, the chief legal counsel) determines that the matter can be resolved informally and without referral to EAC, then the chief of staff shall:
  - 1. Document in writing:
    - a. the complaint or concern;
    - b. the agreement of those affected by the complaint or concern to handle the matter informally;
    - c. the determination that no formal investigation or referral to EAC was necessary, and the reasons for that determination;
    - d. any steps taken to resolve the complaint or concern; and
    - e. obtain a signature from any affected employee(s) reflecting recognition of the resolution of the complaint and their specific interests in anonymity or any other special requests.
  - 2. Notify the complainant of the determination and any steps taken to resolve the complaint or concern.

If the chief of staff (or, in the case of an alleged violation by the chief of staff, the chief legal counsel) determines that further investigation and referral to EAC are necessary, in all cases where a Councilmember is alleged to have violated this policy, or in case of an appeal, then the chief of staff shall:

1. Immediately notify each member of EAC that a matter to be referred to EAC is pending and that a briefing on it will be provided at the next EAC meeting. If the complaint or concerns involve a personal or district support and constituent services staff member of a Councilmember, then the Councilmember employing that staff member shall also be advised;
2. Take steps to safeguard employees and facilitate investigation even prior to EAC being able to meet and act upon a matter referred under this policy. In cases of a more serious nature, these steps may include separating affected employees pending completion of the investigation or resolution of the matter;
3. Inform parties accused of a violation of the policy and of the referral to EAC, and advise them that they may participate in the process, review evidence and statements submitted in support of the allegation, and have opportunities to refute the allegation or offer an explanation or mitigating circumstances, including an opportunity to make a presentation to EAC, directly;
4. Conduct a prompt and thorough investigation to determine whether a violation of this policy has occurred based on all facts and circumstances, the nature of the allegation, and the context in which the alleged incidents occurred. As appropriate and with the approval of EAC, an outside investigator may be retained. Upon completion of the investigation, the chief of staff shall make preliminary recommendations on what action should be taken, including, as appropriate, mediation of the matter; and
5. Brief EAC on the results of the investigation and recommended disposition of the complaint or concern, and any recommended corrective and/or preventive measures such as discipline, training, counseling, and monitoring;

Upon notification of a complaint or concern being referred to EAC by the chief of staff (or, in the case of an alleged violation by the chief of staff, the chief legal counsel), the chair of EAC shall promptly schedule an EAC meeting to consider the matter. If the complaint or concern involves a member of EAC, the chair shall direct that, unless invited by the chair to address EAC, then the involved member not attend or participate in that portion of any meetings of EAC at which the complaint or concern will be considered. Where appropriate, the chair may direct that the complainant and accused violator be separated or that any other steps be taken which

are necessary to immediately safeguard employees, prevent retaliation, or assist with an investigation. If the matter referred alleges violations of this policy by the chair of EAC, then the vice chair shall act in this role instead.

EAC shall promptly meet to consider matters referred under this policy. To preserve confidentiality and to the extent permitted by law, the members shall meet in executive session. After being briefed by the chief of staff (or, in the case of an alleged violation by the chief of staff, the chief legal counsel) EAC will decide whether further investigation is warranted and, if so, direct that further investigation and follow-up. Ultimately, EAC will issue a written final disposition of the matter which, as appropriate, should include findings, conclusions, and actions taken in response. When EAC determines that it is ready to issue a final disposition of the matter, it shall:

1. Adopt by vote the final disposition; and
2. Direct the chief of staff or to implement the final disposition of EAC.

In the case of allegations of violations of this policy by a Councilmember, only the chief of staff or other person selected by EAC may be involved in the investigation or work with an outside firm on the investigation. The final disposition of EAC must either:

- a. Exonerate the member;
- b. Intervene or take steps to remedy any problem or misunderstanding, including providing training or counseling; or
- c. Recommend to the full Council censure or other disciplinary action in the form of a motion to be considered and acted upon by the full Council at the second full Council meeting following the EAC recommendation. No recommendation of censure or disciplinary action to the full Council shall be made unless EAC has first contracted with an independent law firm or other outside investigator to perform an investigation and make a report that includes findings of fact.

Once EAC has issued its final disposition, then the chief of staff shall:

6. Implement the actions set forth in the final disposition of EAC, including discipline (if any) and any corrective or preventive measures. If any discipline is appealed to the full council, the discipline shall not be imposed until the appeal is decided, but corrective or preventive measures may be enforced even while an appeal is pending;
7. Inform the employee who raised the complaint or concern, the accused employee, and any supervisor who received the report of a complaint or concern, of the results of the final disposition;

8. For a reasonable period of time, monitor for repeat behavior or retaliation against any person involved in the filing or investigation of a complaint or concern; and
9. Maintain all records related to the matter.

#### **External Procedure – The Employee Assistance Program.**

The Council recognizes that those experiencing or witnessing a potential violation of this policy may wish to use a process outside of the Council. Persons may wish to access other available federal, state, or local resources. In addition, the Council recommends use of the Employee Assistance Program. King County's Employee Assistance Program (EAP) is a free county resource that provides county employees with counseling and coaching around work related concerns and problems, including workplace stress and conflict with co-workers. EAP also provides general workplace coaching and counseling. EAP can listen, provide general advice, explain policies and options, and assist with complaints. EAP may also work to resolve complaints where appropriate. EAP endeavors to keep all matters confidential to the extent permitted by law. Use of EAP does not preclude use of the internal Council procedure.

#### **V. Remedies & Disciplinary Action**

The Council's paramount interest under this policy is to ensure a respectful, productive, inclusive, and equitable work environment for everyone. In cases where a violation of this policy may have occurred, the Council will work to first ensure the safety of anyone negatively affected and to stop any further behavior that could be a violation. The Council recognizes that workplace interactions and relationships can be complex and that misunderstandings can occur. The Council also recognizes that intentional violations require different responses than unintentional violations or misunderstandings. Where appropriate, behavior should be corrected and good behavior modeled as an example. Counseling and coaching should be considered as appropriate remedies in the case of misunderstandings or ignorance. The remedy and disciplinary action should be commensurate with the nature of the violation, and repeated violations by the same person should be considered in determining an appropriate response. The Council does intend to penalize those persons whose violations are intentional or serious, and violations of this policy may lead to censure or discipline, up to and including discharge.

#### **VI. Appeals**

A complainant who is dissatisfied with the way his or her complaint is being handled may take his or her concerns directly to the Employment and Administration Committee or the full Council for review and further disposition. EAC shall follow the procedures set forth in the policy. The full Council may review and resolve an appeal as it directs by motion. To preserve confidentiality and to the extent permitted by law, the members shall meet in executive session.

#### **VII. Confidentiality**

Every effort will be made to treat all reports and procedures undertaken pursuant to this policy as confidential, but confidentiality cannot be guaranteed and disclosure may be required by law.

### **VIII. Training & Distribution**

The Council's paramount interest under this policy is to ensure a respectful, productive, inclusive, and equitable work environment for everyone, and training is key.

All new employees will receive training on this policy as a distinct unit apart from any other new employee training. All employees will undergo refresher trainings on this policy at least every two years.

Supervisors shall receive training that emphasizes their specific obligations under this policy as supervisors when they become supervisors, and all supervisors shall undergo refresher training at least every two years. Supervisor training will specifically include instruction on how to handle a complaint promptly, effectively and in way that respects the vulnerability and privacy of the individual reporting the incident, the application and limitations of confidentiality, and the legal duties required of the Council as an employer.

New Councilmembers will receive a separate training on this policy that emphasizes the unique role they have as elected officials and supervisors. All Councilmembers shall undergo a refresher training on this policy that emphasizes the unique role they have as elected officials and supervisors at least every two years, and the training shall also include those elements required in training for supervisors.

In addition to covering the specifics of this policy, all trainings will include instruction on how to build a healthy and respectful workplace culture and prevent discrimination and harassment.

Copies of this policy shall be provided to all Councilmembers and employees and be posted prominently on the Council's public website, as well as council break rooms.

### **IX. Employee Expectations**

The Council intends this policy to be a call to service to promote a safe and respectful environment. Employees are expected to act professionally, courteously, and in accordance with this policy at all times. In return, employees may expect to be treated professionally, courteously, and in accordance with this policy at all times.

Nothing in this policy is intended to change the at-will status of employees, but employees shall expect the Council:

- To enforce this policy promptly and fairly;
- To allow them to participate in the process as a complainant or witness, including allowing them to directly address EAC or present evidence in any procedures relating to or affecting them;

- To inform them as to the outcome, disposition, and remedy or disciplinary action associated with any complaint or process relating to them;
- To provide training, coaching, and counseling that promotes a respectful workplace and helps them resolve workplace conflict; and
- To enable them to act in good faith under this policy without fear of retaliation of any kind.

Employees may use the procedures set forth in this policy or use other federal, state, and local procedures such as those of the federal Equal Employment Opportunity Commission, the state Human Rights Commission, or the county Office of Civil Rights. Use of an external process or procedure does not preclude an employee's use of the internal process or procedure.

#### **X. Expectations of the Public**

This policy is intended to promote and maintain a respectful environment for everyone, including the general public. Members of the public should expect high standards of conduct from their elected officials and employees and may use the procedures set forth in this policy to report any potential violation of this policy. While the Council's ability to enforce and apply this policy beyond its own employees and agents may vary, the Council expects the public to treat its employees with respect and general courtesy. Council employees are not expected to endure violations of this policy or abuse from anyone, and may take appropriate steps to safeguard themselves from abuse.