

Amended Bill No. 4695

Ordinance No. _____

Requested by: Steve Ehlmann and Samantha Shadrach

Sponsored by: Council As A Whole

AN ORDINANCE REPEALING IN ITS ENTIRETY SECTION 115.130, HARASSMENT POLICY, OF THE ORDINANCES OF ST. CHARLES COUNTY, MISSOURI (“OSCCMO”), AND ENACTING A NEW SECTION 115.130, ANTI-HARASSMENT POLICY, OSCCMO, AMENDING SECTION 115.370.D, ADMINISTRATION OF THE MERIT SYSTEM, OSCCMO, AMENDING SECTION 115.410.B.3.d APPOINTMENT, AND AMENDING SECTION 115.460.B, DISCIPLINARY ACTION, OSCCMO.

WHEREAS, the St. Charles County Human Resources Department has recommended to the County Executive amendments to the Personnel Administration Plan relating to the County’s anti-harassment policy and certain other matters; and

WHEREAS, Section 7.502 of the Charter of St. Charles County sets forth the establishment of a Merit System and establishes a Merit System Commission that is tasked with review and evaluation of the merit system operation and from time to time recommend changes in policies and procedures; and

WHEREAS, the Merit Commission met on March 5, 2019 and concurred on the Human Resources Department’s recommendation on amendments to Chapter 115 per Section 7.502.4 of the County Charter; and

WHEREAS, it is in the County’s interest to foster a collegial, safe, and respectful work environment; and

WHEREAS, the County prohibits any and all discriminatory behavior or harassment on the basis of race, color, national origin, ancestry, age, disability, religion, or sex; and

WHEREAS, the County prohibits retaliation for filing a complaint or cooperating or participating in an investigation of a complaint of discrimination or harassment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. CHARLES COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Section 115.130 Harassment Prohibited, OSCCMo, is hereby deleted in its entirety and a new Section 115.130 Anti-Harassment Policy, OSCCMo, is hereby enacted as follows:

Section 115.130 Anti-Harassment Policy

A. Purpose. The County is committed to maintaining and promoting a policy of non-discrimination and, as such, the County has a zero-tolerance policy for any and all types of harassment, including sexual harassment. Federal law, Title VII of the Civil Rights Act of 1964, prohibits employers from discriminating against employees and applicants on the basis of gender, race, color, national origin, and religion. The County will not tolerate any type of harassment to or by any of its employees and will take appropriate disciplinary action to stop it when it occurs.

B. Definitions, Forms of Harassment:

1. Harassment- Any unwelcome behavior by the employee that is based on race, religious creed, color, national origin, ancestry, disability, gender, or age. Such harassment includes, but is not limited to:
 - a. Verbal harassment- The use of words to cause harm to a person being spoken to or about. Examples are: epithets, derogatory statements, comments, jokes, or slurs on the basis of race, religious creed, color, national origin, ancestry, disability, gender, or age.
 - b. Physical harassment- The intentional blocking of free movement or passage, or shoving, pushing, or hitting of another. Further behavior such as: pinching, rubbing, grabbing, patting or fondling is also prohibited and a violation.
 - c. Visual Forms of harassment- any form of print, text, video or other medium that is derogatory equates to visual harassment. Examples are: posters, notices, bulletins, cartoons, graphics, emails, social media posts, or drawings on the basis of race, religious creed, color, national origin, ancestry, disability, gender, or age and material that could be deemed sexually explicit.
 - d. Sexual Harassment- Unwelcome sexual advances, requests for sexual favors,

and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- ii. Submission to or rejection of such conduct by an individual is conditioned upon an employment benefit.
- iii. Such conduct has the purposes or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment.

C. Reporting Harassment Complaints

1. If an employee believes he or she is being harassed or if he or she observes such harassment, it is the employee's responsibility to inform the alleged harasser that they are offended by the behavior and promptly contact one of the persons below with whom the employee feels the most comfortable (complaints may be made orally or in writing):
 - a. The employee's immediate supervisor

- b. The employee's appointing authority
 - c. The Director of Human Resources
 - d. The Director of Administration
 - e. The Harassment Complaint Intake Unit
2. The Harassment Complaint Intake Unit is an initial point of contact for County employees who wish to report a potential violation of this Harassment policy, and conducts an initial review of all reported violations of this Harassment policy. Any complaint submitted by means of C.1.a through C.1.d above shall be forwarded to the Intake Unit.
- a. This unit will be composed of the Director of Human Resources or his/her designee(s) and the County Counselor or his/her designee(s).
 - b. The Harassment Complaint Intake Unit can be contacted through email at intakeunit@sccmo.org or by phone message to 636-949-3039. The Harassment Complaint Intake Unit contact information shall be published employee intranet, published along with other required employee notices in common space and shall be made available upon request in the Department of Human Resources.

- c. The Harassment Complaint Intake Unit shall acknowledge receipt of the complaint as soon as possible, but no later than five (5) business days following the date the complaint is received by the Harassment Complaint Intake Unit, if the identity of the reporter is known
 - d. The Harassment Complaint Intake Unit shall review all complaints received and issue one of the following non-binding findings to the Director of Administration:
 - i. No policy violation exists, and no further investigation is recommended, or
 - ii. Potential policy violation exists, and full investigation is recommended, or
 - iii. Not enough information has been submitted to make a finding and further investigation is recommended.
3. The reporter of a complaint may be asked for, and will be required to provide, if available, the following information when reporting or during any investigation responsive to the complaint:

- a. Employee's name and department.
- b. The name of the person or persons committing the alleged harassment.
- c. The specific nature of the unlawful harassment, how long it has gone on and any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against him/her as a result of the harassment or any other threats made against him/her as a result of the harassment.
- d. Witnesses to the harassment, if any.
- e. Whether he/she has previously reported such harassment and, if so when and to whom.
- f. Any and all notes, texts, emails, social media posts, videos in their possession, and any information on any other material that may need to be gathered pertinent to the investigation.

D. The Investigation of the Harassment Complaint.

1. The Director of Administration shall review the Intake Unit's non-binding findings and without undue delay, but no later than fifteen (15) business days, make one of the following determinations:

- a. An investigation is warranted because there is a potential policy violation or because more information is needed, or
 - b. An investigation is unwarranted, and the matter is now closed.
2. The Director of Administration's determination shall be communicated to the reporter of the complaint, if the identity of the reporter is known.
3. If the Director of Administration determines that an investigation is warranted, he/she will delegate the investigation to an attorney in the County Counselor's Office and a representative from the Department of Human Resources, who possess the expertise to administratively investigate such allegations.
4. The confidentiality and privacy of the employees are to be respected during the investigation. Other than with the investigators, the interviewees shall not discuss the investigation with anyone, including other employees.
5. Based upon the conclusions and findings of the investigative report, the Director of Administration shall determine whether the conduct of the alleged violator constitutes unlawful harassment under the guidelines of this policy, State Law, and Title VII. In

making that determination, the Director of Administration shall have the investigator(s) provide him/her with a review of investigative steps, conclusions, and recommendations. The record will remain confidential and under the control of the Director of Administration, in a separate investigative file located away from personnel files.

6. If the Director of Administration determines that the complaint of harassment is founded, he/she shall recommend to the appointing authority that immediate and appropriate disciplinary action be taken against the employee who violated the County's anti-harassment policy.
7. The disciplinary action shall be consistent with the nature and severity of the offense(s), past disciplinary history of the violator, and follow the discipline guidelines as defined in Chapter 115 of the Ordinances of St. Charles County up to and including termination.

E. Obligation of Employees

1. Employees are obligated to report instances of harassment, including but not limited to sexual harassment. All forms of harassment expose the County to liability and it is every employee's responsibility to reduce the County's exposure to liability.

2. Employees are obligated to cooperate in every investigation, including coming forward with evidence, both favorable and unfavorable to the alleged violator. All employees, if requested, must answer fully and truthfully, and if asked for a written statement, that statement must be thorough, complete, and truthful. Omission is a form of untruthfulness and is not tolerated.
3. Employees are also obligated to refrain from filing bad faith or knowingly false complaints of harassment. Such actions may create potential liability against both the employee and the County. Baseless and knowingly false allegations will constitute a separate and distinct investigation and may result in disciplinary action.
4. Employees are obligated to act in a professional manner and abide by the St. Charles County Code of Conduct at all times.

F. Reporting and Cooperation: Disciplinary action may be taken against any employee who fails to report instances of harassment. Disciplinary action will be taken against any employee who fails or refuses to cooperate in any investigation.

G. Training: Harassment and sexual harassment training will be included in new employee orientation, and a complete review of this policy will be covered. In addition, an annual training will be conducted for all

County employees. Employees will acknowledge their receipt and understanding of this policy.

H. Retaliation: The County prohibits unlawful retaliation against anyone who in good faith has complained about harassment, discrimination or retaliation, or anyone who cooperates in an investigation into any such complaint. Retaliation is prohibited, and those in violation of this prohibition may be subject to severe discipline up to and including termination.

I. Confidentiality: All reasonable and appropriate efforts to preserve privacy and to protect the confidentiality of information will be made while conducting an investigation of a complaint. However, due to the nature of investigations, and state and federal laws governing such actions, a guarantee of confidentiality cannot be made to those who report complaints of harassment.

Section 2. Section 115.370.D Administration of the Merit System, OSCCMo., is hereby amended to read as follows (added language in **bold type**, deleted language in ~~stricken type~~).

Section 115.370 Administration of the Merit System

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D. *Powers and Duties of The Human Resources Director Under the Merit System.* In addition to those powers and duties pertaining to the administration of the overall Personnel Administration Program, the Human Resources

Director shall administer the Merit System and have the power and duty to:

1. Report to the County Executive and perform any duties, functions, and managerial or investigative responsibilities assigned by the County Executive not inconsistent with the Charter, applicable laws, or Merit System Rules; and
2. Exercise those powers and perform those duties required by ordinance or rules of the Merit System Commission; and
3. Function as the appointing authority for the Department of Human Resources; and
4. Maintain official employee personnel files in accordance with Part 1 of the Personnel Administration Program; and
5. Certify all additions, deletions and changes in payroll for Merit System employees; and
6. Recruit applicants to fill vacancies; and
7. Hold examinations, consult with appointing authorities as to the qualifications of applicants and establish and maintain eligible lists; and
8. Certify names of candidates to appointing authorities for filling vacancies covered by the Merit System; and
9. Recommend to the Merit System Commission changes in the Classification Plan; and
10. Allocate new positions within the Merit System to position classifications included in

the Position Classification Plan as set forth in this Part 2 of the Personnel Administration Program; and

11. Prevent the suspension, layoff, or dismissal of or discrimination against employees performing military duties pursuant to Chapters 41 and 42, and Section 105.270, RSMo.; and
12. Recommend to the Director of Administration discipline in accordance with this Part 2 of the Personnel Administration Program of any current Merit System employee for the unauthorized release of examination material including written test items, interview questions, or similar confidential material; and
13. Remove from consideration for appointment any applicant, and/or recommend discipline to the Director of Administration in accordance with this Part 2 of the Personnel Administration Program of any current Merit System employee for attempting, or assisting anyone else who is attempting, to gain advantage over other applicants for appointment or promotion to Merit System positions through deceit, misrepresentation or fraud. Disqualified applicants may appeal to the Merit System Commission.
- 14. Recommend to the County Executive updates or amendments to St. Charles**

County's Employee Code of Conduct. The Director shall provide a copy of St. Charles County's Employee Code of Conduct to all County employees and ensure all County employees execute an acknowledgment of receipt.

Section 3. Section 115.410.B.3.d. Appointment - Transfers, OSCCMo, is hereby amended to read as follows (added language in **bold type**, deleted language in ~~stricken type~~).

a. An appointing authority may at any time permanently assign an employee from one position to another in the same position classification in the same department. Upon such assignment, the appointing authority shall immediately notify the Human Resources Director.

b. The appointing authority may, with approval of the Director of Administration, transfer an employee from a position in one classification to another position in a different classification if the Human Resources Director confirms that the positions are in the same pay grade and have the same or similar minimum qualifications.

c. Upon request of an employee and approval of both appointing authorities and the Director of Administration, an employee may move from one position to another position in another department if the Human Resources Director confirms that the

positions are in the same pay grade and have the same or similar minimum qualifications.

d. When warranted by County operations, the Director of Administration may assign an employee from one position in one department, to another position in another department, provided:

- (1) The latter position is vacant;
- (2) The Director of Human Resources confirms that the two (2) positions are in the same pay grade **or the salary of the employee can be reached on the new pay grade** and **the positions** have the same or similar minimum qualifications; and
- (3) If the Department in which the latter position exists is headed by an elected official, that official approves **or does not object to** the employee's assignment.

e. This Section does not affect the power and duty of the County Executive to make transfers under the Charter.

Section 4. Section 115.460.B Disciplinary Action, OSCCMo, is hereby amended to read as follows (added language in **bold type**, deleted language in ~~stricken type~~).

Section 115.460. Disciplinary Action

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B. *Exceptions To Progressive Discipline.* Progressive discipline is not required for probationary employees. Some inappropriate behavior or unacceptable performance is so disruptive, unsafe, or prejudicial to the County, that immediate and severe disciplinary action may be warranted without the use of progressive discipline. Examples would include but would not be limited to:

1. Physical or verbal abuse of a supervisor, fellow employee, or citizen;
2. Falsification of official records;
3. Commission of an act that results in misdemeanor or felony charges or convictions;
4. Violation of the County's Policy on Drugs and Alcohol;
5. Insubordination by failure to carry out a direct order;
6. Theft, misuse or unauthorized use of or access to County property, supplies or equipment, including the County's computer network, systems, software or data;
7. Unauthorized possession of a weapon while on duty;

- 8. Endangering the health and/or safety of fellow employees; and
- 9. Obtaining secondary employment outside the guidelines set forth in Personnel Administration Program, Part 1, Benefits and Conditions of Employment, Section 115.080.
- 10. Violation of the County's Anti-Harassment Policy, OSCCMo Section 115.130.**

Section 5. This ordinance shall be in full force and effect from and after the date of its passage and approval.

DATE PASSED

DATE APPROVED BY COUNTY EXECUTIVE

CHAIR OF THE COUNCIL

COUNTY EXECUTIVE

ATTEST:

COUNTY REGISTRAR