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**ARA 3.02  
EQUAL EMPLOYMENT**

**Chapters:**

- I. Definitions
  - II. Equal Employment Opportunity (EEO) / Affirmative Action
  - III. Prohibition Against Workplace Harassment, Discrimination, Racism, and Retaliation (Rule 2.02)
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**Auditor's Office Administrative Rule Information and History**

Questions about these administrative rules may be directed to the [Auditor's Office's Operations Management Division](#).

Chapter IV is based on Auditor's Office Administrative Rule 2.06 – Reasonable Employment Accommodations, which was adopted by the City Auditor as an interim rule on October 5, 2020.

The remaining rules were originally adopted by the City Auditor on December 11, 2017, and are adapted from [City Human Resources Administrative Rules](#), as noted below.

Chapter III is based on Auditor's Office Administrative Rule 2.02 – Prohibition Against Workplace Harassment, Discrimination, Racism, and Retaliation (Rule 2.02), which was revised by the City Auditor as an interim rule on October 5, 2020.

These rules were revised and adopted by the City Auditor as ARA 3.02 on *Click to enter date*.

## CHAPTER I: DEFINITIONS

For purposes of this rule, unless stated or applicable law requires otherwise:

- A. “Complaint” means that a person is bringing information forward or protesting something that is affecting their work environment, and the substance of the information or protest involves a protected status.
- B. “Disability” means a physical or mental condition that substantially limits one or more major life activities or a record of such a substantially limiting condition.
- C. “Gender expression” means an individual’s characteristics and behaviors (such as appearance, dress, mannerisms, speech patterns, and social interactions) that may be perceived as masculine, feminine, or other.
- D. “Gender identity” means a person’s internal sense of being male, female, or something other or in-between, regardless of the sex they were assigned at birth.
- E. “Major life activities” include but are not limited to caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. A “major life activity” also includes the operation of a major bodily function, including but not limited to functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.
- F. “Pregnancy” means pregnancy, childbirth, or a related medical condition, including but not limited to lactation.
- G. “Protected status” means race, color, ethnicity, religion, nonreligion, gender, marital status, familial status, national origin, age, mental or physical disability (as defined by the Americans with Disabilities Act and state law), sexual orientation, gender identity, source of income, protected veterans’ status, or other protected status under applicable law.
- H. “Reasonable accommodation” means a change in the work environment or in the way job duties are typically performed that provides an equal employment opportunity.

- I. “Religion” includes all aspects of religious observance and practice, as well as religious beliefs. “Religious beliefs” includes theistic beliefs (i.e., a belief in God), as well as non-theistic moral or ethical beliefs about right and wrong that are sincerely held with the strength of traditional religious views. Social, political, and/or economic philosophies and personal preferences are not considered religious beliefs.

## **CHAPTER II: EQUAL EMPLOYMENT OPPORTUNITY (EEO) / AFFIRMATIVE ACTION**

### **A. Purpose**

The Auditor's Office is an equal employment opportunity employer and is committed to an active affirmative action and diversity program. It is the policy of the Auditor's Office to ensure equal opportunity to all employees and candidates, that employees are selected and promoted based on merit and without discrimination, and that reasonable accommodations are provided to qualified employees and applicants that require them. The Auditor's Office will continue to recruit, hire, train, and promote into all job levels without regard to race, religion, gender, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, gender expression, source of income, or Vietnam-era veterans status.

The City Auditor and all Auditor's Office employees, particularly managers and supervisors, must ensure that the intent and requirements of this rule are implemented in all employee relations and personnel practices. It is the responsibility of every employee to ensure that the work environment is free of discrimination and harassment. The City Auditor, in consultation with the City's Affirmative Action Officer, is responsible for implementing the affirmative action program in the Auditor's Office.

Contractors doing business with the Auditor's Office are required to assure that equal employment opportunities are offered by their organizations, and that they comply with appropriate sections of this rule, applicable state and federal regulations, and the provisions for external affirmative action measures contained in City Code.

### **B. Discrimination on the Basis of Age is Prohibited**

State law forbids employment discrimination on the basis of age. It is unlawful to fail or refuse to hire or to discharge an individual or otherwise discriminate against an individual with respect to their compensation or the terms, conditions, or privileges of employment because of such individual's age. Equal employment opportunity as to age applies to persons who are age 18 or older.

### **C. Reasonable Accommodations for People with Disabilities**

Equal employment opportunity for persons with disabilities includes making reasonable accommodations for qualified disabled applicants and employees who would be able to perform the essential duties of the job if such accommodations are made. Any accommodations made in accordance with the American Disabilities Act must be

documented in writing. Accommodations for people with disabilities are addressed further in [Chapter IV: Reasonable Employment Accommodations](#).

**D. Bona Fide Occupational Qualifications**

Age, gender, or physical requirements may be considered if they constitute a bona fide occupational qualification necessary for performance of the essential duties of a job. Physical capacity requirements relating to minimum standards for employment may be a reasonable selection factor. However, such standards must be reasonably necessary for the specific work to be performed and uniformly applied to all applicants for the particular job category, regardless of age or sex.

**E. Complaint Procedure**

The Auditor’s Office has an internal complaint procedure designed to address and resolve complaints of discrimination, harassment, and retaliation. See [Chapter III - Prohibition Against Workplace Harassment, Discrimination, Racism, and Retaliation \(Rule 2.02\)](#). The Auditor’s Office will take appropriate action to prevent discrimination and racism, including retaliation and harassment, and ensure that the rights of employees who file complaints are respected, whether the complaint is filed through the internal complaint procedure, as a grievance, or with a local, state, or federal agency or court.

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This Chapter was adapted from:

[City Human Resources Administrative Rule 2.01 – Equal Employment Opportunity \(EEO\)/Affirmative Action](#). Adopted by Council on March 6, 2002 (Ordinance No. 176302). Last revised December 4, 2013.

## **CHAPTER III: PROHIBITION AGAINST WORKPLACE HARASSMENT, DISCRIMINATION, RACISM, AND RETALIATION (RULE 2.02)**

### **A. City of Portland Core Values**

The core values of the City of Portland and the Auditor’s Office are:

- Anti-racism,
- Equity,
- Transparency,
- Communication,
- Collaboration, and
- Fiscal Responsibility.

These values guide our actions as we engage our workforce and serve the community.

### **B. Workplace Harassment, Discrimination, Racism, and Retaliation Prohibited**

The Auditor’s Office is committed to creating a respectful, inclusive, equitable, and professional work environment that promotes employment opportunities and is free of harassment, discrimination, racism, and retaliation.

1. It is the Auditor’s Office’s policy to prohibit workplace harassment, discrimination, racism, and retaliation based on protected status.
2. Employees are expected to talk with their supervisor, other managers, Operations Management staff, the City Auditor, or Bureau of Human Resources staff if they experience harassment, discrimination, racism and/or retaliation, regardless of its origin. Supervisors or managers receiving such complaints shall take appropriate corrective action to stop the harassment, discrimination, racism and retaliation, and report the incident to Operations Management as required in this rule.
3. Harassment, discrimination, racism, and retaliation are prohibited in the workplace, in any work-related setting outside the workplace, and when off-duty conduct creates a sufficiently negative work environment based on protected status.  
Examples: By way of illustration only and not limitation, off-duty conduct that would likely create a sufficiently negative work environment based on protected status includes:

- a. A text message to a co-worker where the sender calls the recipient of the text a racial epithet.
  - b. An employee is a member of a known white supremacist hate group and/or publicly actively participates in white supremacist hate group activities, and such conduct negatively impacts the City's legitimate interests.
4. Every employee shares responsibility for bringing to the City's attention conduct that interferes with a work environment free of harassment, discrimination, racism, and retaliation. See [Auditor's Office Administrative Rule 3.11- Ethical Conduct, Chapter X: Duty to Report Unlawful or Improper Actions](#); Whistleblowing for more information about reporting duties and whistleblower protections.

### C. Who this Rule Covers

1. This rule covers all Auditor's Office non-represented employees, interns (paid or unpaid), volunteers, and applicants for employment, as well as contractors providing services to the Auditor's Office, such as outside vendors or consultants. Contractors will be notified of this rule.
2. This rule is consistent with City-wide [Human Resources Rule 2.02 - Prohibition Against Workplace Harassment, Discrimination, Racism, and Retaliation](#), which applies to elected officials, employees, interns, volunteers, applicants, and contractors outside the Auditor's Office, and to represented Auditor's Office employees.

### D. Prohibited Conduct; Definitions and Examples

**NOTE:** The definitions in this rule are designed to be consistent with the Auditor's Office's goal of creating a respectful and professional work environment. However, definitions alone do not capture the Auditor's Office's policy without examples. Accordingly, examples are provided to illustrate the definitions of terms, but are not intended to be the only examples of conduct that may violate this rule.

1. Harassment. The Auditor's Office strictly prohibits harassment based on protected status. Harassment involves inappropriate verbal or physical conduct, which may include conduct that is derogatory or shows hostility towards an individual related to the individual's protected status.

- a. The intent or consent of the persons engaging in the inappropriate conduct, or whether the person toward whom the inappropriate conduct is directed is aware of it, does not matter.
  - b. By way of illustration only, and not limitation, prohibited harassment includes:
    - Racial or ethnic slurs, epithets, hate speech, and any other offensive remarks;
    - Jokes, pranks, or other banter, including stereotyping and microaggressions;
    - Threats, intimidation, and other menacing behavior (whether written, verbal, physical, or electronic);
    - Inappropriate verbal, graphic, or physical conduct;
    - Sending or posting harassing messages, videos, or messages via text, instant messaging, or social media, which have a nexus to the workplace; and
    - Other harassing conduct based on one or more protected statuses identified in this rule.
2. Sexual Harassment. Sexual harassment is a specific form of harassment, which includes a broad spectrum of conduct, including unwanted sexual advances, requests for sexual favors, and other sexually oriented verbal or physical conduct.
- a. Sexual harassment may also include situations where:
    - 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 is used as a basis for employment decisions affecting such individual; or
    - iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
  - b. By way of illustration only, and not limitation, some examples of unacceptable behavior include:
    - Unwanted sexual advances;

- Offering an employment benefit (such as a raise, promotion, or career advancement) in exchange for sexual favors, or threatening an employment detriment (such as termination or demotion) for an employee’s failure to engage in sexual activity;
  - Visual conduct (such as leering, making sexual gestures, and displaying or posting sexually suggestive objects or pictures, cartoons, or posters);
  - Sending or posting sexually-related messages, videos, or messages via text, instant messaging, or social media;
  - Verbal abuse of a sexual nature, graphic verbal comments about an individual’s body, sexually degrading words used to describe an individual, and suggestive or obscene letters, notes, or invitations;
  - Welcome or unwelcome contact with any intimate body part, including but not limited to breasts, buttocks, hair, neck, lips, legs, thighs, and feet (such as pinching, kissing, grabbing, patting, or neck massages/rubs); and
  - Physical or verbal abuse concerning an individual’s gender, gender identity, or gender expression.
3. Microaggressions. Microaggressions are a form of harassment. A microaggression is a statement, action, inaction, or incident, whether intentional or unintentional, that excludes, denigrates, negates, or nullifies a person’s identity or their lived experience.
- a. A microaggression may take the form of an insult or invalidation that communicates a derogatory or negative slight against any protected status covered under this rule, including federal or state law.
  - b. By way of illustration only, and not limitation, some examples of unacceptable behavior include:
    - A White person telling a person of color that “racism does not exist in today’s society.”
    - A person saying to a person who is Black, Indigenous, or a person of color (BIPOC), “Your people must be so proud” in response to an accomplishment or public recognition.
    - Someone telling a person of color, “You don’t speak the language, so you must not really be…”
    - Someone giving a nickname to another because of a struggle to pronounce their name.

- Someone telling a person of color, “You don’t even look...”
  - Someone telling a person of color, “You speak really well for...”
- c. The Auditor’s Office’s goal is to create a work environment of respect, dignity, and open communication. Microaggressions, regardless of intent, are harmful. Whenever a microaggression occurs, interrupting the act, fostering dialogue, and providing awareness are first steps to addressing the issue. Where there are frequent acts of microaggression(s), a more formal process is required to determine accountability and apply corrective action as appropriate.
4. Discrimination. The Auditor’s Office is committed to prohibiting discrimination in the workplace. Discrimination is the unequal or different treatment of an individual in any personnel action based on protected status. By way of illustration only, and not limitation, examples of discrimination may include:
- Making employment decisions (such as promotional decisions, hiring decisions, or discharge or layoff selections) based on a protected status,
  - Using stereotypes or assumptions about a protected status for the purpose of employment decisions,
  - Denial or exclusion from information or meetings that could impact successful job performance based on protected status, and
  - Collusion with another person to treat someone negatively based on protected status.
5. Racism. Racism is a form of discrimination and/or harassment. The Auditor’s Office prohibits racism in the workplace. By way of illustration only, and not limitation, examples of racism may include:
- White employees assuming a Black coworker is of lesser employment status;
  - Asking a Black woman if you can touch her hair;
  - Commenting that a Black employee is “so articulate” or referring to a Black employee as “you people”; and
  - Racial slurs, racist jokes or cartoons, racial stereotypes, paraphernalia like swastikas or nooses, or singing along to racist song lyrics.
6. Retaliation. The Auditor’s Office prohibits retaliation against those who engage in protected activities. Protected activities may include but are not limited to:

- Complaining or threatening to complain about alleged discrimination, racism, or harassment against oneself or others;
  - Resisting sexual advances or intervening to protect others; and
  - Requesting a reasonable accommodation for disability, religion, or limitations related to pregnancy, childbirth, or a related medical condition.
- a. Conduct that would likely deter an individual from reporting or supporting a claim of harassment, racism, or discrimination may constitute retaliation.
- b. The Auditor’s Office will not tolerate retaliation against any individual who reports discrimination, racism, or harassment, or testifies, assists, or participates in any manner in an investigation, proceeding, or hearing, regardless of the outcome of the complaint. Retaliation can occur even if the underlying complaint of harassment, racism, or discrimination is not substantiated.
- c. By way of illustration only, and not limitation, examples of retaliation may include:
- Any adverse employment action, including disciplining or terminating an employee for filing a claim of harassment, racism, or discrimination;
  - Ostracizing or excluding a complainant from a work-related meeting or conversation;
  - Spreading malicious gossip or rumors about a coworker for filing a complaint of discrimination, racism, or harassment; and
  - Scrutinizing work or attendance more closely than that of others without justification.

### **E. Manager / Supervisor Expectations**

Managers and supervisors are required to enforce this rule and maintain a productive, respectful, inclusive, and professional workplace.

1. Managers and supervisors who know or have reason to know that discrimination, harassment, racism, or retaliation may be occurring must take *immediate* action to stop it and report the conduct as required below.
  - a. Implied approval of harassment, discrimination, racism, and/or retaliation (by, for example, laughing and treating a situation as a joke, failing to take action, or

- advising an employee not to complain) is prohibited.
- b. Any manager or supervisor who is aware of harassment, discrimination, racism, and/or retaliation and fails to report it or condones it by action or inaction will be subject to disciplinary action.
2. If a manager or supervisor observes or becomes aware of conduct that likely constitutes harassment, discrimination, racism, retaliation, or other inappropriate conduct discussed under this rule, or receives a complaint from a City employee, an applicant, a member of the public, or a contractor about conduct that likely constitutes harassment, discrimination, racism, or retaliation, they must:
    - a. Contact Operations Management and/or the City Auditor as soon as possible, but no later than two working days after observing or becoming aware of the conduct or receiving the complaint; and
    - b. Upon receipt of a complaint, provide the complainant with a copy of this rule.
  3. Managers and supervisors are not expected to determine whether a Rule 2.02 violation has occurred before contacting Operations Management and/or the City Auditor. When in doubt, managers and supervisors should always err on the side of contacting Operations Management and/or the City Auditor within two working days.
  4. Managers and supervisors are expected to contact Operations Management and/or the City Auditor *even if* the person making the complaint requested that it be kept confidential or the person toward whom the prohibited conduct was directed is not aware of the concerns. Managers and supervisors should inform the individual making a complaint that strict confidentiality may not be feasible.
  5. Managers and supervisors are responsible for ensuring that the following are not permitted in and are removed from the workplace: any media and any notes, comments, posters, or other materials on walls, bulletin boards, or elsewhere in the workplace that reflects harassment, discrimination, racism, or retaliation.
    - a. Managers and supervisors are expected to educate and remind employees about the impropriety of these items, as well as the inappropriateness of jokes, slurs, and other negative verbal comments that violate this rule.

- b. Managers and supervisors are responsible for educating employees that the use of City-owned equipment (e.g., electronic devices such as computers, phones, mobile phones, tablets, or photocopiers) for any of these purposes is also prohibited.

## **F. What Should Employees Do?**

1. All employees, managers, and supervisors are advised to:
  - a. Not engage in workplace discrimination, harassment, racism, or retaliatory conduct in violation of this rule.
  - b. Document incidents and allegations of workplace harassment, discrimination, racism, or retaliation.
  - c. *If you believe you are being subjected to conduct that violates this rule and feel comfortable doing so:* Tell the offender to "stop it!" and say it firmly, without smiling or apologizing. However, nothing prevents you from filing a complaint because you did not tell the offender that their behavior is unwelcome or ask the offender to stop.
  - d. *If you are the recipient of workplace harassment, discrimination, racism, or retaliation prohibited by this rule:* Promptly file a complaint using the procedure below.
  - e. *If you witness prohibited conduct:* You are encouraged to bring that information to the attention of a supervisor, Operations Management, or the City Auditor.
2. Employees are not required to follow any supervisory chain of command in filing a complaint or reporting possible violations of this rule. You may go directly to Operations Management or the City Auditor.
3. Employees who believe they are subject to conduct that violates this rule are encouraged to take advantage of the City's [Employee Assistance Program](#) (but please do not stop there: also bring the issue to the attention of your supervisor, Operations Management, or the City Auditor).
4. If an employee is unsure whether or not the behavior or incident is a Rule 2.02 violation, the Auditor's Office recommends that the employee report it.

5. Nothing in this rule restricts an employee’s right to file a complaint with the [Bureau of Labor and Industries](#) or the [Equal Employment Opportunity Commission](#) or to file a lawsuit.
6. Oregon law requires the City to notify all employees that anyone who intends to sue the City for violation of state law must provide notice of the tort claim within 180 days of the alleged violation of the law. If a timely tort claim notice is given, a complaint alleging an unlawful employment practice as described in Oregon law (ORS 659A.030, 659A.082, or 659A.112) must be commenced not later than five years after the occurrence of the alleged violation. More information about filing a tort claim notice is available from the City’s Risk Management Division.
7. This policy includes conduct that is enforceable as an Auditor’s Office rule but is not prohibited under state or federal law, and is not intended to create a legal right of action that does not exist under state or federal law.

#### **G. Internal Complaint Process: Who to Contact**

1. Auditor’s Office employees are encouraged to discuss harassment, discrimination, racism, and/or retaliation concerns with their immediate supervisor.
2. If an employee does not feel comfortable discussing their concerns with their immediate supervisor, the employee should contact:
  - Their supervisor’s manager,
  - Business Operations Manager,
  - Chief Deputy City Auditor,
  - City Auditor, or
  - Bureau of Human Resources staff.
3. Oregon law requires the City to investigate complaints submitted within four years from the date that the workplace harassment, racism, or discrimination occurred. The Auditor’s Office encourages employees to report concerns promptly so that it can act quickly to address the issue, and to bring forward any complaints the employee may have regardless of when the conduct occurred.

4. A non-City employee (e.g., an applicant, a member of the public, or a contractor) may contact the manager of the Auditor’s Office Division where alleged harassment, discrimination, racism, or retaliation occurred, or may file a complaint with Operations Management or the City Auditor.

## **H. Investigations**

1. The Auditor’s Office will conduct or provide for the investigation of complaints, in accordance with Auditor’s Office procedures. All complaints must be thoroughly and promptly addressed.
  - a. When appropriate, the individual who receives the complaint may discuss options for informally resolving the complaint with the complainant.
  - b. Immediate action may be required in situations where prohibited harassment, retaliation, racism, or discrimination has occurred.
2. The Auditor’s Office will notify the individual making the complaint and the subject of the complaint of the results of the investigation and whether action will be taken.
3. Operations Management will follow-up with the complaining employee not less than every three months for one year after receipt of the complaint to ensure that the harassment, racism, or discrimination has stopped, and the complainant has not experienced retaliation. The complainant may, at any time, request in writing for Operations Management to stop following up on the complaint.

## **I. Confidentiality**

1. The Auditor’s Office will treat all information received in connection with inquiries or with the filing, investigation, and resolution of workplace harassment, discrimination, racism, and/or retaliation complaints as highly sensitive.
2. Employees authorized by the City Auditor to receive and investigate complaints are required to maintain confidentiality to the extent possible. It is expected and anticipated that all parties involved in complaints will observe the same standard of sensitivity. It is emphasized that this practice is in the best interest of all parties; however, absolute confidentiality cannot be guaranteed.

3. A person who believes that they have been the victim of workplace harassment may voluntarily disclose information regarding the incident of workplace harassment.
4. As required under State law, the City may not require or coerce an employee reporting a violation of this policy to enter into a nondisclosure or non-disparagement agreement; however, an employee may voluntarily request to enter into such an agreement with the City and will have seven days after executing the agreement to revoke any such agreement.
  - a. A nondisclosure agreement refers to a contract by which the parties agree not to reveal information with others outside of their arrangement.
  - b. A non-disparagement agreement refers to a contract by which the parties agree not to make negative statements about the other(s).

## J. Training

Auditor's Office employees will attend training on the Citywide counterpart to this rule, [City of Portland Human Resources Rule 2.02](#), upon hire and every three years thereafter.

**Important Notice to all Employees:** Employees who have experienced conduct they believe is contrary to this rule have an obligation to take advantage of the complaint procedure included in this rule. An employee's failure to fulfill this obligation could affect their other rights.

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This Chapter was adapted from:

[City Human Resources Administrative Rule 2.02 – Prohibition Against Workplace Harassment, Discrimination and Retaliation](#). Adopted by Council on March 6, 2002 (Ordinance No. 176302). Last revised August 2020.

## CHAPTER IV: REASONABLE EMPLOYMENT ACCOMMODATIONS

### A. Purpose

The Auditor's Office is dedicated to providing an equitable employment environment for all job applicants, job candidates, employees, interns, and elected officials (collectively, for this Chapter IV, "Workers"). As part of this commitment, to enhance workplace productivity and facilitate equal employment opportunities, the Auditor's Office provides reasonable accommodations for qualified Workers with:

- a disability,
- known limitations related to pregnancy, or
- religious customs and/or beliefs.

Those are referred to in this Chapter as "Accommodated Statuses."

It is the Auditor's Office's policy that reasonable accommodation requests are processed without regard to the requestor's race, color, ethnicity, religion, gender, marital status, familial status, national origin, age, disability status, sexual orientation, gender identity, source of income, veteran status, or other protected status.

The goal of this rule is to ensure that all Workers can readily and efficiently request and receive reasonable accommodations needed to help them perform their essential job functions. This rule facilitates Auditor's Office compliance with [Title I of the Americans with Disabilities Act \("ADA"\) of 1990](#), as amended, and Title VII of the Civil Rights Act of 1964, as amended. The rule also facilitates compliance with Oregon state law (namely ORS 659A.112 and 659A.033).

### B. Reasonable Accommodations

1. A reasonable accommodation is provided when:
  - a. A qualifying applicant or candidate with an Accommodated Status needs an accommodation to have an equal opportunity to apply for a job with the Auditor's Office.
  - b. An Auditor's Office Worker with an Accommodated Status needs an accommodation to perform the essential functions of their job, gain access to the

workplace, or enjoy equal access to benefits and other privileges of employment (e.g., trainings).

2. The Auditor's Office is not required to provide accommodations that would pose an undue hardship (e.g., too costly or disruptive to Auditor's Office operations), fundamentally change the essential functions of a job, violate an applicable agreement, or might threaten the health and safety of the Worker or other employees. However, in these cases, the Auditor's Office may discuss whether some other form of workplace modification may be effective.
3. At times, the City may provide work modifications regardless of whether an Accommodated Status exists when permitted under law. For example, the City's ergonomic program makes special equipment available to employees to address or prevent various injuries and conditions (e.g., an employee with carpal tunnel syndrome may request an ergonomic chair, stand / sit desk, or wrist pad). More information on the ergonomic program is available from the City's Risk Management Division. Requests under the ergonomic program and other employee wellness programs do not require medical documentation.

**NOTE:** Under Oregon law (ORS 653.077), a nursing Auditor's Office employee who has a need to express milk for a child 18 months of age or younger is entitled to a reasonable rest period to express milk each time the employee has a need to express milk. The Auditor's Office will make reasonable efforts to provide a private location for nursing other than a public restroom or toilet stall. For more information, please contact Operations Management.

### **C. Responsibilities**

1. It is the responsibility of the Worker to request a reasonable accommodation. More information on requesting an accommodation is provided in Section F, below.
2. Auditor's Office employees must notify Operations Management upon receipt of a reasonable accommodation request from a Worker.
3. Operations Management is responsible for initiating an interactive process with a Worker who requests an accommodation. The required interactive process is described in Section G, below. If a reasonable accommodation is needed for an Accommodated Status, Operations Management may involve any person Operations

Management deems necessary to ensure an effective and timely accommodation is provided.

4. Managers and supervisors will normally participate in the interactive process with Operations Management and the Worker to fulfill the accommodation request.
5. Operations Management must ensure that the Worker is informed of the outcome of the accommodations request.
6. Operations Management is responsible for coordinating and monitoring the Auditor's Office's reasonable accommodations system, including managing the appeals process for reasonable accommodations and recordkeeping on reasonable accommodations.

#### **D. Confidentiality**

The Auditor's Office will ensure the confidentiality of all medical information obtained through reasonable accommodation requests, as well as the confidentiality of all associated communications during the interactive process.

1. Operations Management must keep all medical documentation in a file separate from the individual's personnel file. See [Auditor's Office Administrative Rule 3.01 – Administration, Chapter III: Employee Medical Record Files](#).
2. Non-medical information obtained during the reasonable accommodation process is shared only on an as-needed basis with those involved in providing a reasonable accommodation.

#### **E. Initiating a Reasonable Accommodation Process**

The reasonable accommodation process begins when the Auditor's Office becomes aware that a Worker may need an adjustment concerning some aspect of the application process, job, or benefit of employment for a reason related to an Accommodated Status. This may occur when:

- A Worker requests a reasonable accommodation or discloses an Accommodated Status,
- A manager or supervisor recognizes an obvious challenge of a Worker due to an Accommodated Status, or

- A Worker returns to work with an Accommodated Status after a leave of absence.

## **F. Requesting a Reasonable Accommodation**

1. A request for a reasonable accommodation is any communication in which a Worker asks for or states that they need a change because of an Accommodated Status. Accommodation requests should be made directly to a manager, supervisor, or Operations Management.
  - a. An accommodation request does not have to include any special words, such as “reasonable accommodation,” “disability,” or “ADA.”
  - b. If a manager or supervisor is unsure if a Worker is requesting a reasonable accommodation, they must immediately contact Operations Management and allow Operations Management to assess the request. Operations Management may ask for clarification if they are unsure if a Worker is requesting a reasonable accommodation.
2. Any Auditor’s Office employee (including the Auditor) who receives an accommodation request must notify Operations Management of the request within one business day.
3. Upon being notified of an accommodation request, Operations Management will provide the Worker with the appropriate [Accommodation Request Form](#), and must initiate an interactive process with the Worker within two business days.
4. If a Worker discloses an Accommodated Status, returns to work with an Accommodated Status (e.g., an ongoing disability), or if a manager, supervisor, or Operations Management recognizes an obvious challenge of a Worker due to an Accommodated Status, Operations Management may proactively inquire of the Worker if a reasonable accommodation would be helpful.
  - a. If the Worker states that they do not need an accommodation, Operations Management will document the offer and declination in writing and no further action will be taken.

- b. If the Worker states that they do need an accommodation, Operations Management will provide the Worker with an [Accommodation Request Form](#) and initiate the interactive process.

**NOTE:** While a Worker does not have to disclose their disability until they feel they need an accommodation, it is recommended that Workers not wait until a performance evaluation or disciplinary proceeding to disclose a disability and request an accommodation. The Auditor's Office is not required to rescind a disciplinary action administered prior to a request for an accommodation. Any prospective discipline after disclosure will be administered as appropriate under the circumstances.

## **G. Interactive Process**

An interactive process is a collaborative effort between the Worker, manager or supervisor, and Operations Management to discuss the need for an accommodation and identify effective accommodation solutions. Depending on the nature of the accommodation request, Operations Management may request that the manager or supervisor initiate and/or lead the interactive process.

1. Generally, an interactive process will be initiated as soon as feasible but no later than three business days after an accommodation request is made. For a job applicant requesting an accommodation, the timing of the interactive process should be a priority so the applicant does not lose out on the opportunity to compete for a job.
2. An interactive process includes but is not limited to:
  - a. Understanding the job-related challenge that is generating the request;
  - b. Learning more about the Worker's Accommodated Status that is prompting the need for an accommodation, including the Worker's ability to perform essential functions of the job, and what options are available to accommodate the Worker; and
  - c. Determining the reasonable accommodation solution(s) that may be effective in meeting the Worker's needs.
3. Depending on the type of accommodation requested, during the interactive process, Operations Management may request assistance, services, and/or input from the

Human Resources Business Partner, City Attorney's Office, Disability Resources and Employment Specialist, other Human Resources staff members, other relevant bureaus, and/or a third-party vendor or community partner (collectively, "Advisors").

4. The Worker's cooperation in the interactive process is necessary. A Worker's failure to cooperate with or participate in the interactive process could result in delayed consideration of a request or in its denial. If this occurs, the Worker may initiate a new accommodation request and interactive process at any time.

## **H. Medical Documentation**

1. If the disability or need for accommodation is obvious or adequate medical documentation has already been provided for other reasons (e.g., a family medical leave or workers' compensation record), medical documentation might not be required. However, the Worker must still complete an Accommodation Request Form.
2. When the disability or need for accommodation is not obvious, or further information is otherwise required as part of the interactive process, a Worker may be asked to sign a release form authorizing Operations Management to secure additional job-relevant information from the Worker's health care provider regarding the nature of the Worker's medical condition and/or whether the requested accommodation is necessary. Operations Management may also give the Worker a list of questions to give to their health care provider or other appropriate professional to answer.

**NOTE:** Medical information will be disclosed only on a need-to-know basis. Accommodations may be provided without informing the Worker's manager or supervisor of the Worker's diagnosis or disability type.

## **I. Determination**

1. When all necessary information is received from the Worker (including medical documentation, if needed) and the Worker's manager or supervisor, Operations Management will assess the accommodation request and determine whether to approve or deny the request. Operations Management may consult with Advisors, on a need-to-know basis, for input on the proposed accommodation, including whether an alternative modification or accommodation may be available.

2. When a decision has been made, Operations Management will communicate the decision to the Worker and will discuss the Worker's questions or concerns, if any, about that decision. The decision will also be communicated to the Worker's manager or supervisor, as well as any relevant stakeholders.
3. *If the Auditor's Office grants an accommodation:* Operations Management will provide written notice of the accommodation to the Worker.
  - a. The notice will include next steps for implementation, as well as any training that may be needed.
  - b. When multiple accommodation options are available to allow the performance of essential job functions, the Auditor's Office retains its right to select which option to implement.
    - i. A decision to provide an accommodation other than the one specifically requested will still be regarded as a decision to grant an accommodation.
    - ii. If an alternative accommodation is offered but declined by the Worker, Operations Management will note the Worker's rejection of the alternative accommodation on the notice letter.
4. *If the Auditor's Office denies a request for an accommodation:* Operations Management will provide written notice of the denial to the Worker and discuss the reason for the denial. The notice must explain the reasons for the denial and the process for appealing the decision. If appropriate, the notice will inform the Worker of alternatives that could be explored.

**NOTE:** The approval or denial of an accommodation request does not prevent the Worker from making another request if they believe an additional or different accommodation is needed due to a changing workplaces or job expectations (e.g., an employee is assigned new duties or works in a new building location). The Auditor's Office may not refuse to process or deny a request for a reasonable accommodation based on a belief that the accommodation should have been requested earlier (e.g., during the application process or before the Worker returned from a leave of absence).

## J. Time Frame for Processing Requests

The Auditor's Office will process requests and, if appropriate, provide accommodations, as quickly as reasonably possible.

**NOTE:** While the Auditor's Office desires to further the purposes of this rule to the best of its ability, because some cases may be more time consuming or challenging than others, all timelines specified in this rule are aspirational.

1. The time frame for processing a request for job applicants and candidates (including providing an accommodation, if approved) is as soon as possible but generally no later than 15 business days from the date the initial accommodation request was made. This 15-day period includes the two-day period in which Operations Management must contact the applicant or candidate after being notified of a request for a reasonable accommodation.
2. The time frame for processing a request for employees (including providing an accommodation, if approved) is as soon as possible but generally no later than 30 business days from the date that Operations Management receives the initial accommodation request. This 30-day period includes the two-day period in which Operations Management must contact the employee after receiving the request.
3. *For disability-related accommodation requests:* If Operations Management must request medical documentation from the Worker's health care provider, the time frame will stop on the day that Operations Management asks the Worker to obtain medical information or sends out a request for documentation. The time frame will resume on the day that Operations Management receives all needed documentation. It is therefore recommended that the Worker work closely with their health care provider to expedite their response (ideally, within one to two weeks).
4. An extension of the time frame for providing an accommodation will be considered in circumstances that may not have been anticipated or avoided in advance of the request for accommodation, or that are beyond the Auditor's Office's ability to control. This may include times when the purchase, testing, and installation of software or hardware for approved accommodations requires additional time.
5. When extenuating circumstances are present, the time for processing a request for a reasonable accommodation and providing the accommodation will be extended as reasonably necessary. In such circumstances, the requestor, manager or supervisor,

and other need-to-know individuals will be informed as to the reason for the delay and anticipated delivery of a solution.

### **K. Expedited Processing**

In certain circumstances, a request for reasonable accommodation may require an expedited review and decision. For example, an expedited review and decision may be required to enable an applicant to apply for a job or participate in an interview, to enable an employee to attend a last-minute meeting or training, or to address a safety-related concern in the workplace. If the accommodation is approved, all reasonable efforts will be made to provide the modification in as short a timeframe as possible.

### **L. Temporary or Trial Accommodations**

Every situation is unique and requires case-by-case analysis of the Worker's limitations, restrictions, specific accommodation needs, and the impact accommodation will have on job performance and Auditor's Office operations.

1. While many accommodations are implemented long-term, some accommodations last for only a temporary period. Implementing a temporary change may offer an opportunity to evaluate an accommodation for effectiveness before making the decision to implement the change long-term. Situations that can warrant a temporary or trial accommodation may include but are not limited to when:
  - Time is needed to research a permanent accommodation solution, to acquire equipment, or to arrange a service;
  - Testing an accommodation is necessary to determine if it is effective and/or compatible with existing City technology;
  - The medical condition is temporary but sufficiently severe enough to entitle the Worker to an accommodation;
  - The accommodation is necessary to avoid temporary adverse conditions in the work environment;
  - An accommodation can currently be provided but may eventually pose an undue hardship if provided long-term.
  
2. If a trial accommodation is found to be ineffective, Operations Management will contact the Worker to restart the interactive process.

### **M. Reassignment**

If a Worker with a Protected Status cannot be accommodated in the Worker's current class or assignment, a permanent or temporary reassignment may be considered as appropriate and if possible.

### **N. Monitoring an Accommodation**

The Worker is responsible for monitoring the effectiveness of the accommodation. If an accommodation is no longer effective, the Worker should notify their manager or supervisor or Operations Management, and the interactive process should be revisited.

### **O. Appeals**

A Worker who disagrees with the outcome of a reasonable accommodation request may submit a reconsideration request (appeal) to the Chief Deputy City Auditor; provided that if the Chief Deputy City Auditor issued the denial notice, the appeal must be filed with the City Auditor. The appeal must be requested by email within 10 business days from the date of the denial. This deadline will be strictly enforced.

### **P. Complaints**

A Worker with an Accommodated Status who believes they have been discriminated against in an employment action or reasonable accommodation request (including any form of retaliation) may file a complaint in accordance with [Chapter III: Prohibition Against Workplace Harassment, Discrimination, Racism, and Retaliation \(Rule 2.02\)](#).

### **Q. Tracking and Record Keeping for Audit Purposes**

To ensure compliance with this rule, as well as relevant federal and state laws, the Auditor's Office and Human Resources track and record accommodation requests.

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This Chapter was adapted from:

[City Human Resources Administrative Rule 2.06 – Reasonable Employment Accommodations](#). Adopted February 13, 2019. Last revised January 1, 2020.

## **CHAPTER V: GENDER IDENTITY NON-DISCRIMINATION**

### **A. Rule**

The Auditor's Office prohibits discrimination on the basis of gender identity and gender expression. No person may be discriminated against based on the individual's gender identity or gender expression in any aspect of employment, including but not limited to recruitment, selection, hiring, wages, hours, benefits, assignment, or promotion.

The Auditor's Office will not tolerate disrespectful language or behavior from its employees. Every person must be addressed in a manner that is consistent with the person's expressed preference, including the use of the person's preferred pronoun or lack of pronoun, as well as preferred name, even if it is different from the person's legal name. The refusal of managers, supervisors, co-workers, or other employees to address individuals in a manner consistent with their expressed preference will not be tolerated.

### **B. Gender-Specific Facilities**

The Auditor's Office supports the City's efforts to accommodate all employees who use gender-specific City facilities.

1. All City employees must have access to City bathroom facilities corresponding to their gender identity or gender expression. The employee decides which bathroom facility to use.
2. In facilities where undressing in the presence of others may be unavoidable (such as locker rooms), the City will make reasonable efforts to accommodate the privacy concerns of all users. Auditor's Office employees using gender-specific facilities where undressing in the presence of others may be unavoidable are expected to deal with each other in a respectful and responsible manner.

### **C. Dress Codes**

Employees are permitted to dress in a manner that is consistent with their gender identity or gender expression. All Auditor's Office employees are expected to maintain a neat and professional appearance.

#### **D. Resources**

Operations Management is available to respond to questions regarding this rule. The City's Diversity Outreach and Employment Resources Office is also available as a resource.

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This Chapter was adapted from:

[City Human Resources Administrative Rule 2.04 – Gender Identity Non-Discrimination.](#)

Adopted by Council on March 6, 2002 (Ordinance No. 176302). Last revised April 25, 2016.

## **CHAPTER VI: BLOODBORNE PATHOGENS: NON-DISCRIMINATION AND SAFETY**

### **A. Non-Discrimination**

Bloodborne pathogens are microorganisms that may be present in human blood and can cause disease in humans. Bloodborne pathogens include but are not limited to Hepatitis B virus (HBV), Hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

1. Discrimination, harassment, and/or disparate treatment of any person on the basis of a bloodborne pathogen infection is prohibited.
  - a. Auditor's Office managers and supervisors may not refuse to hire or promote a person, and may not discharge a person from employment, because the person is or is believed to be infected with a bloodborne pathogen, as long as the person can perform the essential duties of the job, with or without reasonable accommodation, and does not pose a safety risk to other employees or the public.
  - b. Exclusion of a person infected with or believed to be infected with a bloodborne pathogen from any position, on the basis of that infection or belief, is prohibited unless, with reasonable accommodation, there remains a significant or materially enhanced risk of infection to others.
  - c. A competent medical authority designated by the City must evaluate the severity of risks.
2. Persons who believe they have been discriminated against on the basis of a bloodborne pathogen infection may contact Operations Management for assistance. See Chapter III - Prohibition Against Workplace Harassment, Discrimination, Racism, and Retaliation (Rule 2.02).

### **B. Guidelines for Employees with Bloodborne Pathogen Infections**

The Auditor's Office recognizes that bloodborne pathogen infections may pose significant and delicate issues for employees in the workplace and offers the following guidelines:

1. Self-disclosure of bloodborne pathogen infection is voluntary.
2. A person with a bloodborne pathogen infection is encouraged to share information concerning their ability to perform assigned work with Operations Management for

the purpose of reasonable accommodation, help, and understanding, and/or referral to the Employee Assistance Program.

3. Employees needing more specific direction or advice concerning bloodborne pathogens in the workplace can contact Operations Management, or may call City Risk at 503-823-5101 and ask to speak with the Occupational Health Nurse or a Loss Prevention Specialist.

### **C. Confidentiality**

Confidentiality of all employee medical records must be maintained in accordance with all applicable federal and state laws and Auditor's Office human resources rules.

### **D. Bloodborne Pathogens: Responsibilities and Safety**

1. The Occupational Safety and Health Administration ("OSHA") enacted the [Bloodborne Pathogen Standard](#) (29 CFR 1910.1030) to reduce occupational exposure to human bloodborne pathogens that employees may come in contact with in the workplace. This standard establishes a framework for training and medical response.
2. The City is committed to maintaining a healthy and safe work environment for employees and has adopted an [Exposure Control Plan](#) to comply with OSHA standards. The Exposure Control Plan provides guidelines and procedures to prevent, minimize, and respond to occupational exposure to bloodborne pathogens. The Auditor's Office hereby adopts the City's Exposure Control Plan.
3. The Auditor's Office is responsible for identifying positions that have a reasonable likelihood of occupational exposure to bloodborne pathogens, for informing Auditor's Office employees of the City's Exposure Control Policy, and for ensuring that new Auditor's Office employees obtain this information during their orientation.
4. City Risk provides training for employees who may reasonably anticipate exposure to human blood, body fluids, and other potentially infectious materials because of their duties, and facilitates follow-up assessment, education, and testing for City employees who have an on-the-job exposure. More information is available from City Risk.

5. In the event of an occupational exposure, first aid providers should follow the universal precautions outlined in the Bloodborne Pathogen Standard and the [Exposure Control Plan](#).
6. Worksite first aid kits should contain appropriate personal protective equipment (e.g., gloves, gowns, face shields or masks, pocket masks, eye protection, mouthpieces, resuscitation bags, other ventilation devices). Personal protective equipment is “appropriate” only if it does not permit blood or other potentially infectious material to pass through to or reach the employee’s clothes, undergarments, skin, eyes, mouth, or other mucous membranes under normal conditions of use. Contact Operations Management or City Risk at 503-823-5101 for additional information.

#### **E. Employee Refusal to Work**

Employees are not permitted to refuse to work with a fellow employee or member of the public who has or is suspected of having a bloodborne pathogen infection. An employee who is concerned about the risk of exposure should contact a supervisor or the City Risk’s Occupational Health and Infectious Disease Program Manager at 503-823-5238.

#### **F. Education**

The Auditor’s Office recognizes the importance of information and education relating to bloodborne pathogens. Additional information is available at:

- Hepatitis B and Hepatitis C: <http://www.cdc.gov/hepatitis>
- HIV infection and AIDS: <http://www.cdc.gov/hiv/> or the National AIDS Hotline (1-800-448-0110)
- Occupational exposure: <http://www.cdc.gov/niosh/topics/bbp/>
- Risk Management

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This Chapter was adapted from:

[City Human Resources Administrative Rule 2.03 – Bloodborne Pathogen Exposure and the Workplace](#). Adopted March 6, 2002 (Ordinance No. 176302). Last revised April 25, 2016.