

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2021-22

By Jim Maxwell Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

### REPEALING AND REPLACING CHAPTER 185, DISCRIMINATION AND HARASSMENT, OF TITLE VIII - PERSONNEL PLAN, OF PART ONE - ADMINISTRATIVE CODE, OF THE CODIFIED ORDINANCES OF THE CITY OF BERA, AND DECLARING AN EMERGENCY.

**WHEREAS**, the Council of the City of Berea periodically reviews ordinances establishing employment policies, especially those policies prohibiting discrimination and harassment in the workplace; and

**WHEREAS**, this Council reaffirms those workplace protections provided in Title VII of the Civil Right Act of 1964, prohibiting discrimination and/or harassment due to race, color, religion, sex, national origin or age; along with other prohibitions of discrimination and/or harassment in the workplace due to disability and genetic information; and

**WHEREAS**, best practices for handling allegations of discrimination and harassment have evolved since the establishment of Chapter 185 of the Codified Ordinances, which necessitate its repeal and replacement.


**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Berea, State of Ohio:

**SECTION 1.** That Chapter 185, Discrimination and Harassment, of Title VIII - Personnel Plan, of Part One - Administrative Code, of the Codified Ordinances of the City of Berea, attached hereto as Exhibit "A" and incorporated herein by reference shall be expressly repealed in its entirety and replaced with new Chapter 185, Discrimination, Harassment (Including Sexual Harassment) and Retaliation, attached hereto as Exhibit "B" and incorporated herein by reference.

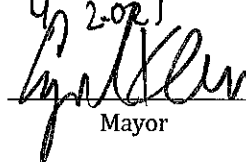
**SECTION 2.** That is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department and for the further reason that it is important that the City's prohibitions against workplace harassment and/or discrimination be compliant with best practices and current law. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

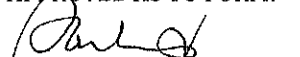
PASSED: May 3, 2021

  
President of Council

ATTEST: Aljo San  
Clerk of Council

APPROVED: May 4, 2021  
  
Mayor

APPROVED AS TO FORM:

  
Director of Law

**Discrimination and Harassment**  
**TITLE VIII OF PART ONE OF THE CODIFIED ORDINANCES**

**CHAPTER 185**  
**Discrimination and Harassment**

- 185.01 Policy and Definitions**
- 185.02 Grievance Procedure**
- 185.03 Penalties**

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**185.01 POLICY AND DEFINITIONS**

- (a) In accordance with Title VII of the Civil Right Act of 1964, it is the policy of the City of Berea that all employees should be allowed to work in an environment free from discrimination and harassment due to race, color, religion, sex, including sexual harassment, national origin or age.
- (b) "Sexual Harassment" is defined as any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:
  - 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Sexual harassment can be committed by a person of either sex against a person of the opposite or same sex; and can occur in any workplace relationship. Sexual harassment could include, but is not limited to, sexually oriented jokes or comments and verbal "kidding" or "teasing," gender biased comments, subtle pressure for sexual activity, physical contact such as patting, pinching or brushing against another's body, and sexually explicit or suggestive posters, calendars or publications in the workplace.
- (c) Discrimination or harassment due to race, color, religion, sex, including sexual harassment, national origin or age is a violation of an employee's rights and is expressly forbidden here in the City of Berea. The City of Berea will not tolerate any form of discrimination or harassment at the workplace, including acts of non-employees. Disciplinary action shall be taken promptly against any and all employees, including all employees with supervisory responsibilities, engaging in discrimination or harassment.
- (d) Each department head will advise of and review with each employee in the particular department the adoption of this policy and complaint procedure.
- (e) All employees at the City of Berea, both management and non-management, are expected to avoid any behavior or conduct toward any other employee that could be interpreted as discriminatory or harassing.
- (f) Retaliation or reprisal against an individual for raising a concern or acting as a witness is prohibited. Anyone who retaliates against an employee in connection with the reporting of a discrimination or harassment complaint shall be subject to the penalties set forth in 185.03.

**185.02 GRIEVANCE PROCEDURE**

The following Grievance Procedure is established to investigate, hear and resolve the complaints of City employees in regard to discrimination and harassment.

- (a) Any employee who feels that he or she has been the victim of discrimination or harassment shall immediately contact his/her department head. This report can be oral or written, but a formal complaint for discrimination or harassment shall be made in writing by the complaining employee within fifteen (15) working days of the incident, which gave rise to the complaint. The complaint shall be made to the employee's department head and shall include the date, time and a description of the alleged discrimination or harassment. If it shall be inappropriate for the complainant to address the complaint to his or her department head where the accused and the department head are the same, then the complaint shall be addressed directly to the Mayor. If the Mayor is the subject of a discrimination or harassment complaint, the complaint shall be made to the Director of Law.
- (b) A department head shall be responsible for forwarding the complaint to the Mayor immediately upon receipt. All department heads and other supervisory personnel shall notify the Mayor immediately upon becoming aware of an oral complaint of discrimination or harassment.
- (c) Upon receipt of a report of discrimination or harassment an investigation shall immediately commence. The Mayor or Mayor's designee shall conduct the investigation and shall immediately contact the person who allegedly engaged in the discrimination or harassment and inform him or her of the basis of the complaint and afford the person the opportunity to respond. That person may be required to complete a written statement. The investigation may include, but is not limited to, the interrogation of witnesses to the alleged conduct.
- (d) Within five (5) working days of the receipt of the written complaint and upon notice to all parties, the Mayor or Mayor's designee shall meet with all affected parties and their respective department heads to make a determination of facts and to attempt to resolve the matter, if appropriate. The investigation and determination shall be completed within ten (10) business days of receipt of the written complaint and upon notice to all parties. In determining whether the alleged conduct constitutes discrimination or harassment, the Mayor or Mayor's designee will look at the record as a whole and the totality of the circumstances and the context in which the alleged incidents occurred. The determinations of the legality of a particular action will be made from the specific facts on a case-by-case basis.
- (e) Each complaint will be handled as discreetly as possible; however, the City of Berea cannot and does not insure complete confidentiality of any such matter.

### **185.03 PENALTIES**

Sanctions for violations of this policy may include one or more, but are not limited to the following: an apology, transfer, direction to stop offensive behavior, counseling or training, verbal reprimand, written reprimand, and suspension without pay for a specific period of time, or dismissal.

TITLE VIII OF PART ONE OF THE CODIFIED ORDINANCES

## CHAPTER 185

## Discrimination, Harassment (Including Sexual Harassment) and Retaliation

185.01	Definitions
185.02	Policy
185.03	Grievance Procedure
185.04	Sanctions

**185.01 DEFINITIONS**

- (a) "Age" means age 40 and older
- (b) "Color" means skin tone
- (c) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual, including have a record of such impairment or being regarded as having such impairment.
- (d) "Genetic information" means information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e., an individual's family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.
- (e) "Harassment" means unwelcomed, offensive conduct that creates a work environment that would be intimidating, hostile or offensive to reasonable people, when such conduct is based on a protected class, as defined herein.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker or a member of the public.

The victim does not have to be the person harassed; but can be anyone affected by the offensive conduct.

Unlawful harassment may occur without economic injury to or discharge of, the victim.

- (f) "National origin" means birthplace, ancestral, cultural, family descent or lineage; the linguistic characteristics common to a specific nationality; marriage or association with persons of a national origin group.
- (g) "Race" means the physical, tribal, ancestral, cultural, geographic or linguistic characteristics common to a specific ethnic group or stock including but not limited to persons having origins in any of the original people of the Americas, Europe, Africa, Australia, Antarctica, or Asia.
- (h) "Religion" means a system of moral and ethical standards as to what constitutes right and wrong which are sincerely held with the strength of traditional religious views.

- (i) "Sex" means gender, as defined by State and Federal law and as further interpreted by Courts of appropriate geographic and subject-matter jurisdiction.
- (j) "Sexual harassment" includes the definition above of "harassment" and also includes any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature when:
  - 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

Petty slights, annoyances and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile or offensive to reasonable people.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.
  - 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Sexual harassment can be committed by a person of either sex against a person of the opposite or same sex; and can occur in any workplace relationship. Sexual harassment could include, but is not limited to, sexually-oriented jokes or comments and verbal "kidding" or "teasing," gender-biased comments, subtle pressure for sexual activity, physical contact such as patting, pinching or brushing against another's body, and sexually explicit or suggestive posters, calendars or publications in the workplace.

**185.02 POLICY**

- (a) In accordance with Title VII of the Civil Rights Act of 1964, it is the policy of the City of Berea that all employees should be allowed to work in an environment free from discrimination and harassment due to race, color, religion, sex, disability, national origin, age or genetic information.
- (b) The City of Berea will not tolerate any form of discrimination or harassment in the workplace, including acts of non-employees. Management and non-management employees are expected to refrain from any behavior or conduct toward any other employee, employer's agent or the public that could be interpreted as discriminatory or harassing in nature.
- (c) Managers, administrators, chiefs, directors, supervisors and elected officials who knowingly allow or tolerate discrimination, harassment or retaliation, including the failure to immediately report such conduct in accordance with the Grievance Procedure, are in violation of this policy and subject to sanctions.
- (d) Retaliation against an individual for raising a concern about a possible violation of this policy or for providing a witness statement about such possible violation is strictly prohibited. Anyone who retaliates against an employee in connection with reporting or providing information about an incident of alleged discrimination or harassment shall be subject to the penalties set forth in 185.05.
- (e) All complaints of sexual or other harassment or discrimination will be taken seriously and investigated thoroughly. It is recognized that not all incidents of sexual or other harassment can be supported by other witnesses or other evidence. Employees are nonetheless encouraged to report all incidents of sexual or other harassment. However, after a thorough investigation, if it is

determined that an employee has intentionally fabricated allegations of sexual or other harassment or pursued a false complaint of sexual or other harassment, then that employee will be disciplined accordingly.

- (f) A copy of this Ordinance shall be provided to all full-time, part-time and temporary employees. The Law Department shall be responsible for providing and/or arranging for periodic employee training.

### **185.03 GRIEVANCE PROCEDURE**

- (a) Any employee who feels that he or she has been the victim of discrimination or harassment shall report the incident within fifteen (15) working days of the incident which gave rise to the complaint. While a written statement is preferred, the individual may make the complaint verbally. The complaint shall be made to the employee's department head and shall include the date, time and a description of the alleged discrimination or harassment. If it is inappropriate for the complainant to make the complaint to his or her department head, then the complaint shall be made to the Director of Law. If the Director of Law is the subject of the complaint, it shall instead be made directly to the Mayor.
- (b) A department head shall be responsible for forwarding the complaint to the Director of Law, who immediately upon receipt, shall advise the Mayor of the complaint.
- (c) An investigation shall immediately commence upon receipt of a report of discrimination or harassment. The Director of Law shall conduct or direct the investigation and shall immediately contact the person who allegedly engaged in the discrimination or harassment and inform him or her of the basis of the complaint and afford the person the opportunity to respond. The investigation may include, but is not limited to, questioning witnesses to the alleged conduct. Employee witnesses are required to participate in any investigation.
- (d) Within five (5) working days of the receipt of the complaint and upon notice to all parties, the investigator shall meet with all affected parties to make a determination of facts and to attempt to resolve the matter, if appropriate.
- (e) If the matter cannot be resolved, then the investigation and determination of facts shall be completed within ten (10) business days of receipt of the complaint and upon notice to all parties and such information shall immediately be provided to the Mayor or the Mayor's designee. In determining whether the alleged conduct constitutes discrimination or harassment, the Mayor or the Mayor's designee shall look at the record as a whole and the totality of the circumstances and the context in which the alleged incidents occurred.
- (f) Every complaint will be handled as discreetly as possible; however, the City of Berea cannot and does not guarantee complete confidentiality of any such matter and will comply with any requirements set forth in Ohio Revised Code 149.43.

### **185.04 SANCTIONS**

Sanctions for violations of this Chapter may include one or more of (but are not limited to) the following: an apology, transfer, direction to stop offensive behavior, counseling or training, verbal reprimand, written reprimand, suspension without pay for a specified period of time, or dismissal.