GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2017-313
December 18, 2017

SUBJECT: **SEXUAL HARASSMENT POLICY, GUIDANCE AND PROCEDURES**

ORIGINATOR: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by sections 422(2), (3), and (11) of the District of Columbia Home Rule Act, 87 Stat. 790; Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2), (3), and (11) (2016 Repl.), and the District of Columbia Human Rights Act of 1977, D.C. Law 2-38, D.C. Official Code §§ 2-1401.01 *et seq.* (2016 Repl.), it is hereby **ORDERED** that:

I. Purpose

The purpose of this Order is to reaffirm and make clear that that the District of Columbia Government (the **"District of Columbia"**) does not tolerate any form of sexual harassment in the workplace. Sexual harassment is recognized as one of the most unjust, demeaning, and demoralizing examples of workplace misconduct.

II. Individuals Affected

(a) Prohibitions

The District of Columbia prohibits workplace sexual harassment by all District of Columbia employees, officials, and all employees under the Mayor's jurisdiction. The prohibition also applies to third parties doing business with, or carrying out the goals and objectives of the District of Columbia government, such as vendors, contractors, grantees, customers, and other persons visiting or working at District of Columbia worksites inside and outside District of Columbia agencies, who may not sexually harass District employees. Further, while carrying out their duties as contractors or grantees for the government, contractors and grantees of the District of Columbia may not engage in workplace sexual harassment, although not every procedure set forth in this Order applies to persons not working for the District government. In the course of their duties as members of District of Columbia Boards and Commissions that report up to the Mayor, board members are bound by the procedures and deadlines set forth herein.

(b) **Protections**

The protections against workplace sexual harassment extend to employees, contractors, interns, and any other persons engaged by the District of Columbia to provide permanent or temporary employment services at District of Columbia worksites inside and outside District of Columbia agencies, and to applicants for District government employment, although not every procedure set forth in this Order applies to persons not working for the government. District of Columbia employees are protected from sexual harassment by contractors, grantees, clients, applicants, and members of the public with whom they interact as part of their District of Columbia employment. Members of Boards and Commissions that report up to the Mayor are also protected as employees. Without limiting this broad definition, persons protected by this Mayor's Order will be referred to as "employees."

(c) **Agencies Not Reporting To Mayor**

Laws prohibiting sexual harassment apply throughout the District government. Agencies not reporting up to the Mayor are asked to ensure that their employees are given training, information, protections, and processes afforded in this Order to employees of agencies reporting to the Mayor.

III. Definitions of Sexual Harassment

(a) ***Quid Pro Quo*** **Sexual Harassment**

Quid pro quo sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any one of the following criteria is present:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual.

(b) **Hostile Environment Sexual Harassment**

Other conduct – if severe or sufficiently pervasive as to alter working conditions – may create a "hostile environment" and is also prohibited. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. Unless the conduct was particularly severe or pervasive, where no warning or admonition is necessary, the person creating such an environment must have been told that the conduct is unwelcome or must stop.

The following are examples of unwelcome conduct that may create an intimidating, hostile or offensive work environment and that are not acceptable in the District of Columbia employment environment, including during work related travel:

1. sex acts;

2. display of sexual organs;

3. giving a preference to a third party who is engaged in a sexual or romantic relationship, to the disadvantage of an employee who is not engaged in a sexual relationship with a supervisor, hiring official, or person exercising authority over the disadvantaged party, (described legally as a "paramour preference");

4. using sexually oriented or sexually degrading language describing an individual or his/her body, clothing, hair, accessories or sexual experiences;

5. sexually offensive comments or off-color language, jokes, or innuendo that a reasonable person would consider to be of a sexual nature, or belittling or demeaning to an individual or a group's sex, sexual orientation, or gender identity;

6. "sexting" or seeking or sending pictures of intimate body parts, or taking or displaying pictures of body parts meant to be covered up (such as "upskirting" pictures), including by sending messages of a suggestive nature on self-destructive messaging apps where documentation of the written word or images is difficult to document;

7. displaying or disseminating sexually suggestive objects, books, screensavers, magazines, photographs, music, cartoons, or computer internet sites or references;

8. unnecessary and inappropriate touching or physical contact, such as intentional and repeated brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massages, groping, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature;

9. leering, ogling, or making sexually suggestive gestures or sounds, such as whistling or kissing noises;

10. making inquiries about someone's private sex life or describing one's own sex life;

11. workplace sexual comments, conduct, displays and suggestions between two willing parties that would cause a reasonable third party to be offended;

12. any unwanted repeated contact, including, but not limited to in-person, or telephonic, for romantic or sexual purposes; and

13. sexual assault, stalking, trapping someone such that they are not free to leave and a sexual encounter is expected or threatened, threats of bodily harm relating to sex or the refusal to have sex, or other crimes related to egregious acts of sexual harassment.

(c) **Sexual Harassment is Prohibited by and Between All Persons**

1. Sexual harassment may be committed by persons of the same sex, or perceived sex, and by those who share the same sexual orientation or the same gender identity or expression, as well as by persons of the opposite sex or gender identity, and shall be prohibited.

2. Sexual harassment is not limited to inappropriate exercise of authority by persons in power over an employee. It can even occur by an employee towards a supervisor.

3. Supervisors are responsible for ensuring a workplace free of sexual harassment.

4. When sexual harassment occurs between colleagues or by clients or customers upon an employee, and it is brought to an appropriate person's attention, the agency must investigate and remedy the situation.

IV. Consensual Relationships

(a) Sexual or romantic relationships between employees and supervisors in the employee's chain of command are strongly discouraged.

(b) The Director of the Department of Human Resources (**DCHR**) is directed to develop and propose reporting mechanisms to help guard against conflicts of interest and "paramour preferences" that could arise when sexual or romantic relations develop within the chain of command.

(c) The existence of a consensual sexual or romantic relationship between an employee and a supervisor may be a factor in any proceeding in which the relationship is alleged to have contributed to a hostile work environment and/or adversely affected the terms and conditions of employment of the involved parties or a third party.

(d) Employees who engage in a limited consensual relationship with a supervisor or colleague, such as going out to dinner or on dates, remain free to refuse further sexual overtures and have the right to demand that sexual or sexually harassing conduct going beyond that which was consented to must stop. Alternatively, they also may seek the assistance of a supervisor or manager, the agency General Counsel, or the person designated by the agency pursuant to Section V, below, to demand that sexually harassing conduct cease.

(e) Conduct that was once welcome or consensual may become unwelcome. Once the conduct is no longer welcome, and the formerly-consenting employee, or a supervisor, agency designee or counsel, tells the other party to stop, all unwelcomed behavior of a sexually harassing nature must cease.

(f) If legal action is commenced against the District of Columbia and/or a supervisor who engaged in a sexual/intimate relationship with an employee, or a person engaged in a potentially-conflictual relationship, the existence of the sexual or romantic relationship will be a factor in the District of Columbia's decision to provide legal representation to the supervisor or the employee(s) engaged in a potentially-conflictual relationship.

V. Procedures for Stopping Sexual Harassment; Reporting, and Investigating Sexual Harassment Claims

(a) Agency Responsibilities

1. Agencies shall immediately disseminate to all employees the Mayor's letter dated December 18, 2017 discussing our DC Values and condemning sexual harassment, as well as this Mayor's Order. Within thirty (30) days after the effective date of this Order, agencies shall follow up to ensure delivery to difficult-to-reach employees, including employees on leave and work-related travel. Each employee shall confirm receipt of these documents by email or signed copy as instructed by the agency.

2. Within thirty (30) days after the effective date of this Order, all agencies shall designate an Equal Employment Opportunity (EEO) Officer, HR Manager, or any other individual competent in EEO laws to accept sexual harassment complaints and review (henceforth, "**Sexual Harassment Officer**") and investigate claims, and an office to which claims should be reported, in the event the Sexual Harassment Officer is unavailable. The name of such designated Sexual Harassment Officer and office must be submitted to the Office of Human Rights at OHR@dc.gov. Changes or updates to this list must be provided to OHR via OHR@dc.gov within ten (10) business days of any such change. Smaller agencies may by agreement obtain assistance from a sister or superior agency in handling these matters provided its employees are notified of who will review and investigate claims of sexual harassment. For the purpose of this Order, agencies availing themselves of another agency's help will still be referred to as the "agency," even if another agency is providing investigation, human resource, and legal help through a jointly-designated Sexual Harassment Officer and office.

3. Within thirty (30) days after the effective date of this Order, each agency shall display, in noticeable and conspicuous locations accessible and used by a substantial number of agency employees, notices setting forth the District of Columbia's policy prohibiting sexual harassment. Each notice shall contain the identity and location of the agency's designated Sexual Harassment Officer, and office, who is responsible for receiving claims of sexual harassment and ensuring

that they are investigated. The notice shall advise employees that a sexual harassment complaint and any subsequent investigation shall be kept confidential to the greatest extent possible consistent with their investigation and resolution.

4. DCHR and the Office of Human Rights **(OHR)** shall develop and deliver on-going sexual harassment trainings for employees of the District of Columbia. OHR and DCHR shall conduct workshops for approximately 1500 managers by March 14, 2018 and shall ensure that all agencies have the capacity to respond effectively to allegations of sexual harassment, directly or through agreements with other agencies.

5. The Mayor's Office of Legal Counsel (**MOLC**) and OHR shall conduct a training on sexual harassment law before January 31, 2018 for all agency General Counsels or their designees.

6. Managers shall give all employees time to take a course or refresher course on sexual harassment, to be provided by DCHR or OHR, by February 28, 2018, and all current employees shall take such a course, in person or online. New employees shall take a course on sexual harassment as part of the on-boarding process and in no event more than fourteen (14) days of being on-boarded. All employees shall take a refresher course at least once every two (2) years.

7. Those entering into contracts or grants with the District government must affirm that they will abide by the District of Columbia Human Rights Act including its prohibitions on sexual harassment, consistent with 4 DCMR 1100 *et seq*. District agencies drafting contracts and grants shall include such covenants as part of the contract or grant agreement.

8. The best preventative measure to combat sexual harassment is for the workplace to be a place of respect for all persons, at all times. At work, at all times, we seek to serve the residents of the District of Columbia, a mission that is compromised whenever and wherever sexual harassment occurs.

(b) **Employee Communication**

1. An employee must either: (A) tell the person who is engaging in offensive or inappropriate sexual conduct to stop and that such conduct is unwelcome; or (B) ask the employee's supervisor or counsel or the agency's designated Sexual Harassment Officer to advise the person that the conduct is offensive and unwelcome. Employees and others engaged in intervention are encouraged to document all intervention efforts or requests to cease reported inappropriate sexual conduct, including conversations, text, or email exchanges. Some conduct is so egregious that no warning is necessary before personnel action or other consequences ensue; other times, it is necessary to indicate that the conduct is unwelcome.

2. Employees who believe they are being sexually harassed are urged to collect and preserve evidence of any offensive conduct. However, even in the absence of emails, pictures, or other physical evidence, employees should report sexual harassment as described below.

(c) **Reporting Inappropriate or Potentially Inappropriate Conduct of a Sexual Nature**

1. All District of Columbia employees are responsible for ensuring the workplace is free of sexual harassment. Employees who know of incidents of sexual harassment, as well as behavior which may create an intimidating, hostile or offensive work environment, or who are victims of sexual harassment or inappropriate conduct, should report the sexual harassment or inappropriate conduct to the Sexual Harassment Officer or office designated by the agency, or the supervisor or manager of the employee engaging in inappropriate conduct, or to their own supervisor. If the alleged harasser is the employee's immediate supervisor, then the employee should report the conduct to the alleged harasser's supervisor, or to the Sexual Harassment Officer.

2. If the complaint is against an agency director, the report shall be submitted to the appropriate Deputy Mayor for review. If the complaint is against a Deputy Mayor the report shall be submitted to the City Administrator. If the report is against the City Administrator, the report shall be submitted to the Mayor's General Counsel, who shall also receive complaints against any agency director in the Executive Office of the Mayor. If the complaint is against the Mayor's General Counsel or the Mayor, an independent consultant shall be hired to conduct an investigation, and a final investigative report shall be submitted to the Inspector General for the District of Columbia for review.

3. If the alleged harasser is the employee's immediate supervisor, then the employee should report the conduct to the alleged harasser's supervisor, or to the Sexual Harassment Officer.

4. The procedures and remedies specified herein are not intended to preclude an employee from seeking any remedies he or she may have in a court of law.

(d) **Agency Review and Investigation of Reported Claims**

1. Any supervisor or manager who receives a complaint or concern regarding sexual harassment or inappropriate conduct must take immediate steps to notify the Sexual Harassment Officer, who will ensure that an investigation is conducted and take other appropriate action. Any such effort shall be documented.

2. Where there is an allegation of criminal misconduct, including for example, sexual assault, kidnapping, stalking, and threats to do bodily harm, the agency may, after consulting its General Counsel, place the victim and/or the alleged harasser on administrative leave with pay pending final administrative resolution

of the complaint or any criminal proceeding. The complainant at his or her choice may report the alleged criminal violation to a law enforcement agency, including the Metropolitan Police Department (**MPD**). Where either the agency or an appropriate law enforcement officer determines that a criminal violation occurred, the agency shall recommend discipline of the perpetrator up to, and including, termination.

3. When an allegation of sexual harassment is reported, including allegations of criminal conduct, the agency shall notify the agency's General Counsel, who in turn must notify MOLC of the allegation.

4. Allegations of sexual harassment shall be investigated and resolved as soon as practicable, but no later than sixty (60) days after reporting. The agency or office investigating the charges must provide the employee and the alleged harasser with a written notification of its findings and conclusions after the sixty (60) day period, and shall convey the same to MOLC.

5. The agency shall also require that any employee found to have engaged in inappropriate conduct who is not terminated must attend mandatory sexual harassment training within sixty (60) days of receipt of the findings. Such training is supplemental to any disciplinary actions and must occur even if the employee recently received training.

6. The agency shall also remind complainants of sexual assault or other possible crimes of the existence of the DC Victim Hotline. The Hotline, 1-844-443-5732, is available 24/7 by telephone, text or online chat to seamlessly connect victims of crime to free resources to help them navigate the physical, financial, legal, and emotional repercussions of crime. In particular, through the Hotline, victims may be matched with an advocate who can help them decide whether to pursue a matter through the criminal justice process.

(e) **Employee Responsibility to Participate in Agency Investigation**

1. All District of Columbia employees are expected to cooperate in the agency's investigation of sexual harassment complaints.

2. If an employee who alleges sexual harassment, or is believed to have been the victim of sexual harassment, declines to assist and/or participate in the investigation of the allegation, the agency may on its own initiative initiate and conduct an investigation.

3. Agencies must balance the need to respect a victim's wishes not to proceed or cooperate with an investigation, with the responsibility of the agency to ensure a respectful workplace free of sexual harassment. Employees who were not themselves victimized, who, after a direct request of the agency, decline to

participate in a sexual harassment investigation, may be subject to disciplinary action. Any consideration of whether to recommend disciplinary action for failure to cooperate in an investigation requires heightened sensitivity on the part of the agency, and should be conducted in consultation with the agency's General Counsel and MOLC.

(f) **Timely Filing; Statute of Limitations**

All complaints of sexual harassment shall be reported as promptly as possible. Agencies may consider alleged acts of sexual harassment for disciplinary purposes beyond the legal statute of limitations, consistent with the District Personnel Manual and any collective bargaining agreements, taking into consideration the sensitive nature of the alleged offense, the pressure the complainant may have felt not to report the conduct, when the victim became aware of behavior that was not immediately apparent, or a pattern of harassing behavior that developed over time. The statute of limitations for complaints filed at OHR is within one year of the harassment or its discovery.

(g) **Rights of the Alleged Harasser**

Persons accused of sexual harassment deserve the full protections afforded to them under the law in administrative matters, including, but not limited to, the right to respond to allegations of sexual harassment; to counsel and representation, including a union representative or other representative of their choosing, and including the presumption of innocence, unless and until there is a finding of harassment after an investigation by the agency or where appropriate, OHR. The right to counsel does not include the right to have counsel paid for by the government.

(h) **Interim Remedial Actions**

Pending final resolution of a sexual harassment complaint, and in order to protect the rights of the alleged victim as well as the alleged harasser, the agency may take prompt temporary personnel actions that do not result in any adverse employment action to either party. When an agency becomes aware of an allegation of sexual harassment, the agency shall notify the alleged harasser of the reported behavior to ensure that any such conduct ceases immediately and is not repeated.

Interim remedial actions are administrative rather than disciplinary and may include, but are not limited to, transfers, reassignment of duties or reporting requirements, mandatory administrative leave with pay, or other appropriate measures that do not result in reduction of pay, demotion in title or responsibility, or other loss of employee benefits. Where a request for separation, such as a job reassignment, from the alleged harasser is made by the alleged victim, the agency must require the victim to make the request in writing. DCHR is encouraged to find alternative, reasonably comparable placements, even in different agencies, during the pendency of an investigation for the accuser or accused in lieu of administrative leave with pay, where possible.

(i) **Discipline for Making False Statements or Representations**

In recognition of the seriousness of workplace sexual harassment charges, the agency shall recommend disciplinary action, up to and including termination, of any employee found to have knowingly and intentionally made materially false statements or representations in relation to a sexual harassment claim or investigation. Termination is only available if such statements were in writing and the allegations were formally made with warnings as to their legal force, or under oath.

Consideration of whether to recommend disciplinary action against an employee who is also the alleged victim of sexual harassment requires heightened sensitivity on the part of the agency and should be conducted in consultation with the agency's General Counsel and MOLC.

(j) **Discipline after a Finding of Sexual Harassment**

The agency shall recommend appropriate disciplinary action, up to and including termination of any employee found to have engaged in sexual harassment as defined in Section III of this Order.

(k) **Referral to the Board of Ethics and Government Accountability (BEGA)**

Some claims of sexual harassment may also involve ethical violations, such as if an employee is giving gifts to an employee for sexual favors or to a potential reporter of sexual harassment, or if an employee is using government resources to copy and disseminate inappropriate pictures. Credible violations of the Code of Conduct should be reported to BEGA. Its penalties are in addition to any personnel actions taken by the agency.

VI. Concurrent Remedies and Jurisdiction

(a) **Filing a Formal Complaint with the Office of Human Rights**

In addition to pursuing action within the agency, an alleged victim of sexual harassment, or a person acting on the victim's behalf with or without the victim's consent, may report a sexual harassment claim within one year of the alleged harassment or its discovery to OHR using its Intake Questionnaire Form.

(b) **EEO Counseling Option When Filing a Claim with OHR**

EEO Counseling is not required prior to the filing of a complaint with OHR; however, if the employee wishes to first seek informal resolution, EEO Counseling is available. To exercise this option, the employee must contact a certified EEO Counselor within 180 days of the alleged harassment. The EEO Counselor must then resolve the complaint within thirty (30) days, or at maximum sixty (60) days, and issue an Exit Letter outlining the rights of the individual reporting the claim as well as the counselor's efforts to resolve

the claim. If the employee is not satisfied with the outcome of the counseling effort, the employee may file a formal complaint with OHR within fifteen (15) days of receiving the Exit Letter. EEO Counselors will not conduct an investigation. They will simply review the case and try to achieve an informal resolution.

VII. Prohibition against Retaliation

(a) Retaliation Prohibited

Retaliating against an employee for reporting or filing a claim of sexual harassment, assisting another person in filing or asserting a claim of sexual harassment, opposing sexual harassment, acting as a witness in a sexual harassment investigation, refusing to follow orders that would result in sexual harassment, intervening to protect others from sexual harassment or advances, or challenging an allegation of sexual harassment, is strictly prohibited. Employees shall not be penalized as a result of their assertion of rights provided under the District of Columbia Human Rights Act or providing truthful information in connection with an investigation (whether on behalf of a complainant or a respondent). Retaliatory behavior can include but is not limited to unwarranted reprimands, unfairly downgrading personnel evaluations, transfers to less desirable positions, verbal or physical abuse, and altered and more inconvenient work schedules. Employees found to have engaged in retaliatory behavior shall be recommended for termination.

(b) Process for Alleging Retaliation

Employees who believe they have been retaliated against must file a complaint with an EEO Counselor within 180 days of the alleged retaliation and subsequently file a complaint with OHR within fifteen (15) days of receipt of the Exit Letter, if the employee is not satisfied with the outcome of EEO Counseling.

(c) Limits

Lodging a sexual harassment claim or triggering an investigation does not shield an employee from all discipline or discharge. Agencies are free to discipline or terminate employees if the agency is motivated by non-retaliatory and non-discriminatory reasons that would otherwise result in such consequences.

VIII. Confidentiality

The complaint file, including all information and documents contained in the file as well as information received during investigation of the complaint, shall be confidential. The agency shall take all reasonable steps to ensure that no information contained in the complaint file is disseminated except in furtherance of the investigation; resolution of the allegations; execution of any consequences stemming from the investigation; when lawfully released; or when required by court order.

The agency must take all reasonable efforts during the conduct of an investigation to protect the identities of the alleged harasser and the alleged victim, as well as witnesses for either party. However, the alleged harasser shall be promptly advised of the complaint and its substance and be given an opportunity to respond to the allegations.

This confidentiality requirement does not preclude the agency from reporting a suspected illegal or improper act, or conduct related to the investigation, to an appropriate enforcement, investigating and/or legal organization or from cooperating in any related investigation.

IX. Applicability of Personnel Rules

Any proposed personnel action instituted under this Order is subject to the District of Columbia Personnel Regulations as set forth in the District of Columbia Personnel Manual.

X. Implementation

Where responsibility is not otherwise specified, the Director of the Office of Human Rights, or the designee of the Director of the Office of Human Rights, is authorized and directed to implement this Order and to monitor the compliance of executive departments and agencies with its directives.

XI. Rescission/Repeal

To the extent that any provision of this Order is inconsistent with the provisions of any Commissioner's Order, Order of the Commissioner, or previous Mayor's Order, the provisions of this Order shall prevail and shall be deemed to supersede the earlier provisions. Mayor's Order 2004-171, dated October 20, 2004, is rescinded.

XII. EFFECTIVE DATE: This Order shall become effective immediately.

MURIEL BOWSER
MAYOR

ATTEST:

LAUREN C. VAUGHAN
SECRETARY OF THE DISTRICT OF COLUMBIA