

AGENDA

Committee of the Whole AGENDA FOR FEBRUARY 6, 2023 AT 5:30 PM



Lansing City Hall, City Council Conference Room
124 W. Michigan Avenue, 10th Floor

To provide input or ask questions on any item that is listed on the agenda,
members of the public may contact the City Council at city.council@lansingmi.gov or (517) 483-4177 prior to the meeting.

Annual Training Meeting Updated February 3, 2023 p.m.

Council Member Wood, Chairperson
Council Member Garza, Vice Chairperson

1. **Call to Order**
2. **Roll Call**
3. **Public Comment on Agenda Items (Up to 3 Minutes)**
4. **Presentations:**
 - A. Human Resources Training Presentation on Workplace Harassment & Workplace Violence
 - B. Office of the City Attorney Annual Elected Official Training to City Council Members

Other

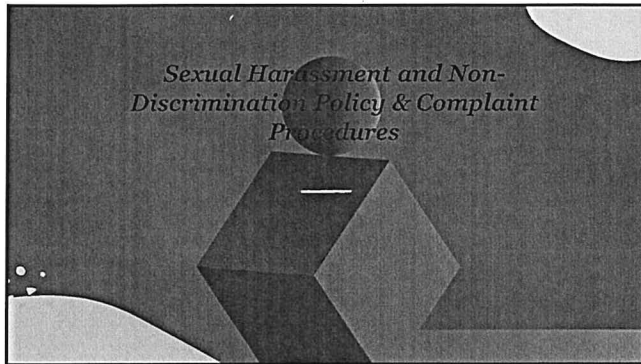
- C. **Closed Session**

Pursuant to MCL 15.268(h) of the Open Meetings Act, City Council will hereby recess into closed session to consult with the City Attorney to consider material exempt from discussion or disclosure by state statute. Specifically, to discuss a written legal opinion from the City Attorney provided under attorney-client privilege and attorney work-product, and which is also exempt from disclosure under the Freedom of Information Act pursuant to MCL 15.243 (g).

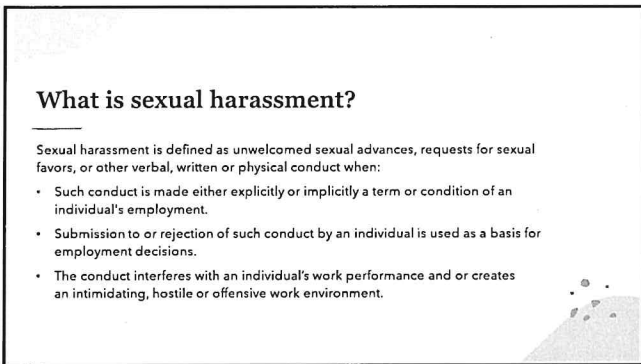
Reconvene

5. **Adjourn**

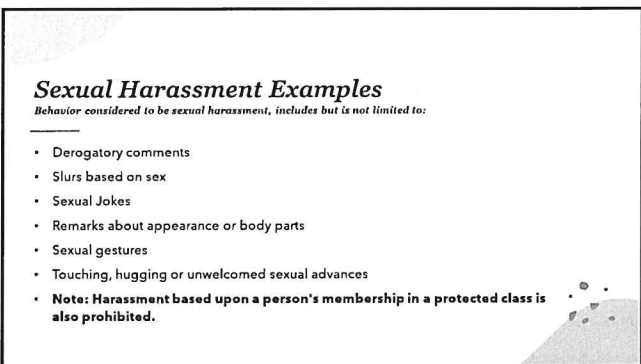
Persons with disabilities who need an accommodation to fully participate in these meetings should contact the City Council Office at 517-483-4177 (TTY 711) 24 hour notice may be needed for certain accommodations. An attempt will be made to grant all reasonable accommodation requests.



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3

What is illegal employment discrimination?

- Any employment decision, policy or practice that is based upon a person's religion, race, color, national origin, gender, gender identity or expression, sexual orientation, age, marital status, height, weight, arrest record, disability, genetic information or other legally protected class.

4

Reporting Sexual Harassment & Illegal Employment Discrimination

- Employees and Supervisors have an obligation to report alleged conduct as soon as possible.
- It is the City's intent to handle complaints as confidentially as possible. Please note that in order to fully investigate matters, questioning witnesses and the person accused of the behavior is necessary.

5

Reporting Sexual Harassment & Illegal Discrimination

- Once a sexual harassment complaint is received an investigation will be started.
- If during the investigation it is determined that an employee has knowingly provided false information, disciplinary action may be taken against the individual.
- Findings of the investigation are confidential, however the employee who filed the complaint will be notified that the issue has been resolved.

6

Retaliation

- The City prohibits any form of retaliation against any employee for filing a complaint or assisting in an investigation.
- If after filing a complaint or assisting in an investigation, an employee believes there are additional allegations of illegal discrimination or retaliation, it must be reported immediately.

7

Workplace Violence Prevention Policy

8

What is workplace violence?

Workplace violence is any act, gesture or statement that is interpreted by any employee as threatening or intimidating; any act or omission that is physically damaging to employees or members of the public while in the workplace, on City property, or that is related to City business or policy, regardless of the location of such acts.

9

Workplace Violence Examples

Including but not limited to:

- Physical or verbal threats
- Assaults
- Battery
- Harassment
- Stalking and other forms of intimidation, actual or implied

10

Reporting Workplace Violence

- 911 (dial) 9-1-1 from internal phone.) if you feel you are in imminent danger
- Your Supervisor
- Department of Human Resources (483-4010)

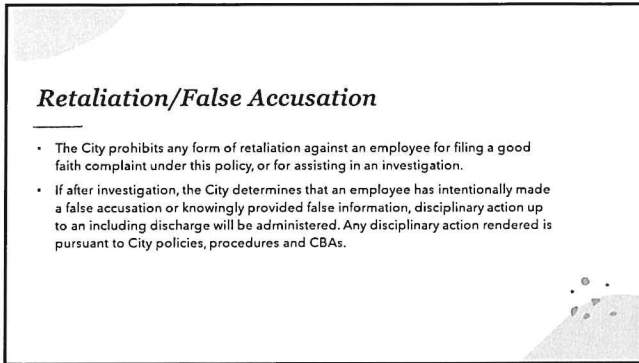
All supervisors shall immediately report violent or threatening behavior to the Department of Human Resources after action necessary to ensure safety

11

Assessment of Reported Behavior/ Resolution

- The Director of Human Recourses or designee will immediately initiate an appropriate process to investigate all complaints.
- The Director of Human Recourses or designee will confer with other appropriate City officials that may include Lansing Police Department Personnel to complete investigation.
- The Director of Human Recourses or designee, the Lansing Police Department (if involved) and the appropriate Department Director will consider all the information gathered in the investigation and determine a resolution.

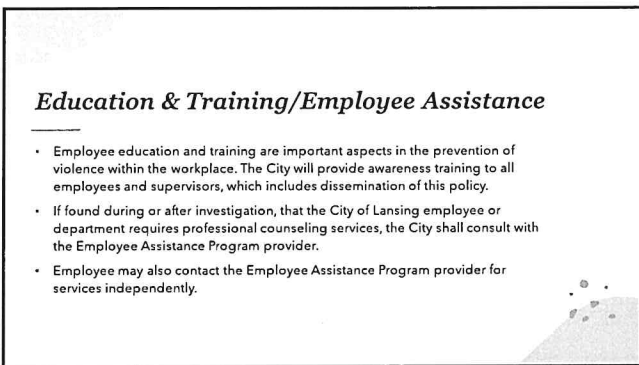
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Retaliation/False Accusation

- The City prohibits any form of retaliation against an employee for filing a good faith complaint under this policy, or for assisting in an investigation.
- If after investigation, the City determines that an employee has intentionally made a false accusation or knowingly provided false information, disciplinary action up to an including discharge will be administered. Any disciplinary action rendered is pursuant to City policies, procedures and CBAs.

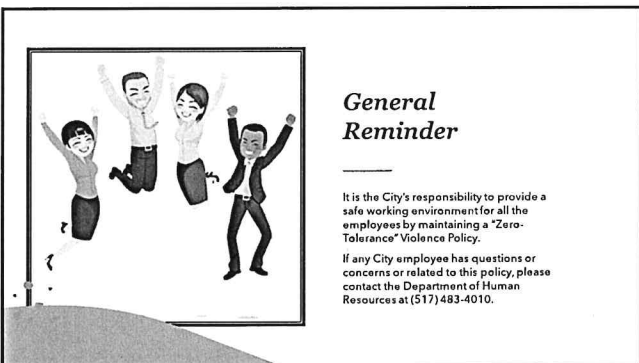
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Education & Training/Employee Assistance

- Employee education and training are important aspects in the prevention of violence within the workplace. The City will provide awareness training to all employees and supervisors, which includes dissemination of this policy.
- If found during or after investigation, that the City of Lansing employee or department requires professional counseling services, the City shall consult with the Employee Assistance Program provider.
- Employee may also contact the Employee Assistance Program provider for services independently.

14

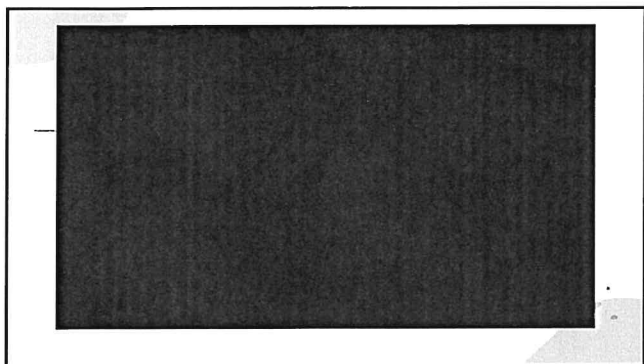


General Reminder

It is the City's responsibility to provide a safe working environment for all the employees by maintaining a "Zero-Tolerance" Violence Policy.

If any City employee has questions or concerns or related to this policy, please contact the Department of Human Resources at (517) 483-4010.

15



16



City of Lansing Workplace Violence Prevention Policy

Andy Schor, Mayor

It is the policy of the City of Lansing to provide a safe work environment, free from recognized hazards, including workplace violence. The City maintains a "Zero-Tolerance" standard for workplace violence whether actual, threatened, verbal or physical. Violent or intimidating behaviors, gestures, acts or verbal assaults will not be tolerated and will be immediately investigated with necessary action taken in response to any reported threats or apparent acts of violence. This policy applies to all City of Lansing employees.

Definition

Workplace Violence:

Includes, but is not limited to, physical or verbal threats, assaults, batteries, harassment, stalking and other forms of intimidation actual or implied. It is defined as any act, gesture or statement that is interpreted by any employee as threatening or intimidating; any act or omission that is physically damaging to employees or members of the public while in the workplace, on City property, or that is related to City business or policy, regardless of the location of such acts.

Reporting Violent or Threatening Behavior

All employees have a responsibility to, immediately, report any act or potential act of violence or threatening behavior committed in the workplace to or by other employees or members of the public. Any employee who fails, on a timely basis, to report threats or acts of violence shall be subject to immediate disciplinary action, up to and including discharge, pursuant to applicable City policy and procedures, personnel rules, City General Requirements and/or collective bargaining agreements. Any employee who has knowledge of, witnesses or experiences a violent or threatening behavior or situation shall call:

1. 9-1-1 (dial 9-9-1-1 from internal phone) if you feel in eminent danger, and
2. Your Supervisor, or
3. Department of Human Resources (483-4010)

All supervisors shall immediately report violent or threatening behavior to the Department of Human Resources after taking action necessary to ensure safety.

Assessment of Reported Behavior

The Director of Human Resources or designee will immediately initiate an appropriate process to investigate all complaints of activities, which include behaviors detailed above. The Director of

Human Resources or designee shall assess the severity of the reported behavior. The Director of Human Resources or designee will confer with other appropriate City officials, which may include Lansing Police Department personnel, to complete the investigation.

Any employee who engages in conduct in violation of this policy, whether verbal or physical, shall be subject to disciplinary action, up to and including discharge, pursuant to applicable City policy and procedures, personnel rules, City General Requirements and/or collective bargaining agreements.

All investigations will be conducted with sensitivity and confidentially, to the extent that it does not hinder the investigation.

Resolution

The Director of Human Resources or designee, the Lansing Police Department (if participating in the investigation) and the appropriate Department Director will consider all information gathered in the investigation and determine the proper resolution to the reported threatening or violent situation. All controls appropriate to ensuring the protection of City employees, citizens and facilities will be implemented.

Retaliation

The City prohibits any form of retaliation against an employee for filing a good faith complaint under this policy, or for assisting in an investigation.

False Accusations

If after investigating any complaint, the City determines that an employee has intentionally made a false accusation or knowingly provided false information, disciplinary action up to and including discharge will be administered pursuant to City policies & procedures, personnel rules, City General Requirements and applicable collective bargaining agreements.

Education and Training

Employee education and training are important aspects in the prevention of violence within the workplace. The City will provide awareness training to all employees and supervisors, which includes dissemination of this policy.

Employee Assistance

If found during or after any investigation, that a City of Lansing employee or department requires professional counseling services, the City shall consult with the Employee Assistance Program provider. Employees may also contact the Employee Assistance Program provider for services independently of this process.

General Reminder

It is the City's responsibility to provide a safe working environment for all employees by maintaining a "Zero-Tolerance" Violence Policy.

If any City employee has questions or concerns related to this policy, please contact the Department of Human Resources at (517) 483-4010.

Issued: 04/17/2002
Reissued: 08/01/2003
Revised: 07/16/2007
Revised: 12/21/2015
Revised: 03/16/2017



Andy Schor, Mayor

No. 6

City of Lansing Sexual Harassment and Non-Discrimination Policy & Complaint Procedures

OBJECTIVE

It is the policy of the City of Lansing to provide a work environment free of unlawful discrimination. Sexual harassment in the workplace is a form of unlawful discrimination. The City's 1978 Charter and the Human Relations Ordinance of 1981 clearly establish that the City's policy prohibits any illegal discrimination against any employee or applicant for employment with the City. It is the City's objective to ensure that no employee during the course of employment with the City should be subjected to illegal discrimination.

In order to enforce this policy, the City has developed a procedure for its employees should they believe they have been subjected to illegal discrimination. Any employee who believes they are subjected to any actions or conduct that they consider illegal discrimination, including sexual harassment, has an obligation to report the activity or conduct. Any employee in a managerial position who has knowledge of any conduct or activity that may constitute illegal discrimination also has an obligation to report the conduct or activity. This policy provides a clear and concise procedure for employees to submit their complaints and provides specific actions that the City will take upon receipt of the complaint. This policy is meant to apply to every office, agency, department and employee of the City.

DEFINITIONS

1. Illegal employment discrimination consists of any employment decision, policy or practice that is impermissibly based on a person's religion, race, color, national origin, gender, gender identity or expression, sexual orientation, age, marital status, height, weight, arrest record, disability, genetic information or other legally protected class. Illegal discrimination includes intimidation or harassment on the basis of a person's membership in any protected classes and others as outlined in the City's Human Rights Ordinance.
2. Employment decisions, practices or policies include job advertisements, recruitment, pre-employment inquiries, hiring processes, job referrals, employment references, job assignments, promotions, pay, benefits, discipline, discharge, training and any term or condition of employment.
3. Discriminatory intimidation is defined as verbal or written statements or physical acts based on a person's membership in a protected class that puts that individual in fear of harm or create a hostile work environment.

4. Sexual harassment is considered a form of illegal discrimination. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal, written or physical conduct when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; or
- Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions effecting such individual; or
- Such conduct interferes with an individual's work performance and/or creates an intimidating, hostile or offensive work environment.

Examples of such behavior that have been found to constitute sexual harassment include but are not limited to derogatory comments or slurs based on sex, sexual jokes, too-familiar remarks about appearance or body parts, unwelcome comments of a sexual nature, repeated unreciprocated requests for dates, sexual gestures, touching, hugging or kissing, graphic material, objects or written material of a sexual nature and the display in the workplace of sexually suggestive pictures, requests or demands for sexual favors, or unwelcome sexual advances.

Harassment that is based upon a person's membership in any protected class is also prohibited.

PROCEDURES

I. General Provisions

- A. Complaints or reports of illegal discrimination should be filed as soon as possible regarding the alleged conduct or activity.
- B. This internal complaint procedure is meant to provide employees with an opportunity to have their complaints resolved internally. If an employee elects to pursue a complaint of illegal discrimination by filing a complaint with the Michigan Department of Civil Rights or the Equal Employment Opportunity Commission, or through a civil court action, the internal complaint procedure may be suspended or terminated.
- C. It is the City's intent to handle all complaints and investigations as confidentially as possible.
- D. The City prohibits any form of retaliation against any employee for filing a complaint under this policy or for assisting in an investigation.

- E. If, after investigating any complaint, the City determines that an employee has knowingly provided false information, disciplinary action may be taken against an individual who knowingly files a false complaint or who knowingly provides false information.
- F. If, after filing a complaint, an individual believes there are additional allegations of illegal discrimination or any alleged retaliation in response to the filing of the complaint, the individual must report the additional allegations of retaliatory conduct promptly.

All management and supervisory personnel are responsible for compliance with these policies.

II. Complaint Procedure

- A. Information/Inquiry Procedure. When an employee is not prepared to file a formal complaint but is seeking information or advice regarding any conduct or activity that they believe may constitute illegal discrimination, the individual may make inquiry to the Department of Human Resources. The Department of Human Resources will assign a member of the Department to promptly schedule a meeting with the individual to discuss the individual's concerns and provide counseling, advice or information as necessary. If information is provided wherein the Human Resources staff member believes that the conduct or activity may constitute illegal discrimination, the individual will be assisted in preparing a complaint pursuant to the formal complaint procedure.
- B. Formal Complaint Procedure.
 - 1. Any employee who wishes to file a complaint of illegal discrimination may do so with their supervisor or with the Department of Human Resources. If the complaint involves a staff member of the Department of Human Resources, the complaint shall be filed with the Office of the City Attorney. If the complaint is filed with a supervisor, the supervisor shall immediately submit the complaint to the Department of Human Resources.
 - 2. Upon receipt of a complaint, the Department of Human Resources shall immediately institute an investigation. Upon completion of its investigation, the Department of Human Resources shall prepare a report with its findings and recommendations and submit it to the Mayor and the City Attorney for approval. The employee complainant will then be informed of the final determination.

Questions concerning the application of this policy should be directed to the Director of the Department of Human Resources and the Director of Human Relations & Community Services.

Office of the City Attorney

2023 Annual Training

1

Fiduciary Duties

As Applied to the City Council of Lansing, MI

Presented by James D. Smierka

2

Fiduciary Duties Defined

A fiduciary duty is among the highest standards of conduct and has been recognized in most of the United States to be a duty owed to the public by public servants and officials.

* Ethics Roundtable of the Michigan Association of Municipal Attorneys, Ethics Handbook for Michigan Municipalities, MICHIGAN MUNICIPAL LEAGUE 1, 9 (May 2008), https://www.mml.org/pdf/ethics_handbook.pdf.

"The People of the City of Lansing declare public office and public employment are held as a public trust and any effort to realize personal gain through official conduct is a violation of that trust. It is the finding of Council that all City Officers and employees are trusted with public functions for the good of the public, that their official powers are fiduciary and are to be used to protect, advance and promote the public interest and not their own; that the people of the City want legislation to ensure that conflicts of interest of officers and employees are eliminated to the fullest extent possible and that violations of rules of ethical conduct are appropriately corrected."

* Lansing Code of Ordinances, Section 290.01.

3

Requirements & Types of Fiduciary Duty

Once one has sworn an Oath of Office, they owe fiduciary duties to the public. This requires "fair dealings and disinterested conduct" in their actions.

Fiduciary duty on the part of City Council is best summarized with two elements:

- * Duty of Loyalty
- * Duty of Care

4

Duty of Loyalty

Councilmembers must avoid conflicts of interest, self-dealing, and exploiting City information or transactions for personal gain.

Conflict of Interest: "Personal interest of a public official places him in a position where he cannot execute his public duties without affecting his private interests, thus denying the public the fair, impartial and objective judgment to which it is entitled."

Self-Dealing:

- * Disclosing confidential information, without authorization, that was gained over the course of serving the City.
- * Personally benefiting from the knowledge or use of confidential information.
- * Using City resources for personal gain or benefit.
- * Using City resources for the gain or benefit of groups you are associated with.
- * Negotiating contracts, issuing loans, or devoting resources to individuals with whom the Councilmember has a financial interest.

5

Duty of Care

Councilmembers must act in good faith and with reasonable care in managing the City. Some examples of the manner of conduct required are, non-exhaustively:

- * Fulfilling the statutory duties and duties under the Lansing City Charter of the Councilmember's Office,
- * Attending meetings and voting on relevant issues,
- * Remaining knowledgeable of the substantive information presented to the Council as well as the procedural and statutory requirements for hearings, publication and posting.

6

Desirable Conduct

- * Be transparent in self-interest, conflicts, voting, and attendance, especially in light of the Open Meetings Act and FOIA.
- * Furnish records when necessary.
- * Complete due diligence and ensure truthfulness in making statements or issuing items relating to City finances.
- * Perform duties of a Councilmember as outlined in the Lansing City Charter, Code of Ordinances, and Michigan Statutes.
- * Keep personal funds and funds related to the City separate.
- * When unsure that a conflict exists, assume the conflict exists, and disclose.
- * Maintain civility when engaged with colleagues, staff, City employees, and the public.

7

Forfeiture of Office

- * In accordance with 2-302 of the Charter, the City Council shall declare the forfeiture of the office of any elective officer or appointee, and in every case, there shall be a public hearing before the City Council with notice published in the same manner as notices of proposed ordinances.
- * Decisions are not reviewable by the Mayor but are subject to judicial review.
- * The position of an official shall be forfeited if he or she:
 - * Lacks at any time any qualifications required by this Charter
 - * Is convicted of a felony while holding the office
 - * Violates a provision of this Charter punishable by forfeiture
- * 2-103 Ineligibility for Office
 - * Any person convicted of either a violation of the election laws of this City, this State, or the USA or a violation of a public trust or any felony
 - * Any person who is default to the City

8

Removal for Cause

- * In addition to the forfeiture of office contemplated by the City Charter, an elected official may be removed for "CAUSE"
 - * Cause implies a reasonable, legal ground for action.
 - * Cause must be of substance, relating to the character, neglect of duty, or fitness of the official removed.
 - * Cause must also be something of a substantial nature directly affecting the rights and interests of the public.
 - * Cause is NOT simply any cause which the municipality may believe to be sufficient.
 - * The Ethics Ordinance, Ch. 290, explicitly provides that a conviction may be grounds for removal.

9

Rights And Responsibilities Of Council Members

- * .1 Members of the City Council shall have all of the rights appropriate to city legislators as established by this Charter or by statute, including the right to make inquiries of City officers and employees and receive specific information in response.
- * .2 The responsibilities and activities shall be to establish policy of the City and shall be legislative in nature.
- * .3 Except as may otherwise be provided by law or this Charter, the administrative activities of the City Council and its members shall be limited to its own staff and they shall give no direct orders to any other city officer or employee.
- * Lansing City Charter 3-207

10

ETHICS

An overview of the Lansing Ethics Ordinance
Presented by Amany Williams

11

Lansing Ethics Ordinance

- Purposes of Ordinance— Ch. 290 Ethics
 - Identifies minimum standards of ethical conduct
 - Establishes penalties for public servants who violate the public trust
 - Provides a process for public servants to identify and resolve ethical issues
 - To promote public confidence in the integrity of public servants
- Penalties
 - Violation of this ordinance shall be a misdemeanor
 - In addition to the criminal penalty, a violation of this ordinance may constitute a ground for forfeiture of office in proceedings brought pursuant to Charter 2-302

12

Prohibitions— You must NOT:

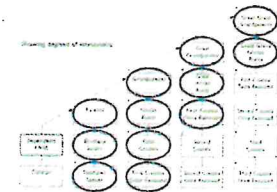
- ❑ Accept non-monetary gifts with a value greater than \$50
- ❑ Offer, give, or solicit any gift, loan, or other thing of value with the agreement or understanding that a vote or action will be influenced— Quid pro Quo is a NO!
- ❑ Falsely represent your own personal opinions as those of the governmental body of which you are a member
- ❑ Act on behalf of the City by making any policy statements when you do not have the authority to do so
- ❑ Divulge confidential information before it is authorized for release
- ❑ Use the power of your office to intimidate or threaten others
- ❑ Use your position to obtain financial gain for yourself or others whom you are associated
- ❑ Engage in a business transaction that allows you to profit from confidential information
- ❑ Participate in, vote on, or otherwise act upon a matter if you have a conflict of interest or have a financial interest, other than as a citizen of the City
- ❑ Assist or agree to assist, directly or indirectly, in the violation of this ordinance

13

Gifts

❑ What's a "Gift"?

- ❑ Anything of value given without the expectation of receiving something in return, including free meals, tickets to events, free trips, and cash.
- ❑ "Gift" does NOT include those received from:
 - A relative within the fifth degree of consanguinity
 - A Spouse, or their relative within the fifth degree of consanguinity



14

FAQs - Gifts

❑ Should I accept the Gift?

- ❑ If the Gift value is greater than \$50 – **No!**
- ❑ If there is an understanding that official action will be influenced – **No!**
- ❑ If there is even the implication that official action will be influenced – **No!**
- ❑ If accepting the gift would cause an appearance of impropriety – **No!**

15

FAQs - Gifts

❑ What Gifts can I accept?

- If the gift is obviously given because of a family or personal relationship – 🍌
- Free attendance at a City Sponsored event, where lunch or other services may be included – 🍌
- Snacks like pop, coffee, or donuts that are offered – 🍌
- Items of little inherent value such as plaques and trophies – 🍌
- Gifts between co-workers and supervisors – 🍌
- A gift you bought yourself –



16

Conflicts of Interest

- ❑ Conflict of Interest questions raised by or about a City Councilmember, at a City Council Meeting, and related to an Agenda Item, will be determined by the City Council at that meeting.
- ❑ At least 10 days prior to the first of any of the events set forth below, a Councilmember who may derive income or benefit, directly or indirectly, SHALL file an affidavit with the City Clerk detailing such income and benefit to be derived:
 - ❑ (A) The bidding of a contract
 - ❑ (B) The negotiation of the contract
 - ❑ (C) The solicitation of the contract
 - ❑ (D) The entry of the contract
 - ❑ (E) Any City action by which you may derive any income or benefit
- ❑ If you have any other conflict between a personal interest and the public interest you SHALL disclose to the City Attorney the nature of the conflict
- ❑ You may NOT vote or otherwise act upon any matter if a conflict exists

17

Affidavit of Disclosure

- ❑ When should I file an Affidavit of Disclosure?
 - ❑ You, your family, or your close associate has a financial interest in a corporation/business that is involved in a City matter
 - ❑ An organization that you, your family, or close associates are involved with, or have prospective employment with, is involved in a City matter
 - ❑ You have a position outside the City, which may be affected by your position as a Councilmember
 - ❑ You have an interest, other than as a citizen of the City, that is directly or indirectly involved in a City matter
 - ❑ Any situation that gives rise to even the appearance of conflict– When in doubt, disclose it!

18

Statements of Financial Interests

- ❑ Each reporting individual SHALL file, by May 1, a sworn written statement of financial interests, unless (s)he has already filed a statement in that calendar year.
- ❑ Statements of financial interests SHALL contain:
 - ❑ (1) The name, address, and type of organization (other than the City) in which the reporting individual was an officer, director, associate, partner, proprietor or employee, or served in any advisory capacity, and from which any income in excess of \$2,500 was derived during the preceding year.
 - ❑ (2) The identity of any capital asset, located within the City of Lansing, including the address or legal description of real estate from which the reporting individual realized a capital gain of \$5,000 or more in the preceding year (other than the sale of your principal residence).
 - ❑ (3) The name of any unit of government, other than the City, which employed the reporting individual during the preceding calendar year.
 - ❑ (4) The name of any person, business or organization from whom the reporting individual received during the preceding calendar year one or more gifts or honoraria having an aggregate value in excess of \$500, NOT including gifts from relatives nor a campaign contribution or expenditure under PA 388 of 1976.

19

Statements of Financial Interests

- ❑ (5) The name and instrument of ownership in any entity conducting business in the city, in which the reporting individual, or a member of the individual's immediate family had a financial interest during the preceding year.
- ❑ (6) The identity of any financial interest in real estate located in the City or other jurisdictions within which the City may own real estate or public utility improvements, other than the principal residence, and the address or, if none, the legal description, including all forms of direct or indirect ownership such as partnerships or trusts of which the corpus consist primarily of real estate.
- ❑ (7) The name of, and the nature of the City action requested by, any person which has applied to the City for any license or franchise, or any permit for annexation, zoning or rezoning of real estate during the preceding calendar year if the reporting individual or a member of the individual's immediate family has a financial interest in such person.
- ❑ (8) The name of any person doing independent contracting business with the City in relation to which business the reporting individual had a financial interest during the preceding year, and the title or description of any position held by the reporting individual in such person.

20

Misuse of Position or Power

Do NOT:

- ❑ Use your office for the private gain of others, including yourself, your family, or nonprofits
- ❑ Use your office to intimidate or threaten City employees or members of the public to gain personal, financial, or political gain
- ❑ Use your office to obtain preferential treatment
- ❑ Use your office to even imply a quid pro quo situation
- ❑ Use City property for personal business, including stationary and phones
- ❑ Leak confidential information to the press, or others who are not privy to such information

21

Finally – The Smell Test

- ❑ Does the situation “smell”?
- ❑ What would this “smell” like if it was headline news?
- ❑ Will this “stink” up your reputation?
- ❑ Will this “stink” up the City’s or the Council’s reputation?
- ❑ Will this leave a “bad taste” in peoples’ mouths?
- ❑ When in doubt-- **Ask the City Attorney!**

22

Open Meetings Act: What is it?

Presented by Lisa Hagen-Lawrence

- **Policy:** All Michigan citizens have the right to know what goes on in government. The OMA provides the legal framework that requires public bodies to conduct nearly all business at open meetings, and punishes failures to do so.
- **State Statute:** All meetings of a public body shall be open to the public and shall be held in a place available to the public (MCL 15.263).
- **This means:**
 - All meetings must be open to the public;
 - All decisions must be made at a public meeting; and
 - All deliberations by a quorum of members must take place at a public meeting, with very limited exceptions.



23

23

OMA Definitions

- **Public Body:**
 - A legislative or governing body including a board, commission, committee, subcommittee, authority or council performing governmental or proprietary function.
 - Lansing City Council is a Public Body.
- **Quorum:**
 - Minimum number of members who must be present for a board to act. The quorum is specified in the statute, charter, or ordinance creating the body.
 - Our Council Quorum is Five Members; Our Committee Quorum is Two.
- **Meeting:**
 - The convening of a public body at which a quorum is present for the purpose of deliberating towards rendering a decision on public policy.
 - OMA does not apply to a conference or informational gathering, provided there is no deliberation and the gathering is not designed to circumvent the Act.
 - Just Because You Don't Call it a "Meeting," Doesn't Mean It Isn't a Meeting.
- **Decisions:**
 - "A determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy." MCL 15.101(4)
 - The Official Business of the Lansing City Council is to Make Decisions.



24

24

OMA Notice Requirements

- Notice of meetings must be given in accordance with OMA and the City Charter and Codified Ordinances.
- A schedule of regular meetings (dates, times, places) must be posted within 10 days of the 1st meeting of the year (MCL 15.265(2)).
- If there is a change in schedule, a new schedule must be posted within 3 days of the meeting at which the change was made (MCL 15.265(3)).
- Notice of rescheduled or special meetings must be posted at least 18 hours before the meeting and available to the public for the entire period of time. If the public is denied access to the notice for any part of the 18 hours, the notice is not valid (MCL 15.265(4) and (7)).
- **Our recommendation:** Clerk and Council staff post notices of rescheduled or special meetings in the glass of the front door of City Hall so they are accessible to the public even when the building is closed. Further, notices of rescheduled or special meetings must also be posted online (MCL 15.265(4)).

NOTICE

**THANK YOU
FOR NOTICING
THIS NEW NOTICE**
YOUR NOTICING HAS BEEN NOTICED

15

25

Public Access to Meetings and Minutes

- Public meetings shall be open to the public and held in a place available to the general public. All persons in attendance have the right to address the public body.
- Members of the public attending the meeting may tape record it, video tape it, broadcast it live, subject only to reasonable rules established by the governing body to minimize disruption (MCL 15.263(1)).
- No person may be excluded from a meeting except for a breach of the peace committed at the meeting from which the person is being excluded (MCL 15.263(6)).
- Minutes must be kept of all meetings. Minutes are public records and must be available for review and copying (except for closed sessions).
- Draft minutes must be made available for public inspection within 8 business days of the meeting. Approved minutes must be available within 5 business days after the meeting at which they were approved.
- Corrections (if needed) must be made to minutes no later than the next meeting after the meeting to which they refer. Corrected minutes must be available not later than the next meeting after the correction and must show both the original entry and the correction.



16

26

OMA in era of COVID

- Concerns with health and safety during the COVID-19 pandemic precipitated a **short period allowing certain exceptions** to the 'in person' meeting requirement
 - These exceptions, allowing members to meet remotely by two way communication – for local or statewide state of emergencies, or a member of the public body who has a medical condition – have since expired
 - Now, only a member of the public body who is away on military duty is permitted to attend a meeting via virtual forum
 - If a member is attending a meeting virtually due to military duty – the meeting notice and meeting minutes must indicate that the member was attending virtually due to this exception, and provide a mechanism by which the public may contact the member regarding items on the meeting agenda. (This can be accomplished by posting a general email to Council/Board staff – who can forward on to the individual member)

17

27

OMA and members of the public

- The Open Meetings Act **only** applies to members of the public body – not general members of the public who wish to attend/participate in an open meeting virtually.
- This means that – if the Council chooses – accommodations could be made for those members of the public body who wish to attend remotely
- Council is under **no legal requirement** to provide for virtual attendance of members of the public
- A physical location of the meeting **must** still be provided
- If a remote option is provided for the public, there must be technology in place that allows for the member of the public to address the body, and to see and hear all members of the public body during the course of the meeting

18

28

Closed Sessions



- * With 6 exceptions related to local government, all meetings must be held in open session.
- * The 6 reasons for a closed session are:
 - Personnel matters, if requested by the named person.
 - Collective bargaining, if requested by either negotiating party.
 - Purchase or lease of real estate up to the time an option to purchase or lease of that property is obtained.
 - Attorney consultation in connection with specific pending litigation.
 - Review applications for employment or appointment to public office if candidate requests confidentiality. Interviews must be held in an open meeting.
 - Consideration of material exempt from discussion or disclosure by state or federal statute. **THIS INCLUDES ATTORNEY-CLIENT COMMUNICATIONS.**
- * The easiest way to avoid violating OMA is to conduct all meetings in open session.

29

Emailing, Texting, Tweeting, Posting, Liking, Poking, Commenting, etc.

- * Voting by secret ballot is prohibited by OMA because it "effectively closes part of a meeting to the public, since the balloting withdraws from public view an essential part of the meeting." *Esperance v Chesterfield Twp*, 89 Mich App 456, 463-64 (1979).
- * Round Robin voting is prohibited.
- * Communicating in groups just smaller than a quorum outside of a meeting, which groups then communicate with each other, is prohibited.
- * Private Communication between members during a public meeting about matters before the body, is prohibited. This includes:
 - Hate Posting
 - Texting
 - Stepping away from the dais, or into the hallway
- * **Real Life Case:** Commissioners used email to discuss and decide how to address Commission matters and would carry out those decisions at public meetings. These Commissioners, even if they did not affirmatively reply to an email, were found to have violated OMA. The Court concluded that each email was a private meeting that deliberated a matter of public policy that should have been open to the public. Further, the Commission's legal counsel advised against emailing a quorum of Commissioners and they did so anyways! *Markel v Mackley*, unpublished opinion no. 327617.
- * **Key Point:** During a public meeting please turn off your cell phone, log off your email and social media sites, and do not talk to other Council members privately about Council matters... or risk violating OMA.
- * **Warning:** Any cell phone used at the dais, would be subject to FOIA requests for related communications.



30

Violations and Consequences



- * A civil action can be brought to invalidate decisions made in violation of OMA (MCL 15.270) or to compel compliance with OMA or enjoin non compliance (MCL 15.271), and a person bringing a civil action may be entitled to court costs and attorneys' fees (see MCL 15.271(4)).
- * A public official who intentionally violates the OMA is guilty of a misdemeanor punishable by a fine up to \$1000 (MCL 15.272(1)), and is personally liable in a civil action for actual and punitive damages of up to \$500 plus court costs and attorneys' fees (MCL 15.273(1)).

31

31

Human Rights: Principles and Values Presented by E. Joseph Abood



32



Human Rights Framework

- Universal
 - All of us have them and they apply everywhere
- Inalienable
 - We were born with them (not granted)
- Indivisible
 - The realization of human rights depends on the protection and fulfillment of all of rights
- Interdependent
 - They depend on each other to be fully realized

33

Role of Policy Makers

Respect	Protect	Fulfill
Government cannot take away your rights or stop you for enjoying those rights	Government must prevent others (individuals or corporations) from violating your rights	Must take positive actions to contribute to your enjoyment of basic human rights

34

Deprivation of Rights

- 42 U.S. Code § 1983
 - Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law
 - The most common Federal litigation filed against municipalities.
 - Known as Municipal Liability

35

Michigan Department of Civil Rights

- The MDCR investigates and resolves discrimination complaints and works to prevent discrimination through educational programs that promote voluntary compliance with civil rights laws.
- The Office of the City Attorney responds to MDCR complaints made against the City, City Departments, and/or City Employees
- For more information: <https://www.michigan.gov/mdcr/>

36

City of Lansing—Human Rights Ordinance

- In addition to Federal and State remedies, the City of Lansing also prohibits discrimination or harassment based on irrelevant human characteristics and discrimination in employment, housing, and public accommodations or services
- Any person who experiences the above, in the City of Lansing, may file a complaint with the HRCS Department within 180 days of the incident
- For more info: <https://www.lansingmi.gov/536/Human-Rights-Ordinance>

37

Types of Sexual Harassment

- Quid Pro Quo
- Hostile Work Environment



38

DEFINITION-QUID PRO QUO

Quid Pro Quo sexual harassment occurs when:

Employment decisions or expectations-hiring decisions, promotions, salary increases, work assignments or performance evaluations are based on an employee's willingness to grant or deny sexual favors.

39

Hostile Work Environment

Hostile Work Environment occurs when verbal or non-verbal behavior in the workplace:

- Focuses on the sexuality of another person or occurs because of the person's gender.
- Is unwanted or unwelcomed.
- Is severe or pervasive enough to affect the person's work environment.

40



Cost to the City

- The need for employees to be “off the job”
- Investigation of the sexual harassment complaint
- Depositions
- Trial
- Low productivity due to diversion of focus
- Negative impact on others
- Adverse publicity about the City

41

What Can You do to Prevent Sexual Harassment?

If you become aware of the questionable behavior and even if there is no complaint you:

- ▶ Must take immediate and corrective action
- ▶ For internal behaviors, contact Human Resources
- ▶ For external behaviors, contact HRCS
- ▶ Document action taken.
- ▶ Communicate action taken to the affected employee, explain what he or she should do if the problem should occur.

42

FOIA Requests

Freedom of Information Act



State Sunshine Act: keep public informed about government functions
Presented by Matthew Staples

43

An Introduction

- A FOIA is a request for existing public records possessed by a public body.
- What's a public record? Any writing prepared, used, or possessed by a public body in performance of an official function. This includes writings, letters, emails, pictures, text messages, maps, audio recordings, video.
 - Use of a personal cell phone or email for work may subject that information to public disclosure. Use common sense.
- What is NOT a public record? Software, personal notes not made part of a public record.
- The public body is not required to create a public record, nor make a compilation or summary.

44

What Do You Do if You Get a Request for Public Records?



- Send it to the Office of the City Attorney ASAP, even if it does not specifically reference FOIA.
- Please send it to our FOIA email: FOIA.Request@lansingmi.gov! This is the best way to make sure we see it right away.
- If it gets sent to our spam or junk folders, a FOIA is considered "received" on the date on which it was discovered.

45

What We Do With the Request

- Record the pertinent portions of the request in a City log, which is posted on the City's website each month.
- Our office will reach out to every relevant department to see if they have responsive records.



The Department

Me

46

Departments that get FOIA'd Most Often



- Building Safety Office, Fire Department and The City Assessor
 - Property Records and Permits
- Clerk
 - Records on file
 - Marijuana
- LPD
 - Arrest records
 - Procedure documents

47

Cost Estimates

- A public body may charge for a request if the request takes more than 15 minutes to process, or, if the document requested already has an associated price to obtain (e.x. – Fire inspector reports)
- Calculation: (time) X (hourly rate of lowest-paid, capable employee)
- Other Costs:
 - Copying Costs
 - Mailing Costs
 - CD/USB (LPD body cam video)
 - Redaction time costs



48



Good Faith Deposit (Big FOIA's)



- If a department estimates that a FOIA will take more than \$50 to process, we send the requestor a Good Faith Deposit
- Good Faith Deposit
 - ½ estimated total costs.
 - Don't begin processing request until receipt of deposit.
 - The other half of the costs, in addition to any costs incurred beyond the estimate, are due upon production of the FOIA.

49

We Get Documents Back

- Departments submit documents to us within five business days.
- If department knows that it will need more time they should notify OCA ahead of time.
- City may request 10 day extension one time.
- If documents include information exempt from FOIA, OCA will do the redacting.
- **DO NOT REDACT ANY INFORMATION PRIOR TO PROVIDING TO OCA.**
 - If you have concerns about information contained in the records please reach out to our office.

50

Common Exemptions/Redactions

- **PRIVACY**
- Attorney-Client Privilege
- Police Investigation Records
- Medical information
- Frank Communications
- Bids for contract with City during open bidding
- *Statutory exemption*- the ONLY REQUIRED redaction (e.x. – marijuana applications MCL 333.27205(4))

51

FOIA Appeals

- Any request that is denied (in whole or in part) may appeal to President of City Council.
 - OCA will provide summary of basis for denial to President.
- Requestor may file action in Circuit Court.



52

City of Lansing Charter: Officers and Elections

Presented by Gregory Venker

- **Qualification for elective office (Ch. 1 Sec 2-102):**
 - Every City official holding elective office shall be a registered elector in the City of Lansing and shall have been a resident of the City for one year prior to taking office. A ward Council member shall be a resident of the ward from which elected or chosen.
- **Ineligibility for office (Ch. 1 Sec 2-103):**
 - Any person who has been convicted of either a violation of the election laws of this City, this State or the United States of America, or a violation of a public trust, or any felony, shall not be eligible to hold any City office for a period of twenty (20) years from the date of conviction.
 - No person who is in default to the City shall be eligible to hold any City office.
 - A person who holds or has held any elective City office shall not be eligible for appointment to a non-elective office or employment for which compensation is paid by or through any agency of the City, until the person has been out of office for one year.



Andy Schor, Mayor

53

53

Eligibility Affidavit

* City Council Rules provide:

- Rule 47. Verification of Qualifications for Elective Office. Upon first taking office and annually not later than May 1 each year, each member of City Council must submit an affidavit to the City Clerk that the provisions of Lansing City Charter 2-102 continue to be met. In addition, the affidavit must also include a statement that each member of Council has no circumstance which would render that member ineligible for elective office pursuant to Lansing City Charter 2-103. The City Clerk shall notify Council leadership (Council President and Vice President) if any member of City Council fails to submit the required affidavit by the deadline, or if a member of Council is ineligible for office pursuant to Lansing City Charter provision 2-103.

54

54

Candidates and Campaign Information



- **City Offices to be Elected in 2023:**
 - Council Member-At-Large (Two Positions)
 - First Ward Council Member
 - Third Ward Council Member
- **Filing Deadline & Election Dates:**
 - Filing Deadline for Candidates: Tuesday, April 25, 2023 by 4:00 pm
 - City Primary Election: Tuesday, August 8, 2023
 - City General Election: Tuesday, November 7, 2023
- **Terms:**
 - All terms are to expire January 1, 2028.
- **Requirements for Candidates:**
 - Must be a registered voter in the City of Lansing and a resident of the city for one year prior to January 1, 2024.
 - A candidate for a Ward office shall be a resident of that ward.
 - Must have sworn to the Candidate Qualification and Eligibility Affidavit.
 - In addition to the above requirements, you must comply with Michigan Campaign Finance reporting requirements through the Ingham County Clerk's Office.
- For more information, go to <https://www.lansingmi.gov/218/Elections>

55

55

Election Dos and Don'ts

- City officials may use their title for identification purposes in endorsements supporting or opposing a candidate or an initiative or referendum, but should not use public facilities or equipment for communications and should make clear that it is their personal view.
- Do not donate to a candidate as a public official or public body using public funds or resources.
 - You may make private donations.
- Do not display campaign materials in City Hall.
 - You may do so at your private residence.
- Do not use social media accounts created for official public office to endorse a candidate.
 - You may do so on a personal social media account.

56

56

Michigan Campaign Finance Act

- The Campaign Finance Act prohibits public bodies from using funds, personnel, office space, computer hardware or software, property, stationary, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services. (MCL 169.257(1)).
 ➤ A violation of the Michigan Campaign Finance Act is a misdemeanor punishable by up to a \$1,000 fine and a year in jail.
- Contribution:** a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party. (MCL 169.204).
- Expenditure:** a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party. (MCL 169.206).



57

What You Can and Cannot Do Under the Campaign Finance Act

- The following are allowed:
 - An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference. (MCL 169.206(2)(b)).
 - The expression of views by an elected or appointed official who has policy making responsibilities. (MCL 169.257(1)(a)).
 - The production or dissemination of factual information concerning issues relevant to the function of the public body. (MCL 169.257(1)(b)).
 - The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication. (MCL 169.257(1)(c)).
 - The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility. (MCL 169.257(1)(d)).
 - An elected or appointed public official or an employee of a public body who, when not acting for a public body but... on his or her personal time... express[es] his or her own personal views;... expend[s] his or her own personal views;... provid[es] his or her own personal volunteer services. (MCL 169.257(1)).
- Payroll deduction plans are expressly not allowed. (MCL 169.257(1)).
- Knowing violation of the prohibition is a misdemeanor. (MCL 169.257(3)).
 - Individuals are punishable by a fine up to \$1,000, imprisonment for up to one year, or both. (MCL 169.257(3)).
 - Persons other than individuals (the City) may be fined up to \$20,000 or the amount of the prohibited contribution or expenditure, whichever is greater. (MCL 169.257(3)).



58

Penultimate Prohibitions



- CONTRIBUTIONS: NO INTERMINGLING OF PUBLIC OFFICE FUNDS AND CAMPAIGN CONTRIBUTIONS!**
- DO NOT use city equipment, personnel, or supplies for anything campaign related; easy to do if you are at City hall and something comes up.
- DO NOT place campaign signs in the public right of way.
- DO NOT place campaign literature in mail boxes, or stapled to utility poles or trees.
- Follow the rules for Candidate filing and reporting; if there is any question, have your Treasurer or Committee Chair obtain clarification from the City Clerk and the Ingham County Clerk.
- Be aware of accepting contributions from corporations or businesses, and any potential for conflicts of interest in your capacity as a Council person.

59

59

THE END.



Andy Schor, Mayor

60

60

