



## CITY OF PITTSFIELD

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# AFFIRMATIVE ACTION PLAN POLICY

The City of Pittsfield has established its Equal Employment Opportunity/Affirmative Action Program in accordance with the intent of the rules, regulations and guidelines of the various federal and state laws and agencies having oversight in the equal employment opportunity area.

City of Pittsfield recognizes that contributions from all of the residents of the city, currently and historically comprised of men and women from a variety of ethnic backgrounds, have enriched the character and quality of life in Pittsfield. Therefore, to best serve all residents, the government of the City of Pittsfield hereby affirms its moral commitment to ensure that, as an employer, it will promote, as well as respect and accommodate, diversity in its workforce.

Any employment or personnel practice that intentionally or unintentionally discriminates against any of our employees or applicants for employment is to the detriment of the City of Pittsfield, and will not be permitted. The City, as an employer, strives to be a civic leader in programs and practices which create and, maintain equal employment opportunities for those who are currently under-utilized, underrepresented, and/or disadvantaged and cut off from the economic and cultural mainstream.

It is the policy of the City of Pittsfield not to discriminate against any employee or applicant for employment because of age, race, color, religion, sex, marital status, sexual orientation, gender identity, national origin, disability, or veteran status.

This non-discrimination policy affects all personnel policies of the City of Pittsfield, which include but are not limited to the following: recruitment; hiring; working conditions, benefits and privileges of employment, compensation, training; opportunities for advancement, including upgrades and promotions, transfers, discipline, and termination of employment, including disciplinary discharge and layoffs.

In addition, it is the policy of the City of Pittsfield that goods and services shall be purchased from agencies or companies which have exhibited an established policy and practice of nondiscrimination in employment or in the provision of services.

In order to affirm and fulfill its leadership role in this area, and to provide the best possible service to its residents, the City has and will undertake affirmative efforts to ensure that its employees, at all levels of employment, and in all types of positions, reflect the race, sex, disability and protected group status of labor markets from which the employees are drawn. Furthermore, the City will take affirmative steps to train and develop its workforce, in order to improve employees' opportunities to participate in higher level employment, with emphasis in job classifications, where members of protected groups such as minority groups and women are under-utilized and under-represented.

The City will adhere to the provisions of all federal, state and local laws and regulations governing equal opportunity in employment.

The City will, without regard to circumstances of race, color, religion, sex, marital status, sexual orientation, gender identity, national origin, age, disability, or veteran status:

- Hire persons who are qualified to perform the defined duties and responsibilities of the position to be filled;
- Promote and transfer employees on a non-discriminatory basis;
- Provide all employees with an equal opportunity to participate in applicable training and development programs;
- Compensate all employees based upon the principle of equal pay for equal work;
- Establish and/or maintain all employees' facilities on a non-discriminatory basis.

The City will not limit, segregate, or classify its employees in any way which would deprive any individual of opportunities, or adversely affect his or her status as an employee because of such employee's race, color, religion, sex, marital status, sexual orientation, gender identity, national origin, age, disability, or veteran status.

The City will not discharge any employee because of race, color religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability, or Veteran status. The City shall continue to make reasonable accommodations for physical and/or mental limitations of any employee or applicant.

The City will continue to administer all personnel activities such as compensation, benefits, transfers, training, social and recreational programs, without regard to race, color, religion, national origin, sex, marital status, sexual orientation, gender identity, age, disability, or Veteran status.

The City is committed to equal opportunity and affirmative action and will use a variety of methods of recruiting applicants for employment in order to meet its commitment to equal opportunity and affirmative action, and to maintain and encourage a diverse workforce.

The City will take affirmative steps to develop the talents, skills, and abilities of its workforce and other local resources so that under-utilized and under-represented groups within the population may have the opportunity to advance to higher level positions.

## OBJECTIVES/PURPOSE

### EMPLOYMENT

The City of Pittsfield will continue its efforts to establish a diverse municipal workforce. The City of Pittsfield acknowledges that employment opportunities will be provided through affirmative action to all present and prospective employees regardless of race, color, age, religion, national origin, sex, sexual orientation, gender identity, disability, or Veteran status. This affirmative action policy applies to all personnel action including, but not limited to: recruitment, hiring, compensation, promotions, demotions, transfers, termination, and recall from lay-offs consistent with the provisions of collective bargaining agreements. To enable Pittsfield to accomplish its objectives, the City has embarked on a series of affirmative and innovative recruitment activities, aimed at ensuring that all protected groups are appropriately represented in the municipal workforce.

The City of Pittsfield is adopting an Affirmative Action Program whose purpose is to outline and implement procedures to effectively recruit and employ individuals available to the City, and to achieve parity within the municipal workforce for protected groups.

The City's affirmative action efforts will include recruitment, training and promotions. The City of Pittsfield will accomplish affirmative action employment goals by methods of:

- Workforce Analysis: An analysis of the City's workforce to establish a measurable baseline standard for the City's affirmative action efforts;
- Goals and Timetables: Establish annual and long-term goals for the hiring and promotion of all individuals who are members of protected groups, including women, minorities, disabled persons and Veterans at all levels of City government;
- Recruitment and Employment: Promote recruitment and employment programs designed to support affirmative action goals;
- Internal Review & Reporting Systems: Continue an internal reporting, monitoring and enforcement procedure to achieve compliance goals, timetables, and employment programs;
- Distribution of Policy: Explain the process to distribute the City's affirmative action policy and plan;
- Anti-Harassment Policy: Promote and implement a harassment policy which is aimed at preventing the creation of barriers to employment and participation within the City's workforce;
- Grievances: Explain a grievance process to handle employee allegations formally and informally, and in accordance with Collective Bargaining Agreements.
  - Informal: an internal resolution process to employee allegations.
  - Formal: an external resolution process to employee allegations administered under local, state, and federal agencies.

## **LABOR UNIONS**

To expand efforts in areas affecting affirmative action, the City recognizes the importance of union cooperation. Management shall work with union representatives to enlist their commitment to the goals of the Affirmative Action Plan. Unions include Police, Fire, Teamsters 404, Berkshire Athenaeum, Supervisory, Professional Associations, and all applicable Teachers Unions.

Management will initiate discussions with union representatives to ensure that: Non-discriminatory clauses are included in all agreements, all provisions in each collective bargaining agreement are non-discriminatory, and issues affecting AA and EEO are addressed promptly.

The Affirmative Action Officers/Personnel Directors have sole responsibility to ensure cooperative labor/management efforts in all areas of Affirmative Action and Equal Employment Opportunity.

## **DISTRIBUTION OF POLICY**

To ensure a successful non-discriminatory employment program, the City of Pittsfield's Affirmative Action Program includes procedures for external and internal distribution of the Affirmative Action Plan. The primary objective is to ensure awareness and understanding in order to achieve and maintain the goal of equal opportunity in every area of employment within the City of Pittsfield. Distribution of the Affirmative Action Plan and Program will ensure that sufficient resources are available to appointing authorities in the diligent demonstration of their affirmative action responsibilities of recruiting, hiring, retaining and promoting all qualified members of protected groups, including minorities, women, disabled, and Veteran employees.

A successful and effective distribution of the program will communicate the benefits of the Affirmative Action Plan to ensure support for the program, thus achieving equal opportunity at every level of employment within the City of Pittsfield.

### **The following actions shall be taken:**

#### **INTERNAL**

- The Affirmative Action Policy Statement will be provided to all employees within the City;
- The Affirmative Action Policy Statement will be posted in each department where all employees have access;
- A copy of the Affirmative Action Policy will be available for review in the Personnel Departments, City Clerk's Office, and the Public Library;
- The Affirmative Action Policy will be emphasized to those who are involved with making recommendations concerning the appointment, transfer, and promotion of City Personnel;

- All administrators, managers, and supervisors will be required to attend AA training sessions presented under the direction of the Affirmative Action Officers/Personnel Departments;
- Discuss the Affirmative Action Policy thoroughly during employee orientation;
- The Affirmative Action Officers will maintain active liaison status with city employee organizations and bargaining units;
- The Personnel Department will regularly update all Affirmative Action-Equal Employment Opportunity bulletin boards in City departments and buildings.

#### **EXTERNAL**

- The Affirmative Action Plan will be on file for review at the Pittsfield Public Library, the City Clerk's Office, and the Personnel Departments;
- In all employment advertisements or communications, the City will refer to our AA-EEO policy and state the City's encouragement for all members of protected groups to apply for municipal positions;
- Publicize the Affirmative Action Policy to all organizations within the community whose membership represents any protected group. Organizations contacted will be informed of our Affirmative Action Policy commitment to meeting minority, female and disabled hiring goals, as well as hiring goals for all other members of a protected group through notification of current openings, encourage applicants from targeted groups to apply. Continuous contact with community and recruitment organizations will be maintained by the Affirmative Action Officers and Personnel Departments;
- Ongoing efforts to cultivate and increase additional recruiting sources will be emphasized, expressing our desire to hire and retain members of protected groups;
- The City of Pittsfield's Affirmative Action Policy Statement will be included in all contracts, subcontracts, purchase orders, leases and other documents and/or correspondences covered by Executive Order 11246 and other related state and federal statutes;
- Send written notification of Pittsfield's Affirmative Action Program to all subcontractors, vendors, and suppliers requesting appropriate action on their part;
- The Personnel Departments will provide information to community media sources to publicize results of the City's Affirmative Action Program.

## **RESPONSIBILITY AND ACCOUNTABILITY**

### **THE RECEIVER**

The Receiver has ultimate responsibility for the overall administration of the Affirmative Action Plan. The Receiver will provide direction on the development of policy to ensure implementation and effectiveness of the Equal Employment Opportunity/Affirmative Action Programs. The Receiver will also ensure that appointing authorities, department heads, managers and supervisory personnel are held accountable for compliance with and achievement of department affirmative action goals and timetables by administratively supporting affirmative action employment, training and promotional objectives, consistent with the collective bargaining agreements and with the City's personnel policies.

### **AFFIRMATIVE ACTION OFFICER**

The Receiver has delegated the Affirmative Action Officers/Personnel Directors with the responsibility of development, review, implementation and administration of the Affirmative Action Plan. The Affirmative Action Officers report directly to the Receiver and are accountable for all phases of the program.

The Affirmative Action Officers will prepare, maintain and coordinate the preparation, dissemination, implementation, revision and monitoring of the City of Pittsfield's Affirmative Action Plan and Policy.

The Affirmative Action Officers will prepare information and act as staff persons for the Receiver's Office. Other duties and responsibilities include but are not limited to:

### **EDUCATING**

- Distribution, publication and explanation of the Affirmative Action Plan, including policy and program-related activities, internally to city employees and externally to the community in general and to specific groups and target populations;
- Encouraging protected group members to apply for training programs;
- Providing technical assistance and training to all City departments, agencies, boards, and commissions to plan and implement EEO and Affirmative Action programs, initiatives and activities, and to ensure understanding, support and compliance from all supervisors;
- Assisting in the development of training programs to improve the skills of existing employees to maximize their opportunities for internal promotion and career advancement within the city;
- Encouraging an atmosphere of acceptance and inclusion among city workers with diverse backgrounds, to promote and encourage productivity in harmonious working relationships, and to improve retention and job satisfaction;

- Working with the City's Legal Department to establish a process collecting and disseminating significant developments in affirmative action and equal employment laws, policies, regulations, court decisions and rulings;

#### **MONITORING**

- Developing goals and timetables for various types of positions in the departments of the City;
- Developing and maintaining a system for internal program evaluation including data collection and analysis;
- Developing implementation guidelines for the Affirmative Action Plan, applicable to all staff and participants;
- Auditing and monitoring all personnel practices, particularly recruitment, hiring, promotion, transfer, termination, and training patterns to ensure compliance with law and policy;
- Preparing quarterly EEO/AA reports to the Receiver and the Affirmative Action Advisory Committee;
- Maintaining records of all Affirmative Action activities;
- Report to the Receiver on any failures to comply with any EEO/AA regulations, including recommendations for appropriate corrective action, including discipline, up to and including discharge;
- Acting as the Receiver's liaison with the Massachusetts Commission Against Discrimination (MCAD), the regional Equal Employment Opportunity Commission (EEOC) office and other regulatory oversight agencies, disseminating information from those agencies on current legislation and court decisions or other policy guidelines concerning EEO and Affirmative Action;

#### **MEDIATING**

- Working with department heads in solving EEO problems which may arise, and continually attempting to prevent the occurrence of such problems;
- Attempting to mediate interpersonal disputes or conflicts with EEO implications whenever possible and appropriate;
- Developing an employee and applicant grievance mechanism to resolve complaints alleging discrimination/harassment in hiring, firing, promotion, demotion, lay-off, training, and denial of reasonable accommodation;
- Providing prompt, fair and impartial processing of complaints of discrimination, and providing prompt, fair and impartial EEO counseling as needed;

## **RECRUITING**

- Assisting the Personnel Department and other departments with generalized and targeted recruiting to ensure a diverse mix of applicants for consideration in selection and hiring. In those job categories where under-representation is evident, extensive outreach recruitment will be done to ensure that eligible lists submitted to departments consistently contain a representative number of members of a protected groups;
- Participating in community efforts to improve conditions which affect employability and serve as a liaison with various community groups.

## **DIRECTORS OF PERSONNEL/AFFIRMATIVE ACTION OFFICERS**

The Directors of Personnel/Affirmative Action Officers play a primary role in ensuring that the City's personnel policies are and remain non-discriminatory in design, impact and implementation. The Directors of Personnel/Affirmative Action Officers report directly to the Receiver and set the administrative tone of encouraging equal employment opportunities for employees and applicants. They will emphasize a desire to hire and retain members of protected groups.

### The Directors of Personnel/Affirmative Action Officers shall:

- Oversee the administration of the City's recruiting, hiring, training, promotion, and discipline process consistent with Equal Employment Opportunity and supportive of Affirmative Action;
- Assist the affirmative action function in monitoring progress in meeting departmental and overall city goals and timetables in affirmative action;
- Work closely with appointing authorities, department heads, and managers providing technical assistance helping them meet affirmative action goals;
- Establish and conduct a recruitment program to ensure a multicultural mix of qualified applicants for city positions;
- Identify and make recommendations to the Receiver on the use of available certification methods, such as Personnel Administration Rule 10, section 47A Massachusetts General Laws, and selective certification where the underutilization of minorities, women, disabled persons and Veterans is documented;
- Assist in career development efforts for employees;
- Maintain all central personnel records in a manner consistent with applicable employment practices, laws and regulations;
- Provide other assistance necessary in helping the City achieve and maintain its affirmative action goals.

## **DEPARTMENT HEADS/MANAGERS**

The success of the City's Affirmative Action Plan hinges upon the support of each management employee responsible for hiring and/or supervision functions. A key responsibility for department heads and managers is to gain support for affirmative action by educating their employees as to the goals and objectives of the program, discussing affirmative action with a positive attitude, and demonstrating concern that the City's Affirmative Action Program succeeds.

- Each department head shall have direct responsibility for effective affirmative action within his or her department and shall be held accountable to the Receiver for the attainment of specific departmental goals. Department heads have the responsibility for making recommendations on decisions as to whom to appoint or promote from a group of eligible candidates. If a particular department fails to meet Affirmative Action goals and timetables, the Department Head must submit to the Personnel Director/Affirmative Action Officer written documentation of reasons for failure to meet the goals and timetables.
- Where under-utilization exists and there are eligible candidates belonging to a protected class, any request to hire a non-protected group candidate in such a job category will not be approved without written explanation as to why the protected group individual was not hired.
- The Receiver will review the EEO/AA record of each department annually with the department head and other managerial staff as appropriate and if necessary take corrective action.
- The Department Head's EEO/AA record will be taken into account when reviewing possible promotion or reassignment, compensation, retention, and term of employment.
- Department Heads are responsible for encouraging an atmosphere of acceptance, tolerance, and openness to diversity within their departments, in order to foster productivity, harmonious working relationships, job satisfaction, and improved retention within a diverse workforce.
- Department Heads are responsible for assisting in identifying training needs of individuals within their departments for whom training would be helpful in developing improved skills useful in career development.
- Managerial employees are required to attend an annual EEO/AA training program developed, sponsored or approved by Personnel Directors/Affirmative Action Officers.

## RECEIVER'S AFFIRMATIVE ACTION ADVISORY COMMITTEE

The Receiver shall appoint an Affirmative Action Advisory Committee. The Committee shall consist of citizens, union representatives, and city officials, including individuals representing each of the major racial minority groups in the Pittsfield area with expertise in the areas of affirmative action, civil service, staff development, training and broader areas of civil and human rights. This Committee shall meet quarterly to hear the report of the City's Affirmative Action Officers on progress in affirmative action.

In the development of its role as an integral part of the Affirmative Action Plan it is the responsibility of the Committee to monitor the Affirmative Action Program and to make recommendations to the Affirmative Action Officers and the Receiver regarding affirmative action progress.

The Committee mission statement is as follows:

*The Pittsfield Affirmative Action Committee exists to protect and expand equal opportunity in the City of Pittsfield. We seek this goal as a matter of equity for individuals and in the conviction that the entire community will be better served by it.*

*We believe that the City will be more responsive to its citizens when it functions as an employer, appointing authority, or purchaser of goods and services with an awareness of and sensitivity to people's differences.*

*Thus, our concerns include but are not limited to:*

- *The Receiver's appointments*
- *Recruitment and hiring*
- *Promotion and career development*
- *Contracts and purchasing*
- *Education and training*
- *Accurate and timely personnel information*
- *Redrafting and implementation of the AA/EEO Plan*
- *Overall functioning of city government.*

*We are an advisory and advocacy group. We will assist the City departments in general and the Personnel Departments in particular. At the same time we will function independently of them.*

## **EMPLOYEES**

The success of the Affirmative Action Plan depends on the support of each person employed by the City of Pittsfield. Employees must demonstrate sensitivity to and respect for individual differences, promoting an atmosphere and a sense of mutual belonging and fellowship when working with other employees and with the public.

Employees are encouraged to recommend new and creative ways to attract employees to work for the City of Pittsfield and to inform established groups of openings for the City of Pittsfield. Employees may submit suggestions for strengthening the City's Affirmative Action Programs, and are encouraged to do so. It is through maximum cooperation from all employees that this Affirmative Action Plan will succeed.

## **THE AFFIRMATIVE ACTION OFFICE**

The office of affirmative action was established in accordance with the Receiver's Executive Order, dated . It reads as follows:

I HEREBY ORDER, PURSUANT TO ST. 1991, C. 200, SECTION 8(3), THERE SHALL BE WITHIN THE DEPARTMENT OF PERSONNEL, AN AFFIRMATIVE ACTION OFFICE TO BE HEADED BY AN AFFIRMATIVE ACTION OFFICER WHO SHALL BE APPOINTED BY THE CHIEF EXECUTIVE OFFICER AND SHALL SERVE AT HIS PLEASURE. SAID AFFIRMATIVE ACTION OFFICER SHALL BE RESPONSIBLE FOR DEVELOPING AND IMPLEMENTING AN AFFIRMATIVE ACTION PLAN FOR THE RECRUITMENT AND PLACEMENT OF QUALIFIED MINORITY, FEMALE AND HANDICAPPED APPLICANTS FOR EMPLOYMENT INTO APPROPRIATE POSITIONS WITHIN THE SEVERAL CITY DEPARTMENTS. FOR THE PURPOSE OF THIS SECTION, THE PERSONNEL DIRECTOR MAY ALSO SERVE AS THE AFFIRMATIVE ACTION OFFICER.

The Receiver appointed the City's Personnel Directors to serve as the Affirmative Action Officers.

## **RECRUITMENT**

The City of Pittsfield seeks to hire or promote qualified individuals for all vacant positions.

To assure conformance with collective bargaining agreements, civil service procedures, Affirmative Action Programs, and state and federal law, the following procedures have been adopted:

1. The employment function is centralized in the Personnel Departments and all employment contacts will be originated by representatives of those department;
2. When an opening exists or is contemplated, Department Heads will complete a requisition form and forward to their Director of Personnel.

3. Once the requisition has been approved by the Receiver, a job posting will be prepared from information contained on the requisition;
4. The job opening will be posted for current employees, and applications for the position will be accepted for at least five (5) working days, consistent with the City's Personnel Office procedures and collective bargaining agreements;
5. The job opening will be posted in conspicuous places in every municipal building for a period of five (5) working days;
6. Postings of all positions will be distributed to concerned agencies that are resources for employees from under-represented groups and the Personnel Offices will update and maintain an active listing of recruiting sources;
7. In cases where no acceptable candidates are found from within the department or current workforce, Personnel Directors will assist Department Heads in obtaining the appropriate civil service list when appropriate, and the Personnel Offices shall recommend the use of Personnel Administration Rule 10 or selective certification. In the case of non-civil service positions or for positions for which no civil service list exists, Personnel Directors will place the appropriate advertisement;
8. This policy is for every position within School/City government, regardless of classification.

#### **INTERNAL**

- Pursuant to civil service law and union contract, all vacancies shall be posted in each municipal building, Department Heads shall encourage the hiring of all protected group applicants;
- Individuals from under-represented groups shall be notified of job openings and encouraged to apply with the state's Department of Personnel Administration (DPA) to fill civil service classifications. The City will work with DPA to review job requirements for city employment. The City's Personnel Department will recruit for specific entry-level promotional exams.

#### **EXTERNAL**

- The Affirmative Action Officer shall develop a recruitment program to work closely with outside agencies and organizations to recruit members of protected group members.
- The Affirmative Action Officers will continue recruitment plans for open or promotional examinations where special efforts to increase representation of all members of protected groups where special efforts are needed.
- The Affirmative Action Officers/Personnel Department will participate in "career days," job fairs, high school programs and college activities to recruit members of protected groups.

The Affirmative Action Officers/Personnel Departments will utilize all available sources to reach members of protected groups. Steps shall include:

1. Direct contact with organizations specifically concerned with equal opportunity in employment for all members of protected groups;
2. Direct contact with employment officers at colleges, secretarial schools or other bodies or institutions with predominantly minority or female enrollment;
3. Direct contact with community and neighborhood action groups who can be helpful in referring applicants for employment;
4. Free media contact with publications, newspapers, cable televisions and other media sources that reach out to all members of protected groups;
5. Identification and maintenance of an active listing of recruiting sources, together with continuous efforts to use, expand and update listing of these recruiting sources.

## **SELECTION /PROCEDURES**

To ensure that the selection process is job-related, and to eliminate discriminating barriers to equal employment opportunity, uniform hiring procedures will be strictly adhered to for all positions. The City of Pittsfield uses a standard application form in an effort to eliminate subtle discrimination which can occur with a reliance on resumes alone. In addition, use of the standard form ensures that applications do not include questions which are not job-related and which have shown to disproportionately reject members of protected groups.

To assist persons responsible for interviewing and hiring city personnel in achieving the goals of this program, the following actions will be taken;

1. The Personnel Department will review and evaluate all phases of the personnel selection process (application forms, types of test, routing procedures, job qualifications, etc.) to ensure that artificial barriers are eliminated;
2. An affirmative action record in the form of an Applicant Flow Log (AFL) will be kept for each position filled. A record of persons interviewed, accepted, or refused for each new hire and promotion showing race, sex, disability, and veteran, or other underutilized group status should be maintained and may be reviewed by MCAD. In cases of underutilization, if a member of a protected group is not hired, a reason for this shall be supplied;
3. The Affirmative Action Officers will provide affirmative action and equal employment opportunity training to persons involved in the employment process;
4. The Affirmative Action Officers will assure that an appropriate number of protected group members are represented on hiring committees;
5. The Affirmative Action Officers will develop a list of interview questions to avoid because of their discriminatory impact;

6. In conjunction with the 504 Coordinator/Disabilities Commission, the Affirmative Action Officers will review all medical standards and application forms to ensure that they are job-related and do not present artificial barriers;
7. The Affirmative Action Office/Personnel Director will confer periodically on hiring processes and related documents to ensure that they follow established non-discriminatory guidelines;
8. Where the Personnel Departments have demonstrated an under-utilization of members of protected groups within civil service job classifications, the Personnel Directors shall recommend the utilization of the following to the Receiver:
  - Personnel Administration Rule (PAR) 10 where applicable,
  - Section 47A of Chapter 31 of the Massachusetts General Law,
  - Advertise in publications directed towards members of protected groups,
  - Where under-utilization exists and there are eligible members of a protected group available, any request to hire a non-member of a protected group will not be approved by the Appointing Authority without written explanation.

## **TRAINING/UPWARD MOBILITY**

The Affirmative Action Officers will insure that protected group members who are already employed are aware of the opportunities and programs for training and career development. Our responsibility does not stop at recruitment but carries on with training in order to retain and prepare members of protected groups for promotional opportunities.

To aid in the preparation of protected group members, including minority, women, disabled and Veteran employees, the following actions shall be taken:

1. Protected group members shall be encouraged to apply for training programs;
2. In conjunction with appropriate departments, the Personnel Directors/Affirmative Action Officers will work toward developing internal, identifiable employee promotional ladders;
3. The Personnel Directors/Affirmative Action Officers will establish relations with outside agencies which can provide city employees with remedial education to obtain GED certificates;
4. Appropriate departments will develop relationships with area colleges to assist employees with access to career development programs.

## **PROMOTIONS**

The City is committed and will insure that a fair promotion procedure is established which benefits all employees. Therefore, pursuant to State and Federal Laws and Collective Bargaining Agreements, all current job vacancies shall be posted well in advance of the application deadline in order to ensure that all employees are aware of job vacancies.

Where under-utilization has been identified, the Personnel Directors/Affirmative Action Officers will develop and aggressively utilize a remedial action file for those protected group members, including minorities, females, disabled persons, and Veteran employees, who wish to be included in the file and who are eligible for promotion to one or more positions within the City.

The remedial action file will be established within three months from the effective date of this document and will be updated periodically. During the compilation of this file the City will interview protected group members who wish to be included in the file.

The Personnel Directors/Affirmative Action Officers shall:

1. Review and update records on individuals' qualifications, education, experience, seniority, and performance on the job;
2. Identify individuals who appear to be working at jobs that are below their ability;
3. Upon request, consult with each individual to assess his/her opportunities for advancement.

## **TERMINATION, DISCHARGE AND DISCIPLINE**

The Personnel Directors/Affirmative Action Officers will work to ensure that termination procedures comply with affirmative action policies and are pursuant to and in accordance with State and Federal laws and Collective Bargaining Agreements.

In the event of termination of a protected group employee, the Personnel Directors/Affirmative Action Officers will conduct an exit interview to determine if proper procedure was followed and affirmative action rights were upheld.

In case of lay-offs, employees shall be laid off so that affirmative action principles are preserved and are in accordance with State and Federal Law. The Personnel Directors/Affirmative Action Officers will initiate discussions with labor representatives connecting issues affecting lay-offs and affirmative action principles.

## **CONTRACT COMPLIANCE**

The City shall make every effort to contract only with Equal Opportunity Employers and shall achieve this goal through the following means and statements:

1. Inclusion of Pittsfield's Equal Employment Opportunity Policy Statement in all contracts, subcontracts, leases, and other documents and/or correspondence covered by Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations, and section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veteran's Act;
2. The contractor shall not discriminate against any employee or applicant for employment because of race, religion, sex, marital status, sexual orientation, gender identity, national origin, age, disability or Veteran status;
3. City contractors shall not discriminate in any stage of contract, from contract award to completion in employment practices, selection/retention of subcontractors, procurement of material and rental of equipment expected by contractors;
4. The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, legal commitments under Section 202 of Executive Order Number 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places at worksites and make them available to applicants and employees;
5. The contractor will be required, to the greatest extent feasible, to give employment and on-site training opportunities to residents, lower-income, and members of protected groups in the community, and to abide with labor agreements in regards to affirmative action hiring;
6. The contractor will award business contracts including subcontracting businesses, when possible, to wholly and majority owned Minority Business Enterprises (MBE) and Women Business Enterprises (WBE). It shall be a material breach of any contract resulting from any practice which violates any provisions of M.G.L. c. 151B, relative to discrimination in hiring, discharge, compensation or terms, conditions or privileges of employment because of race, color, religious creed, national origin, sex, sexual orientation, gender identity, age, or ancestry.

## **UTILIZATION**

In determining whether members of protected groups are properly utilized in any job classification within the City of Pittsfield, the following factors will be considered:

- The composition of the population within the City;
- The percentage of the minority/female workforce as compared with the total workforce within the School Department and City Government;

- The percentage of the minority/female population of the area surrounding the City (Primary Metropolitan Statistical Area, PMSA);
- The availability of minorities/females seeking employment in the local labor or recruitment area;
- The size of minority/female unemployment and overall unemployment force in the local labor area;
- The general availability of minorities/females that have the requisite skills from our recruiting area;
- The availability of promotable and transferable minorities/females within City employment, with procedures in accordance with Collective Bargaining Agreements.

## **UNDER UTILIZATION**

Under-utilization means having fewer members of protected groups in a particular job classification than would reasonably be expected by their availability in the workforce or recruitment area (301 CMR: 50.18, section 1.2) In general, an overall analysis of the City's labor force shows general under-utilization of all minority groups in all categories.

### UTILIZATION BY EEO CATEGORY

- Office and Administration Professionals/Supervisory Technicians
- Protective Service
- Paraprofessional
- Administrative Support Skilled
- Craft
- Service Maintenance

There will be a brief description of each EEO job category along with a workforce analysis comparing the city percentage to local labor percentages.

## **MONITORING PERFORMANCE/REPORTING**

The City of Pittsfield acknowledges that employment opportunities will be provided through affirmative action to all present and prospective employees regardless of race, color, age, religion, national origin, sex, sexual orientation, gender identity, disability, or Veteran status. To ensure that the City's Affirmative Action Program is effectively implemented, the City will monitor and report all personnel actions including, but not limited to: recruitment, hiring, compensation, promotions, demotions, transfers, terminations and recalls from lay-offs.

In January and July of each year, the Personnel Directors/Affirmative Action Officers shall evaluate the City's progress towards compliance with the established goals and timetables.

The Personnel Directors/Affirmative Action Officers will maintain the following records to support its evaluation:

- Applicant flow by sex, race, veteran status, disability, and source of applicant(internal/external);
- hires by race, sex, national origin and job classification; transfers, demotions, and promotions by race, sex, national origin, position, and department from which transferred, demoted or promoted, and position and department to which transferred, demoted or promoted;
- Voluntary and involuntary terminations by race, sex, national origin, job classification, type of termination and reason therefore.

The Personnel Directors/Affirmative Action Officers shall submit annual reports as required by law to the Massachusetts Commission Against Discrimination (MCAD) and the Equal Employment Opportunity Commission (EEOC) Office.

The Personnel Directors/Affirmative Action Officers shall review the numerical and programmatic accomplishments of each department, and make recommendations for strengthening and revising departmental programs, and further develop strategies to address unrealized goals.

## **GOALS AND TIMETABLES**

The City of Pittsfield has set goals for hiring and promotions in job categories where the utilization analysis shows an under-utilization of minorities and women, so that in the future its workforce resembles the local labor market.

Goal setting is intended to assure that job-related criteria is used in the selection and promotion process and that artificial barriers to employment and promotion of minorities and women are removed. Goals are not quotas which restrict employment by setting limits on the number of people hired but represent a level to be achieved and not the ultimate target.

The City of Pittsfield is setting goals in a good faith effort to ensure equal employment opportunity. There are many internal and external circumstances, such as budgetary restraints and availability of persons with requisite skills, which may hinder efforts to achieve the desired workforce composition in a short period of time. The City recognizes that the plan will face challenges and re-adjustments due to the fluctuations in the fiscal situation, and the slow attrition rate prevalent in municipalities.

This policy of the City of Pittsfield sets both long-range and short-range goals to ensure that the objectives are on track.

## **ANTI-HARASSMENT POLICY**

The City of Pittsfield fully supports the right of all persons to hold employment in or

enjoy access to the City of Pittsfield without suffering sexual, racial, disability-related or other forms of harassment or discrimination. The primary focus of the City's Anti-Harassment Policy is to eradicate present forms of harassment and discrimination, and to prevent the creation of barriers and behavior that interfere with a harmonious and inclusive work environment. This policy applies to all phases of employment including, but not limited to: recruitment, hiring, transfer, promotion, salary negotiations, training, and termination. Harassment or discrimination by managers, supervisors, employees,, members of the public who use City facilities, vendors and contractors will not be tolerated. The Anti-Harassment Policy and its grievance procedure system is to encourage and promote employees' full participation within the City's workforce.

Employees of the City and applicants for City employment have the right to file a grievance on any action, procedure, or practice in the selection or employment process which they believe to be in violation of the Affirmative Action Plan, which constitutes racial, sexual or disability-related harassment, discrimination, or which is in retaliation for having filed a discrimination or harassment grievance.

**DEFINITIONS:**

- Sexual Harassment: See existing City Policy.
- Racial Harassment: Words, actions or other verbal, written or physical conduct which are offensive because of their racial connotation, prejudice, stereotyping or bigotry; constitutes racial harassment when 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.
- Disability-Related Harassment: Harassment on the basis of an individual's disability is a violation of the City's Affirmative Action Plan. Conduct which ridicules, scorns, mocks, intimidates, threatens, or coerces any individual due to his/her physical or mental disability or which has the effect of unreasonably interfering with work performance or creating an offensive environment is considered disability-related harassment.
- Other Harassment: Harassment on the basis of an individual's age, color, religion, national origin, sex, sexual orientation, gender identity, disability, or Veteran's status is a violation of the City's Affirmative Action Plan and work rules. Conduct which ridicules, scorns, mocks, intimidates, threatens or coerces any individuals due to such status or which has the effect of unreasonably interfering with work performance or creating an offensive environment will be considered such harassment.

Supervisory personnel are responsible for ensuring that conduct between fellow employees does not rise to the level of racial, sexual or disability related harassment. Supervisory personnel will be held responsible for conduct which is known or should have been known to have created or could create racial, sexual or disability-related harassment whether

perpetrated by an employee or a third party (regardless of control), unless immediate and appropriate corrective action has been taken.

Supervisory personnel must take all steps necessary to prevent racial, sexual or disability-related harassment from occurring. Such steps include trouble-shooting within the department, expressing strong disapproval for harassment and developing appropriate corrective action.

## **GRIEVANCE PROCEDURES**

### Informal/Internal:

The grievance procedure is designed to create an accessible, simple, prompt and expeditious internal review, coupled with fair and equitable resolution to alleged violation of the Affirmative Action Plan based on sexual, racial, disability-related and/or other forms of harassment or discrimination. The City encourages employees who feel they have witnessed or experienced harassment or discrimination to pursue the matter first within the City, with the confidence and expectation that the matter will be handled quickly, fairly and with prudent sensitivity.

All employees must be able to freely seek information, advice, or call attention to any work condition which the employee feels needs to be changed, without fear of retaliation. No applicant, employee, supervisor or manager shall be retaliated or discriminated against in any way for making a complaint of harassment and/or discrimination or for assisting in the investigation of such a complaint.

### Collective Bargaining Agreements (Union):

There are a number of collective bargaining units and non-union groups each with different grievance procedures. Even though there are similarities among them, there is no one system which will satisfy all those concerned. Each member of a bargaining unit has the right to address his/her grievance through whatever grievance procedure system he/she chooses to follow be it union, non-union, formal or informal, EEO/AAP or directly to state or federal organizations. If an employee chooses to follow his/her own collective bargaining grievance procedure, that procedure has certain grievance steps with accompanying authority levels which must be followed up to and including arbitration.

If the employee elects to pursue his/her grievance through that unions' grievance procedure, the matter will be adjudicated through that bargaining unit agreement.

A negotiated grievance procedure is not subject to variation or interpretation and must be followed as negotiated and agreed upon affected only by precedent, past practice, demonstrated intent of the negotiating parties and guided by arbitration awards.

### Affirmative Action Grievance Procedures (Non-Union):

The grievance procedure provides the individual an opportunity to present, to an impartial party, issues regarding violations of the Affirmative Action Plan, harassment or discrimination. The Affirmative Action Officers will provide managers and employees' advice and counsel regarding appropriate remedies which may be used. The grievant controls whether the issues raised are investigated or whether the conference is solely for advice and consultation.

Nothing in this procedure shall restrict the right of an employee or applicant to file a formal/external complaint with any City, State or Federal agency responsible for the enforcement of anti-discrimination laws. Throughout the grievance process, in order to protect his/her rights, the grievant can file an external formal complaint with the appropriate federal or state agency or court of law without its jeopardizing his/her rights to use this procedure.

The Affirmative Action Grievance Procedures System covers allegations in:

- Violation of the City's Affirmative Action Plan,
- Instances of racial, sexual or disability-related harassment,
- Instances of discrimination.

The grievance procedure shall be available to all employees except those who have utilized another City, State or Federal grievance, complaint or appeal processes to resolve issues.

No action will be taken by the Personnel Directors/Affirmative Action Officers without a signed grievance form. Though the following procedure involves filing a written complaint, the Personnel Directors/Affirmative Action Officers encourage employees to turn to the Personnel Office for information or counseling as soon as the need arises. If the employee wishes merely to inform the department head about a violation, harassment or the potential for such while keeping his/her identity confidential, the Personnel Directors/Affirmative Action Officers, at his/her discretion, will assist the grievant by speaking informally with the Appointing Authority.

### The internal/informal grievance procedure may be processed through three steps:

1. The employee should first discuss his/her grievance with his/her immediate supervisor.
2. If the grievance remains unresolved, he/she may bring it to the attention of his/her department head for discussion and review.
3. If grievance circumstances prevent using Step 1 and 2, or if the department head does not resolve the grievance within five (5) working days, the employee may bring the grievance to the Personnel Directors/Affirmative Action Officers.

### Alternative/Optional Actions:

1. If the aggrieved employee feels more comfortable with directly referring the grievance to the Personnel Directors/Affirmative Action Officers, he/she may do so without first moving through Step 1 and Step 2 of the grievance procedure.
2. If, after discussions with the Personnel Directors/Affirmative Action Officers, both the Director/Officer and the employee agree that the matter best may be directed back to another level the Directors/ Officers will be empowered to do so, but only with the concurrence of the grievant involved.
3. If the grievance involves the Personnel Director/Affirmative Action Officer, then the aggrieved employees may refer the grievance directly to the Appointing Authority.

Investigation:

After a written grievance form is submitted, the Affirmative Action Officers will request from the immediate supervisor and/or the party alleged to be in violation of the Affirmative Action Plan a written statement answering the allegations. The response shall be returned to the Personnel Directors/Affirmative Action Officers within three (3) working days of receipt.

If a Personnel Director/Affirmative Action Officer determines that the complaint is one of sexual harassment, the Directors/ Officers shall advise the complainant of options available under the City of Pittsfield's Sexual Harassment Policy and Procedure. The Personnel Directors/Affirmative Action Officers will give the complainant a copy of that Policy and Procedure.

A Personnel Director/Affirmative Action Officer shall attempt to resolve the issue which generated the complaint within four weeks of the time it was filed. In this process the Director/Officer shall privately interview relevant parties, examine appropriate documents and gather other essential information relevant to the complaint. The individual being interviewed may have a representative of his/her choice at the interview. During this process, the Director/Officer shall maintain confidentiality to the extent possible.

All employees are expected to cooperate in any investigation conducted by the Personnel Director/Affirmative Action Officer. Witnesses and relevant parties may be asked to sign written statements of their accounts. Should complainants express a desire that witnesses or other relevant parties not be interviewed they shall sign a statement explaining the desire to waive that part of the investigation.

Department heads, managers, and supervisors shall make every effort to allow the grievant sufficient time, with pay, to meet with the Personnel Director/Affirmative Action Officer through the investigatory stage.

Within five (5) working days after interviews are conducted, the Personnel Director/Affirmative Action Officer shall submit written findings of fact and remedies to the

grievant, the Receiver, Appointing Authority, Department Heads and all other affected parties.

If the grievance resulted from a violation of personnel policy, the Affirmative Action Plan, or of employment law, the Personnel Director/Affirmative Action Officer shall take or direct appropriate administrative steps to enforce the policy, the plan or law and to resolve the grievance immediately.

If the grievance involves a question of judgment or opinion not covered by personnel policy, the plan, collective bargaining agreements, or employment law, the Personnel Director/Affirmative Action Officer shall counsel the employee, the supervisor and/or department head to resolve the grievance if possible.

Various methods of grievance resolution may be explored with the concurrence of the parties involved. Alternatives such as mediation, informal mediation, conciliation, or any other avenues available for settling matters by agreement may be explored by the Personnel Director/Affirmative Action Officer and the participants. An ancillary consideration which must be kept in mind is that if these alternative techniques are employed in such agreements, those so achieved may not contravene or invalidate any provisions of an existing collective bargaining agreement then in force to which the grievant is subject.

#### Formal/External:

The filing of a grievance with a Personnel Director/Affirmative Action Officer is not the same as filing a discrimination complaint with the Massachusetts Commission Against Discrimination (MCAD) and/or the Equal Employment Opportunity Commission (EEOC).

The filing of a grievance with the Personnel Director/Affirmative Action Officer is a quick, informal method to resolve disputes without the necessity of litigation. A dispute filed as a formal complaint with an agency empowered to enforce anti-discrimination is adjudicated under specified laws, regulations and procedures with the purpose of determining legal responsibility for acts.

If grievance resolution fails through the informal/internal procedure, the grievant and/or Personnel Director/Affirmative Action Officer may use established procedures under local, state and federal agencies by filing a case with the Cities' Human Rights Commission, MCAD or the EEOC or exercise their rights in a court of law.

PITTSFIELD HUMAN RIGHTS COMMISSION (HRC): An integrated group of nine volunteer citizens of Pittsfield is empowered by the City Charter to investigate complaints against public and private organizations in Pittsfield when an individual or group alleges denial of equal access to, and discrimination in employment, housing, education, recreation and public accommodations, based on race, color, religion, creed, national origin, sex, age, or ancestry,

marital status, sexual orientation, source of income or handicap.

The HRC may attempt mediation to resolve a complaint. In the case of a complaint against a City Department, findings and recommendations are made to the Mayor and/or the Superintendent of Schools for action.

If the HRC is unable to resolve any matter where in its opinion is a justifiable complaint, outside of the jurisdiction of the Mayor, then the HRC will recommend that the Complainant proceed to the MCAD/EEOC or other appropriate agency and will further attempt to provide the Complainant with volunteer legal assistance. Nothing precludes a Complainant from going to a State or Federal agency without first proceeding through the HRC process.

Complaints should be in writing to:

Human Rights Commission  
City Hall  
70 Allen St.  
Pittsfield, MA 01201

MCAD - Employees have three hundred (300) days from the date which the alleged violation occurred to file a complaint with the Massachusetts Commission Against Discrimination. Their offices are located at:

Massachusetts Commission Against Discrimination  
One Ashburton Place - Room 601  
Boston, Ma 02108  
(617) 727-3990

EEOC - Employees may also file with the federal antidiscrimination agency; their offices are located at:

Equal Employment Opportunity Commission  
One Congress Street  
10th Floor - Room 1001  
Boston, MA 02114  
(617) 565-3200

Under current arrangement between the EEOC and the MCAD, the agency a grievant files with first has primary responsibility for investigating and resolving your case. This makes it important to know how the agencies operate.

MCAD investigations follow these steps:

1. An MCAD investigator meets with a grievant to draw up the complaint.
2. The investigator requests a position statement from the employer and may send a list of questions (called interrogatories).
3. The grievant and the employer may be asked to attend a fact-finding conference with an MCAD investigator to clarify the issues in the case or attempt to achieve a settlement.
4. The MCAD makes a finding of probable cause if the investigation indicates that a violation has occurred. Otherwise the case is dismissed.
5. Most cases are settled after the finding of probable cause, but if there is no resolution of the problem, a public hearing is scheduled before one of the three MCAD commissioners, with both sides represented by lawyers. An MCAD lawyer will represent the grievant free of charge, or the grievant may use his or her own attorney.
6. The commissioner's decision is binding unless the losing party appeals to the full commission or the courts.
7. If the grievant prevails with the MCAD and the employer appeals, the MCAD will defend its decision in court at no charge to the grievant.

The major advantage of the MCAD is its public hearing procedure. Cases can be decided without delay and expense of a court trial. The MCAD process is useful if the grievant cannot hire an attorney.

#### The Equal Employment Opportunity Commission:

Unlike the MCAD, EEOC procedures do not include an agency hearing. The steps are as follows:

1. The grievant is interviewed by an EEOC staff member, who helps in the filling out of the EEOC complaint.
2. The investigator requests a position statement from the employer and may send a list of questions (called interrogatories).
3. The EEOC makes a finding of reasonable cause if the investigation indicates that discrimination has occurred. If the commission's investigation fails to find reasonable cause, the grievant will be issued a right-to-sue letter, which allows the grievant to file the case in court.
4. If reasonable cause is found, the EEOC begins conciliation efforts to try to resolve the matter. If these efforts fail, the EEOC decides whether to file a lawsuit in court or issue the grievant a right-to-sue letter. If a suit is filed, the EEOC will represent the grievant at no charge.

Only a few cases are filed in court by the EEOC. The vast majority not settled are returned to claimants with right-to sue letters. This puts the burden on the claimant to file a private lawsuit, which must be done within ninety days. If he or she cannot afford a private attorney, he or she can go to federal court and request that an attorney be appointed to represent them.

Retaliatory Action:

Any retaliatory action of any kind taken against the grievant as a result of that person's seeking redress under these procedures, cooperating in an investigation, or otherwise participating in any activities under these procedures is prohibited and shall be regarded as a separate and distinct grievable matter under this procedure.

Personnel Directors/Affirmative Action Officers - Scope of Authority:

The Personnel Directors/Affirmative Action Officers are granted the authority to carry out the following activities:

1. To receive and attempt to resolve complaints on an informal basis;
2. To provide aggrieved persons with information and advice on equal opportunity procedures, including local, state and federal redress procedures, including proper notification and filing for affirmative action complaints. The Personnel Director/Affirmative Action Officer shall inform the grievant of his/her right to sue in court;
3. To take any other steps which may assist in the resolution of the problem, prior to filing a formal complaint;
4. To assist in preparing a formal complaint to HRC/ MCAD/ EEOC, etc., of alleged discrimination based on race, color, sex, religion, national origin, age, sexual orientation, gender identity, disabled, or Veteran status;
5. The aggrieved person and the Personnel Director/Affirmative Action Officer shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the program or grievance. The Personnel Director/Affirmative Action Officer shall not reveal the identity of any aggrieved person who comes for consultation, except when authorized to do so by the aggrieved person;
6. The Personnel Director/Affirmative Action Officer shall make every effort to resolve the problem informally. To this end, he/she shall, if requested by the grievant, assist in discussion with the supervisor, or any other party to the problem, and may take other steps which may assist in the resolution of the problem;
7. The grievant has the right to be accompanied, represented and advised by a representative or attorney of his/her choice. If the aggrieved person and /or his or her representative is an employee of the City, they shall be given a reasonable number of

- working hours to prepare and present a request for a solution of the grievance;
8. The Personnel Director/Affirmative Action Officer shall have twenty (20) working days to resolve the grievance before the grievant may file a formal complaint to the HRC/MCAD/EEOC ; and
  9. Nothing contained herein shall be construed to deny a grievant the right to make a direct complaint to HRC/ MCAD/EEOC, etc.

## **DEFINITIONS**

**AAP:** Affirmative Action Plan.

**Accessibility:** A barrier-free environment in which the mobility of disabled persons is not inhibited by external forces such as architectural design.

**Affected Class:** Those who have suffered and continue to suffer effects of past discrimination.

**Affirmative Action:** Demonstrated commitment to the recognition, development and utilization of the abilities of members of protected groups. It is a process to achieve the purpose of anti-discrimination.

**Affirmative Action Plan:** A written document outlining those steps to be taken to bring about affirmative action. The execution of the plan will ensure measurable yearly improvements in hiring, training and promotions for minorities and women, and development of an employment program for Veterans and disabled employees. It is a result oriented program designed to achieve equal employment opportunity rather than simply a policy to ensure anti discrimination.

**Affirmative Action Policy Statement:** A written declaration of policy of an appointing authority to initiate positive steps to rectify patterns of institutional discrimination.

**Alternative Certification Programs:** Programs administered through the Department of Personnel Administration Certification which use the Civil Service selection procedures to reach targeted protected classes.

**Application Flow:** The process of maintaining records of hiring, promotions and other employment actions for the purpose of monitoring. Applicant flow analysis assures that the employer's employment practices and procedures pursue goals of the affirmative action plan.

**Applicant Pool:** Total of those persons who have applied for a particular position (or who have applications on file) from which an employee may be selected.

**Artificial Barrier:** A requirement placed on a job or on an individual's performance within the job which is neither job-related nor consistent with merit principles.

**Candidate:** An individual who has applied for and has been interviewed for a City-posted job opening.

**Complaint:** A pleading by which a legal action is commenced under local, State or Federal courts or administrative agencies. The complainant applies to the courts or agencies for legal redress.

**Disabled person:** Any person who has a physical or mental impairment which physically limits one or more of such person's major life activities, has a record of such impairment, or is regarded as having such impairment.

**Disabled Veteran:** Any veteran who (1) has a continuing service incurred disability of not less than 10% based upon wartime service for which he/she is receiving or entitled to receive compensation from the veterans administration or, provided that such disability is a permanent physical disability, for which he has been retired from any branch of the armed forces and is receiving or is entitled to receive a retirement allowance, or (2) has a continuing service-incurred disability based on wartime service for which he is receiving or is entitled to receive a statutory award from the Veterans Administration.

**Discrimination:** The failure to treat equals equally; in equal opportunity/affirmative action parlance the unequal treatment or categorizing either based on race, sex, sexual orientation, gender identity, religion, age, physical or mental disabilities, or has the effect of disparate treatment of any of that class which is unlawful.

**Disparate Impact:** The result of an employer action or policy not unlawful on its face which affects one or more classes of employees differently than other classes of employees. In anti-discrimination law, concern with disparate impact deals with unequal treatment received by members of a protected class or classes. For example, a policy requiring that all applicants for employment possess no greater than two years' experience, while not unlawful on its face, could have a disparate impact on persons over 40.

**Disparate Treatment:** Differential treatment of employees or applicants on the basis of their race, age, color, religion, sex, sexual orientation, gender identity, national origin, disability, or Veteran's status.

**Equal Employment Opportunity:** An employer's posture that all personnel activities will be conducted in a manner to assure equal opportunity for all. Such activity is to be based solely on individual merit.

**EEO-1 Report:** (also termed Standard for 100) The Equal Employment Opportunity Employment Information Report, an annual report filed with the joint Reporting Committee (composed of OFCCP and EEOC) by employers subject to the Executive Order or to Title VII of the Civil Rights Act of 1964, as amended. This report details the race, ethnic, and gender composition of an employer's work force by job category.

**EEO-4 Report:** The Equal Employment Information Report, an annual report filed by State and Local governments with the State and Local Reporting Committee (composed of EEOC, HEW, HUD, DOT, OPM and OFCCP). It sets forth the race, ethnic, and gender composition of their work force by activity and job classification.

**Goals:** A numerical objective, fixed realistically, based on the number of vacancies expected and the number of qualified applicants available in the job market.

**Good Faith Efforts:** A term used to describe honest attempts to reach affirmative action goals.

**Grievance Procedures:** Established process to resolve allegations of harassment and discrimination with appropriate outcomes.

**HRC/MCAD/EEOC:** Pittsfield Human Rights Commission Massachusetts Commission Against Discrimination, Equal Opportunity Employment Commission.

**Informal Grievance:** Procedures are internally processed and resolved.

**Formal Grievances:** Procedures are externally processed and resolved through the Massachusetts Commission Against Discrimination, the EEOC or exercising a grievant's right in a court of law.

**Job Categories:** The nine designated categories of the EEO-1 report: officials and manager, professionals, technicians, sales workers, office and clerical craft workers (skilled), operatives (semi-skilled), laborers (unskilled), and service workers.

**Job related:** Aspects of a job which are essential to the performance of the specific task.

**MCAD Report:** A report following the Massachusetts Commission Against Discrimination guidelines that monitors racial and gender composition by salary level in regards to hiring, training, promotions, and full-time employees.

**Minority:** The following terms are defined as referenced in Massachusetts General Law Chapter 221B, section 9 and Chapter 7, section 40N:

**Black** - All persons having origins in any of the Black racial groups of Africa.

**Hispanic** - All persons of Puerto Rican, Dominican, Cuban, Mexican, Central or South America or other Spanish culture or origin, regardless of race.

**Asian** - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands.

**Native American** - All persons having origins in any of the original peoples of North America excluding Mexico, and who maintain cultural identification through tribal affiliations or community recognition.

**Eskimo & Aleutian**: All persons having origin in any of the original peoples of Northern Canada, Greenland, Alaska or Eastern Siberia.

**Parity:** Equality. The ultimate goal of affirmative action programming is to achieve parity in the participation of women in the City government comparable to their participation within the general work force and for minorities based on their population statistics within Pittsfield. The goal is for representation in every job category and at every level within the work force.

**Promotion:** Any personnel action resulting in movement to a position affording higher pay, or greater rank, and/or provides for greater skill or responsibilities, or the opportunity to attain such.

**Protected Groups:** Legally identified groups that are specifically protected by the statutes against employment discrimination.

**Qualified Disabled Person:** A disabled person who is capable of performing essential functions of a particular job, or who would be capable of performing the essential functions of a particular job with reasonable accommodation.

**Reasonable Accommodation:** The changing of environments or schedules, or the requirement to adapt to the known physical or mental limitations of a qualified disabled applicant or employee. The accommodation may include, but would not be limited to, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, or other similar actions.

**Remedy:** Whatever is required to "make the charging party whole"; that is, whatever would have (or would not have) happened, had a violation not occurred.

**Special Civil Service Certification:**

47 Certification: (Massachusetts General Law Chapter 31, section 47A): A state federal training program certificate used for placement on special registration list for entry level job titles within the labor service if a person meets both of the following two requirements: 1) Low Income guidelines, and 2) (a) member of one of the following ethnic/racial groups: Black, Hispanic, American Indian, Asian and Cape Verdean, or (b) lack high school education or equivalency, or (c) under 21 - over 45 years of age, or (d) handicapped.

Personnel Administration Rule Ten (PAR10): An official service certification based on race, color, national origin or sex.

Selective Certification: A civil service appointment calling for persons having special qualifications, in addition to the general qualifications tested by an examination. The three types are: Bilingual Selective Certification; EMT Selective Certification; and Gender-Based Selective Certification.

**Terms and Conditions of Employment:** The entirety of the environment in which an employee works. The term encompasses all aspects of an employee's relationship with his or her employer and fellow employees, including: compensation, fringe benefits, physical environment, work-related rules, work assignments, training and education, and opportunities to serve on committees and decision-making bodies.

**Timetables:** The time-frame (in years) set for attaining measurable goals in an affirmative action program.

**Under-Utilization:** Having minorities, women, disabled persons or Veterans in a particular job classification less than would reasonably be expected by their availability in the work force or recruitment area.

**Utilization:** The listing and examination of the presence of protected group members employed by the City.

**Veteran:** A Person who has served on active duty for a period of more than 180 days, and was discharged or released with other than a dishonorable discharge.

**Workforce:** The total strength of persons employed by the applicant in various occupations, trades, professions, vocations in its business or operations.

**Workforce Analysis:** A detailed listing (by specified categories) of job classifications and levels by department or other organizational unit.

## **LAWS & REGULATIONS**

### **FEDERAL LAWS**

#### **TITLE VII OF THE CIVIL RIGHTS ACTS OF 1964 (TITLE VII)**

Title VII is the most far-reaching federal law on employment discrimination. Title VII prohibits all discrimination in employment because of race, color, sex, national origin, or religion. Title VII provides for an administrative and judicial enforcement scheme. The Equal Employment Opportunity Commission is the federal agency responsible for investigating an employee's claim of discrimination under Title VII. The federal courts have final responsibility for enforcing Title VII.

#### **AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (ADEA)**

The ADEA prohibits discrimination against applicants or employees who are 40 years and older. A limited exemption applies to bona fide executives and high policy-making employees as they are defined in the ADEA. The ADEA provides for a similar enforcement procedure as Title VII.

#### **EQUAL PAY ACT OF 1963**

The Equal Pay Act prohibits wage discrimination based on sex where the employees in question are performing work requiring equal skill, effort, and responsibility, and which are performed under similar working conditions. The Equal pay Act also contains four exceptions to the equal pay for equal work requirement. The Equal Employment Opportunity Commission is responsible for administering this law. Unlike Title VII and the ADEA, however, the filing of the charge with the Commission is not a prerequisite to filing suit under the Equal Pay Act.

#### **CIVIL RIGHTS ACT OF 1966 (SECTION 1981)**

Section 1981 prohibits discrimination on the basis of race or color in the making and enforcement of employment contracts. Unlike other anti-discrimination statutes, Section 1981 does not cover sex, age, religion, handicap, or other claims of discrimination. Enforcement of Section 1981 is limited to lawsuits.

#### **REHABILITATION ACT OF 1973**

This law prohibits discrimination against physically or mentally handicapped persons by federal contractors and requires that such contractors establish a separate affirmative action program to employ qualified handicapped individuals. Another section of this law prohibits employers receiving federal grants or funding from discrimination against employees because of their handicap. The Department of Labor's Office of Federal Contract Compliance Programs is the

designated enforcement agency.

### **THE VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT**

This law prohibits discrimination against disabled veterans and veterans of the Vietnam era. This law requires federal contractors to undertake affirmative action measures on behalf of qualified veterans of the Vietnam era during the first four years after discharge, and qualified disabled veterans throughout their working life. The Department of Labor's Office of Federal Contract Compliance Programs is also responsible for administering this law.

### **IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA)**

The IRCA requires all employers to verify that all employees hired after November 6, 1986, are legally authorized to work in the United States. The IRCA also prohibits employers of four or more employees from discrimination on the basis of national origin or citizenship. The Department of Justice is responsible for enforcing the IRCA.

### **AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)**

The ADA prohibits handicap discrimination in employment in a broader sense than the Rehabilitation Act of 1973. The ADA became effective in July 1992 for employers with 25 or more employees and in July 1994 for employers with 15 or more employees. The ADA is enforced by the Equal Employment Opportunity Commission.

### **EXECUTIVE ORDER 11246**

Executive Order 11246 of September 24, 1965, prohibits certain federal contractors from discriminating on the basis of race, color, religion, sex or national origin. This order also requires that covered contractors develop a written affirmative action program to employ and encourage the advancement of women and racial minorities. This order is enforced by the Department of Labor's Office of Federal Contract Compliance Programs. This office has issued regulations which, among other things, specify the contents of affirmative action programs, and what federal contractors can expect in a compliance review.

### **THE CIVIL RIGHTS ACT OF 1991**

This Act expands the damages available under Title VII and provides a right to a jury trial in most cases based upon Title VII of the Civil Rights Act of 1964 (Title VII), the American with Disabilities Act (ADA) and the Rehabilitation Act of 1973. Individuals alleging intentional violations of Title VII, the ADA or the Rehabilitation Act of 1973 may now recover compensatory and punitive damages. The Act reemphasizes the disparate impact theory in which an individual does not need to prove that an employer intended to discriminate but that

the employer's practices disproportionately affect classes of persons protected by Title VII. The federal courts have final responsibility for enforcing the Act.

## **MASSACHUSETTS LAWS**

### **MASSACHUSETTS FAIR EMPLOYMENT PRACTICE LAW, G.L. c.151B, s4**

This law prohibits employment practices that discriminate on the basis of race, color, religion, creed, national origin, age, sex, sexual orientation, ancestry, or disability. Under this statute, the prohibition against sex discrimination includes sexual harassment. This statute covers employers with six or more employees. The Massachusetts Commission Against Discrimination is the State agency responsible for enforcing this law.

### **MASSACHUSETTS AGE DISCRIMINATION LAW, G.L. c.149, s24A**

Massachusetts also has a separate age discrimination law that covers all private sector employers and prohibits employment practices that discriminate against individuals over the age of 40. This law is enforced by the Department of Labor and Industries.

### **MASSACHUSETTS EQUAL PAY LAW, G.L. C.149, s105A**

This law prohibits employers from paying female employees less than male employees for work of like or comparable character or from discriminating in any other way in the payment of wages on the basis of sex, unless such differences are based on seniority. The Department of Labor and Industries is the state agency responsible for administering this law.

### **MASSACHUSETTS EQUAL RIGHTS LAW, G.L. c.93, s102**

This law provides that "all persons within the Commonwealth, regardless of sex, race, creed, or national origin, shall have, except as otherwise provided or permitted by law, the same rights enjoyed by white male citizens, to make and enforce contracts..." An individual who believes his/her rights under this statute have been violated may sue for "injunctive and other appropriate equitable relief."

### **GOVERNOR'S CODE OF FAIR PRACTICES - EXECUTIVE ORDER 227**

This order re-affirms that non-discrimination and equal employment opportunity are the policies of the state. The order further directs each Executive Officer serving the Governor and all other state employers to take affirmative steps to insure equality of opportunity in all programs and activities of the Commonwealth.

## **IMPROPER OR ILLEGAL INTERVIEW QUESTION**

Improper interview questions are those that do not pertain to the nature of the job or to the applicant's ability to perform that job, or those questions not asked of every candidate. They are illegal only if the information is used to make a hiring decision. For more direction, study the guide below, which illustrates ways recruiters should and should not inquire about "sensitive" areas. However, it is strongly recommended that questions bordering on any of these subjects simply not be asked. Please become familiar with the job application form (see form attached), where much of this information may be obtained. If you still have questions after reviewing this information, please consult with the Personnel Director.

### **Improper Questions**

#### **National Origin**

- Are you a U.S. citizen?
- Where were your parents born?
- What is your native tongue?
- Where were you born?

#### **Age**

- How old are you?
- What is your date of birth?
- What year did you graduate high school?

#### **Marital and Family Status**

- What is your marital status?
- How many children to you have?
- What child care arrangements have you made?
- With whom do you live?
- Do you plan to have a family? When?
- In general, all questions related to pregnancy are illegal, and specific inquiries about a spouse or children are considered unfair employment questions.

#### **Organizations/Religious Affiliation**

- To what clubs or social organizations do you belong?
- Questions intended to solicit information about one's religious affiliation are improper.

### **Legal Inquiries**

#### **National Origin**

- Are you legally entitled to work full-time in the U.S.?
- What languages do you read, speak, or write fluently? (if required by the job)

#### **Age**

- Are you over the age of 18? (or whatever age is required to work in the position)

#### **Marital and Family Status**

- Would you be willing to relocate if necessary?
- Would you be able and willing to work overtime as necessary?

#### **Organizations/Religious Affiliation**

- Do you belong to any professional or trade groups or other organizations that you consider relevant to your ability to perform this job?

## Improper

### **Disabilities**

- Do you have any disabilities?
- How many days were you sick last year?
- What was the date of your last physical exam?
- How is your family's health?
- Have you ever filed a workers' compensation claim?
- Have you ever been treated for an alcohol or mental health problem?
- What drugs are you currently taking?
- Have you ever filed a workers' compensation claim?
- Any inquiries that would elicit information about disabilities or health conditions that do not relate to job performance
- Any inquiries that would elicit information about drug addictions or alcoholism, as these are disabilities covered by the ADA
- Do you understand that any offer of employment is conditional on the results of a pre-employment exam and drug test?

### **Arrest Record**

- Have you ever been arrested?

### **Personal**

- What is your sex?
- What is your height and weight?

### **Military**

- If you have been in the military, were you honorably discharged?

## Legal

### **Disabilities**

- Can you perform the functions of the job with or without reasonable accommodation?
- Can you meet the attendance requirements of the job?
- Do you engage in illegal drug or alcohol use?

### **Arrest Record**

- Employers may only ask about criminal convictions in the initial written application where state or federal laws or regulations state that certain criminal convictions either (1) mandatory or presumptively disqualifies applicant, or (2) prohibits employers or affiliates from employing persons convicted of special offenses.
- Employers must inform an applicant that they are in possession of an applicant's criminal offender record information prior to questioning an applicant about his or her criminal history.

### **Personal**

- You are permitted to question the applicant with respect to his or her physical ability to perform certain aspects of the position so long as those physical requirements are part of the job description (i.e. Are you able to lift 50 lbs. from ground level to chest height in standing position as required by the job description for Highway Maintenance Craftsman?)

### **Military**

- In what branch of the Armed Forces did you serve?
- What type of training or education did you receive in the military?

**7/14/14 (last updated)**