



## THE CITY OF MIRAMAR CITY COMMISSION WORKSHOP MINUTES

**May 16, 2018**

**5:00 P.M.**

A Workshop of the City of Miramar City Commission was called to order by Mayor Wayne M. Messam on Wednesday, May 16, 2018, at 5:49 p.m. in the Commission Chambers, Town Center, 2300 Civic Center Place, Miramar, Florida.

MAYOR MESSAM: Madam Clerk, please call the roll.

Upon call of the roll, the following members of the City Commission were present:

Mayor Wayne M. Messam  
Commissioner Winston F. Barnes  
Commissioner Maxwell B. Chambers  
Vice Mayor Yvette Colbourne  
Commissioner Darline B. Riggs

Upon call of the roll, the following member of the staff was absent:

Interim City Manager Vernon Hargray

The following members of staff were present:

City Attorney Jamie Cole  
City Attorney Alison Smith  
City Clerk Denise A. Gibbs

MAYOR MESSAM: Thank you. At this time, I will turn the balance of the Workshop over to City Attorney Jamie Cole.

CITY ATTORNEY COLE: Thank you, Commission. Today, we are going to have some harassment training. This is training that is being done for all City employees; it is not targeted at the Commission, but since you are also City employees, we did feel it was appropriate for you all to have the training as well. Alison Smith has been doing that training for all the City employees, so she is going to do that for you this evening. Here is Alison.

CITY ATTORNEY ALISON SMITH: Thank you very much, Jamie. As Jamie mentioned, we have been doing it citywide, so I think we have trained a total of maybe 900 employees already here in the City, but I have also been doing it for other Cities. I just trained the Medley Town Council last week; a lot of elected officials are doing it, and because we think it is so important, we have actually done it in our own firm. So, if you have done training with me before, you know that my training is interactive because I don't want to put you to sleep, etc. so, I do ask questions; this training is no different. So, how I'm going to start off the training is to test your knowledge with some, we call them fact patterns. If you ever want to impress an attorney you can say, "You know, I have a fact pattern". Really, it is a scenario that I want you to advise me on. All of these fact patterns are scenarios that we are going to talk about are true, I absolutely never make them up because I just think it's better when it is relatable, and it is real, and it actually happens. So, these are all cases that I have had to deal with over the years, then we will test your knowledge and then we will go into the actual theory about what the law says about harassment.

Okay, first one, remember, it's a real case. Jim is an openly gay employee; he is known for being direct and unafraid of speaking his mind. One day, in conversation with a new male employee and some other co-workers, Jim jokingly asked the new male employee if he is well endowed. The new male employee is highly offended and complains to management. Is there a viable claim for sexual harassment? Remember, this is a real scenario, it is not made up, so what do you think? Whoever wants to speak.

COMMISSIONER BARNES: Does it not usually get noticed when there is a series of these encounters or just one incident can bring it up to that level?

CITY ATTORNEY SMITH: Okay, so, you are saying there needs to be a pattern of it before it rises to the level of sexual harassment.

COMMISSIONER BARNES: Uh-huh.

CITY ATTORNEY SMITH: Okay, anybody else?

MAYOR MESSAM: I think it's inappropriate.

CITY ATTORNEY SMITH: Alright, so, in this particular situation, Commissioner Barnes is correct. In terms of sexual harassment, one of the things we will learn about today is it has to be severe and pervasive, that is the actual legal terminology. So, yes, there has to be a pattern, like a one off is not going to count, there has to be a pattern. Now, I will tell you that Jim was actually terminated by the City. I used another name, it's not Jim, I always make up new names. Jim was actually terminated by the City, so when I do the training for employees, because I've used this example many times, lots of times employees will say to

me, "Well, how was he terminated if it wasn't sexual harassment?" So, what do you think is the basis for the termination if I'm telling you that this is not a viable sexual harassment claim? What do you think is the basis? What's the basis? What's was the reason?

MAYOR MESSAM: Perhaps, it violated a conduct claim.

CITY ATTORNEY SMITH: It's a policy issue. So, one of the things that is really critical in understanding sexual harassment or harassment claims is just because something is not viable, meaning legally viable, you can't file a lawsuit and be successful in court on it, doesn't mean that you can't be disciplined if there is not a policy in place and generally it is a conduct policy. So, for like Fire and Police, they have a policy that says, "You can't engage in unbecoming conduct whether you are on or off duty". That's like a catchall that we can use to address those types of issues. He was not a Fire or Police employee, he was a general employee, but they still used the policy violation to show that he is engaging in inappropriate conduct. One additional fact is that he was a supervisory employee, and generally speaking, we do impose stricter sanctions on a supervisor because that person is supposed to lead by example. So, if you are violating the rules you are setting a bad example and a bad precedent for other people to follow.

Alright, so let's try another one. Michelle and Sarah are co-workers in the Accounting Department. They are both attracted to each other and frequently flirt openly with each other. Is there a potential for a sexual harassment claim? They work with each other, they flirt with each other.

COMMISSIONER RIGGS: No.

CITY ATTORNEY SMITH: Commissioner Riggs, you said no?

COMMISSIONER RIGGS: Because of the word "both".

CITY ATTORNEY SMITH: That they both, right, so it is consensual. You say no. Anybody else?

COMMISSIONER BARNES: On the surface it seems consensual.

CITY ATTORNEY SMITH: So, if I'm telling you it is totally consensual, they both agree to it, they both are willing participants in this relationship, What's the response? Yes, Vice Mayor.

VICE MAYOR COLBOURNE: Two things; one of them could change their mind and the second thing is if it is done in front of somebody else, the third party could be offended by it.

CITY ATTORNEY SMITH: So, that's actually the exact correct answer. And the reason I picked this particular scenario, which really happened, is exactly that. So, the people who are in the relationship, who think it's unicorns and gumdrops and lollipops are fine, but third parties can file a sexual harassment claim, i.e. the harassment does not have to be directed at them, they can just be observing it and still file a viable claim. So, you don't live in a bubble and that's why the saying, "Get a room" exists. I don't want it imposed on me, I don't want to see it, I don't want to share in it, I have no interest in whatever you have going on in your extracurricular activities and I have a right to be free from that. We have an environment here where we want everybody to be free from those types of things, so they could find it offensive and file a sexual harassment claim, a third party. That's why I picked this one because people don't often think that. You see, the first response you have is they both agree so it's fine. No, because third parties could not want that and could actually file a claim. The other point that Vice Mayor made was, at some point consent can be withdrawn. So, particularly if you have a supervisor and a subordinate and at some point, let's say the supervisor is the one who is pushing the relationship and the subordinate has now withdrawn the consent, but they are concerned because you are my boss and you could fire me. Now, all of a sudden, they are trying to extricate themselves from the relationship and you are not letting them go and then there is a power struggle and we could really be open to liability for something like that. So, you have to be aware. There are Cities that do have anti-fraternization policies, so, try to avoid that because it can become an issue where the consent is withdrawn, or the relationship goes away and all of a sudden there is a sexual harassment claim. Some Cities actually do put those into place; we do not have one, we do not have an anti-fraternization policy, but some Cities do. I have written them for numerous Cities, sometimes I write them just for a department, like a Police Department or something. But, it's not mandatory but some Cities try to curtail it by doing that. Okay, but that's exactly the right answer that the Vice Mayor gave. Oh, you have a question? Commissioner Riggs.

COMMISSIONER RIGGS: I guess there is two lessons from this scenario, no dating your co-worker and no flirting in public.

CITY ATTORNEY SMITH: We are going to talk about dating coming up, so that is a very good question you are asking. Be aware of your public displays of affection, be aware in the workplace. So, when you are on your own time, whatever you want to do on your time is a little different, but when you are in the workplace, we work in a massive environment with so many, we have 1,100 employees. You know, people are very diverse, so you could offend somebody with your conduct that you think is innocuous, totally harmless, and it ends up being something offensive and there is a claim that is made against you; that could happen and it does happen, and I've dealt with them for over 14 years, now I've been dealing with these types of issues. So be aware. By the way, ask me questions as we go through if you have any questions.

Next one, remember, these are all real, right, so I use them to show you the point that I am not making it up, people actually sue for these things. Okay, Yanni and Yemmi are female co-workers in the Building Department. At least twice a week they go to lunch with their boss, Dan. During lunch, Dan almost always makes lude comments about some of their female co-workers who he finds “hot”. Both, Yanni and Yemmi find this behavior reprehensible but have never complained to Dan because he is their boss. Is Dan’s behavior unlawful?

COMMISSIONER BARNES: Yes.

CITY ATTORNEY SMITH: You say yes?

COMMISSIONER BARNES: Yes.

COMMISSIONER CHAMBERS: Yes.

CITY ATTORNEY SMITH: Anybody with a different opinion? I’m just hearing yeses. Any no’s or do we all think the same thing?

COMMISSIONER BARNES: The operative word is “boss”.

CITY ATTORNEY SMITH: The operative word is “boss”. Why do you think that matters that he is their boss?

COMMISSIONER BARNES: He can make a decision as to their status or their retention with the company. He has power over them.

CITY ATTORNEY SMITH: How about the theory, because a lot of times, I’ve used this example, I’ve used lots of examples in the past, this is one off my favorite ones, it’s a real one of course, like everything else. This is one off my favorite ones because it elicits a lot of discussion when I bring up this particular example. The first thing that people say is, “Why do they have to go to lunch with him, why can’t they just say no?” If you don’t like it, if you are going to lunch with a person and the person is making comments or engaging in behavior that you think is reprehensible or wrong or immoral, there is no mandate from the City, from any City, or any employer, private or public, that you go to lunch with your boss, so why can’t they just say no?

COMMISSIONER BARNES: A response to that could be that he might demand that you go, he’s the boss.

CITY ATTORNEY SMITH: Okay. Yes. And I will tell you, it was an actual lawsuit. In the lawsuit, that came up as a defense, “Well, if you didn’t like it you shouldn’t have gone to lunch” and the woman responded exactly the way you said, which was, “This is our boss. We felt if we said anything reprisals would be taken against

us, up to and including termination of our employment". In the idealistic world, we say and we always encourage, "Hey, if you don't like it you need to speak up and you need to say it", but in the real world it's very very intimidating and awkward for people who feel that they are in a position where there is a person who has power over them dominion, that they are going to say, "Now I'm going to complain about you" because they know that the repercussions can be severe and they have bills and they have a mortgage and they have school fees and they have things that they have to pay, so people are very reluctant sometimes to come forward and say anything. The other thing that comes up a lot, you haven't brought it up, but I will tell you, with every single class I have done where I have used this example, this, that I am going to say now has come up every single time. One of the things that is in there is that this behavior is not taking place while they are actually at the workplace. If you notice, in the example I've cited, in the fact pattern it says, "He is doing it when they go to lunch". So, you are not thinking it is safe to put yourself in the mind of the employees, right, so every time this comes up, what do you think the employees say to me about the fact that they are at lunch when this happens? What do you think the employees say about lunch?

COMMISSIONER CHAMBERS: Lunch is an extension of work.

CITY ATTORNEY SMITH: I'm not at work, I have clocked out, because we actually don't pay, we are not required to and we don't pay for lunch, right, so they say, "This is my private time, I have clocked out and I am at lunch, so what I do at lunch should not be held against me by the City." How do we feel about that because that comes up every single time?

COMMISSIONER BARNES: He's still the boss though.

CITY ATTORNEY SMITH: That's how employees think.

COMMISSIONER BARNES: He's still the boss.

CITY ATTORNEY SMITH: The dynamics of the relationship do not change. It doesn't matter if it is lunch, it doesn't matter if it is after hours, it doesn't matter if it is happy hour because you go right back to the City; it's not like somebody goes to Pembroke Pines and one goes to Tamarac and one goes to Homestead, you come right back here, he's still your boss and you still have to take direction from him. Maybe you don't even respect this person anymore because of the things they have been saying about other women and you are a woman and you feel that is denigrating to women, so the dynamics do not change, so it does not matter and if there is a lawsuit, no jury cares, the Judge doesn't care that it happened at lunch, it is not a defense because the dynamics have not changed. I always encourage them, don't think you get a free pass because you have punched out and you are at lunch. That's one off the reasons I really use this example because those are the comments I get and I get that particular question every single, I've never not

had it from at least one person in the audience that says, "That's not fair, I've clocked out" and I have to explain why clocking out doesn't matter because the dynamics are the same.

Okay, so, to move forward, yes, the behavior can be unlawful harassment but there is a rule, I use this rule, I actually use the rule pretty much every single time I do training because it is so applicable to so many different scenarios. It is the TSA rule, so if you have been watching the news, I've been using it for years and years and years, since 9/11. If you have been watching the news, they use it a lot with the school shootings, now they say the TSA rule is what you need to follow. What's the TSA rule? Do you know? What's the TSA rule that you have to follow? If you travel a lot, you hear it over and over and over in the airport. "If you see something say something". If you are in the airport and you really pay attention you will see that say it all the time, "If you see something say something". I've done it, I have done it myself. I travel all the time and I saw somebody one day not go through the metal detector and not put his stuff for screening or anything and I literally found a TSA agent and I said, "There is a man, he has on a red pair of shorts, he has on a white t-shirt, a blue cap, he has a backpack on, he is light skinned" and I told them the whole thing and they said, "Oh, he's an Air Marshall, don't worry about it" and I said, "Okay, that's fine". But I followed the rule, I saw something, so I said something.

It's the same thing and it kind of goes back to what you were saying, Commissioner Barnes, about the notice requirement, right? We actually use it as a viable defense if we get sued where the person never complained. You have to say it, you have to tell us because we don't have telepathy, we can't read your mind, we don't know there is an existing issue unless you say there is an existing issue because we will address it, but we can't address it if you don't bring it to our attention. In fairness, you have to give the City the opportunity to respond. When all these employees are trained, they are trained to do exactly that and that's every policy that they have. If they see something they need to say something.

Alright, so let's move on. So, we are moving on from the examples I usually use way more when I do it with the employees, but we are limited in time today. So, the City is committed to ensuring a diverse work environment and that we are an Equal Opportunity Employer, I drill this into the heads of everybody that works here. What that means, is everybody says that all the time like a couch phrase, "We are an Equal Employment Opportunity Employer". What Equal Employment means is that employment decisions are based on your merits, your ability to perform the job. We don't care if you fit into a protected category or not. Protected category defined means that you are in a class, a group, that the law has decided is protected. That could be based on your race, and that includes by the way, because a lot of people have this mistaken perception it doesn't include a person in the majority race, a white person, yes, any race that you are, you are protected, your religion so, whether you are Buddhist, or your Christian, or you are Muslim,

or you are Jewish. Disability, and by the way, disability does not mean what many people think, which is that they are missing a leg or in a wheelchair. If you have high blood pressure that can qualify as a disability. There are very few things that are exempt and that would include wearing glasses like Commissioner Barnes and I, that you are not disabled or if you have a common cold you are not disabled. But, when we even had like the Bird Flu epidemic, they were trying to get that to be a disability as well, if you had the Bird Flu, so it is very very broad. Okay, so if you are in one off those protected categories, then we can't make an employment decision based on that. If you happen to be that, that's great, if not, that's okay too, but we don't focus on that to make the decision. So, when I do training I also like to look at what's happening in our Nation because that influences what the trends, legal trends. So, why you see such a big push for sexual harassment training and harassment training in general actually started last year. A lot of people think it started with like Bill Clinton, because I've heard that, "Well, this all came about because of Bill Clinton". Not really. Everything was really driven by one person in particular; do you know who I'm talking about?

COMMISSIONER BARNES: Uh-huh.

CITY ATTORNEY SMITH: Who am I talking about?

COMMISSIONER BARNES: The top of our list.

CITY ATTORNEY SMITH: Harvey Weinstein. Okay, Harvey Weinstein. In October 2017, there were a bunch of allegations that came out that he was engaging in sexually inappropriate conduct and still ongoing and there are still articles coming out every day where women are saying that he violated their rights to be free from sexual harassment, but there are lots of other people. There is, Mario Batali is one of them, he is a very famous Chef from the Food Network. People have asked me many times who that is, and I always say, "Am I the only one who watches Food Network?" He is one off the people too. Danny Masterson, he was on that 70's Show with Ashton Kutcher, he was fired. Matt Lauer, we all know him, and it was literally from one day to another that Matt Lauer was fired. The allegations came out, the next day he was fired. Russell Simmons, same thing, and Senator Al Franken. There is one person I don't have on here, but he was very close to winning his election in Alabama and he didn't, and it was because allegations came out about sexual harassment. Do you know who I'm talking about? Who was it? He was the one that almost won, everybody thought he was a front runner and then he didn't win.

CITY ATTORNEY COLE: Roy Moore.

CITY ATTORNEY SMITH: Jamie, you are not included. Roy Moore. Jamie, you can go outside; no participation. Okay, so Roy Moore was that person when those allegations came out. What is one thing that you are seeing that is consistent



amongst all these examples I'm using, and you can even do a Google search yourself. What's the one consistent thing that you are seeing? What do you think is the same amongst all of these examples I am talking about, what's the similarity?

COMMISSIONER BARNES: Multiple allegations.

MAYOR MESSAM: For example, with Matt Lauer, he was dealing with subordinates, Russell Simmons, same thing. I'm not sure about Al Franken though, I don't know if his situation was a subordinate.

CITY ATTORNEY SMITH: No, she wasn't a subordinate.

COMMISSIONER BARNES: The fact that these are well-known people.

CITY ATTORNEY SMITH: Yes, generally they are going after well-known people and there are lots of reasons behind that. But, what else? What should just be jumping out at you in terms of what's the same, the same, the same? What is it?

COMMISSIONER CHAMBERS: High profile.

CITY ATTORNEY SMITH: Not just high profile. What's the ...there are three of you that fit into that category. They are all men. They are all men. Okay, they are all men. Why do you think that all these allegations, and if you think about it, everything you are hearing on the news, always a man, always a man, always a man? Why do you think that all of the allegations that are coming pertain to men? What do you think?

COMMISSIONER CHAMBERS: It's easier.

CITY ATTORNEY SMITH: It's easier. Why?

COMMISSIONER CHAMBERS: I don't know. Men are defenseless, I guess.

MAYOR MESSAM: Typically, men are, I guess, historically, have been in the position of power and control. So, it's the abuse of that position from a sexual act or position that typically has led to this. I'm not sure if it is specific for these examples but typically, at least from a perception standpoint.

CITY ATTORNEY SMITH: So...

MAYOR MESSAM: But, it happens the other way around too.

CITY ATTORNEY SMITH: It absolutely happens the other way around. Yes, Commissioner Riggs.

COMMISSIONER RIGGS: I'm thinking maybe because for men, if it's the other way around where it's a woman harassing, it is more of a flattery, where the women were offended. It is how it is perceived. Men, I guess, perceive it differently than women do.

COMMISSIONER BARNES: Men tend to not report it.

CITY ATTORNEY SMITH: Thank you. It is either not reported or under-reported. So, we don't even have good statistics on what happens with men. Like the Mayor was saying, it happens. Women sexually harass men all the time. Men don't report it. I have even asked whenever I teach the classes because I want to know so I ask the men, I say, "Well, why?" I have had somebody stand up and say, "If I heard a man report that he was sexually harassed, I would tease him from now until the end of time". I said, "I would never allow that to go unnoticed" because like Commissioner Riggs said, "That is flattery". And he said, one off the persons that stood up said, "I wish I was sexually harassed by a woman", literally.

COMMISSIONER BARNES: On the other hand, some of us couldn't care less about teasing, could not care less so that would not even work.

CITY ATTORNEY SMITH: It wouldn't work. It would have any impact on you?

COMMISSIONER BARNES: Nah.

CITY ATTORNEY SMITH: I will tell you, men are, in general, very, it sounded like a taboo for a man to come forward and say, "This woman sexually harassed me" because it is perceived in general. It is a stereotype, but the generalization is that men should feel flattered that a woman is pursuing them.

COMMISSIONER BARNES: I will tell you why I take that position very publicly even today, a caller mentioned that man versus woman thing. So many of the woman across our community are unaware that the law will arrest a man for abuse in the home and arrest a woman as well. That law changed years ago and a lot of people across the community are unaware of that. They think that you call the cops and they are automatically going to take the man; that does not happen anymore.

CITY ATTORNEY SMITH: Yes. It's not like 100%. It is still majority, but it is not 100%. But yes, it's the same but people don't always put those two things together to say, "Okay, yes, a man can be sexually harassed by a woman". Absolutely and it happens all the time. Men are just not prone to coming forward so the statistics we have are not good statistics. Here is the other thing. If a woman comes forward and says, "I was sexually harassed by this man", what is the general belief of society? How do people normally receive that?

COMMISSIONER RIGGS: He did it.

CITY ATTORNEY SMITH: He did it!

MAYOR MESSAM: Guilty as accused.

CITY ATTORNEY SMITH: Yes, guilty before you even have a trial even though in America we have a presumption of innocence, right? If a man comes forward and says, "This woman sexually harassed me", what is the perception? You have to prove it. There is no presumption that is given to you; you have to prove it. For the woman, it doesn't matter how a person looks or anything, in fact, people will attack you if you ever dare to say, "Well, no she's not my type", people will attack you. It doesn't work in the opposite way, society, as a whole, does not look at it that way. To the men in the audience when I do the training, I always say, "Be mindful, be really mindful, because you see who is believed in society and you see who the claims are being brought against". They are not being brought against women, I would tell you you probably would have a difficult time, you would have an uphill battle if it were against a woman versus a man; it's easier. So, just be mindful, especially in today's society that we live in, that you are engaging in behavior that is not going to put you in a jam.

Okay, Alright. Just moving on. Some of the laws that are important that we should know about, the two main ones that we have to know about are the Federal one, which is Title 7, and it prohibits various types of discrimination, and then you have the Florida Civil Rights Act, which is patterned off of the Federal one. So, we have Federal and State Laws that control and protect against that type of harassment or discrimination in the workplace. Some of the consequences, I will just go over them quickly, but it increases absenteeism so people don't want to come to work, it polarizes the work force where you start having factions in the work force, peoples' moral is lowered, they feel good about the environment because they feel like the employer is tolerating a toxic environment, it reduces productivity, people don't want to work, it can generate bad publicity for the City, and then we have a hard time attracting good people. We can attract anybody, but we want the best, we want good people. Then it can also lead to EEOC complaints, that is Equal Employment Opportunity Commission. Before you actually can ever file a lawsuit for sexual harassment you have to go to the EEOC, they are the gatekeeper, and they basically make a decision as far as whether or not they find any cause that there was harassment or discrimination and then the person can actually file a lawsuit. So, it's costly; it's a costly proposition for the City.

When you talk about absenteeism, I will give you an example and this is a real case, where somebody didn't even want to go to work. I had a case a long time ago, maybe 12 – 13 years ago where this woman, she was hired as a receptionist for a company and the owner of the company just took a shining to her. She was very beautiful, she is actually a former Florida Beauty Pageant Queen, so a very

beautiful lady. She became the receptionist and he took a shining to her and every day he would come in and try to woo her and say really nice things to her, "Oh, you look nice today", "I like your hair", it started very subtly and then it gradually progressed to him writing her notes because when people fall in love they think they are poets so they start writing poetry. So, he started writing her poetry, buying her cards, buying her chocolates, flowers, teddy bears, and she was literally feeling sick and she told me, "I feel sick, I don't want to go to work, I'm not going to work because I feel like throwing up every time I pull up to the parking lot". Because she was engaged, she was actually going to be married, so she stayed there because she wanted the money for the wedding, but she was rejecting him, you know, all the advances. Every time he was buying the chocolates and the teddy bears and all that she was rejecting that, saying, "No, I'm engaged, I'm getting married in a few months, no". Then, one day he crossed line and he bought her something that she just said, "That's it" and she left the job and she filed a lawsuit. Do you know what he bought her? Can you guess?

COMMISSIONER BARNES: Underwear.

CITY ATTORNEY SMITH: Underwear? A negligee. He bought her a negligee, a red negligee, and she kept it. You know why? Because it was an exhibit in the lawsuit.

MAYOR MESSAM: Of course.

CITY ATTORNEY SMITH: So, that thing came out all the time, this negligee, constantly, here is Exhibit A. So, that was not a good case, it was a very bad one. That's kind of an extreme; people are usually not that extreme, but it happens too. That does happen where people just lose all their senses, they fall in love and they lose all their senses. So, you have to be very very mindful. And, that lady was paid by the way, handsomely, in the end.

So, moving on, who's covered? Who is covered by our sexual harassment laws? So, it's basically everybody. So, whether it is an applicant for a job, whether it is a current employee, which includes our elected officials, whether it is the fellow employees here, whether it is a supervisor or manager, if it's an outside vendor, if it's legal counsel, if it's your other vendors that we contract with, if it's a resident, all those people are all covered. Now, here's a question. This was actually a question I was asked when I did one of these training classes by one of our employees. So, one of our employees said, "He works in Public Works and he was outside working, and he had on two shirts and he was sweating excessively so he decided to take off one shirt and leave one shirt on". As he was taking off the one shirt to leave the other shirt on, there's a resident that is going by and she said, "Oh, take it off, take it off" to him. It really happened. So, he said, "Is that sexual harassment". What do you think?

COMMISSIONER BARNES: One off.

CITY ATTORNEY SMITH: What did you say, Commissioner Barnes?

COMMISSIONER BARNES: One off.

CITY ATTORNEY SMITH: It's a one off. Okay, let's change it. What if she has done that more than once, this is not the first time that she has made a comment like, "Take it off".

COMMISSIONER BARNES: It becomes a different ...

MAYOR MESSAM: Is this a resident?

CITY ATTORNEY SMITH: This is a resident.

MAYOR MESSAM: To an employee?

CITY ATTORNEY SMITH: To an employee.

MAYOR MESSAM: It may be inappropriate. I'm just thinking what authority or what control does a resident have over a City employee.

CITY ATTORNEY SMITH: So, if it were to be sexual harassment, what could the employee do? Let's say it is actually sexual harassment; what can the employee do?

MAYOR MESSAM: To the resident?

CITY ATTORNEY SMITH: Yes.

COMMISSIONER RIGGS: File a complaint.

CITY ATTORNEY SMITH: File an absolute complaint. Absolutely. But, going back to the scenario, let's say it has happened more than once. It has happened more than once, it is not just the one off, it's not just one time, she has done things like that many times in the past. Is that sexual harassment?

MAYOR MESSAM: Yes.

CITY ATTORNEY SMITH: Yes, if, here's the other piece that we haven't learned about yet that we are going to talk about more. Yes, if it's unwanted or unwelcome, that is key for sexual harassment. So, I said to him, "Well, how did it make you feel?" He said, "I felt really good, I mean, I know I'm handsome but gee".

COMMISSIONER RIGGS: That's what I said, it was a compliment.

CITY ATTORNEY SMITH: I said, okay, then, then there is no sexual harassment.

COMMISSIONER CHAMBERS: It's not right.

CITY ATTORNEY SMITH: You feel like the big man on campus, Alright, there you go. Then we were good to go. So, it has to be not only severe in reason where there is a pattern, but it is unwelcome, you don't want it. So, lots of time when I do training I have people say, "Oh my gosh, I can't hug anybody, I can't kiss anybody", not true. It has to be unwanted or unwelcome. We live in a culture wherein South Florida where that is just part of our nature and lots of us come from countries where that is part of our culture. So, we hug, and we kiss, and we are close. As long as it is not unwelcome or unwanted you are okay.

COMMISSIONER BARNES: But, does this not again go against that whole female versus male situation because a female, under those circumstances, different story I think.

CITY ATTORNEY SMITH: Yes, yes. It's unfortunate. I mean, I certainly don't agree with it, I think it should be equal for everybody, but the truth is that the way society views is different, it's skewed, and it's not right, I totally don't agree with it but selling it to a jury is another thing, it's just very very hard because there is always the presumption. There is always a perception that if it's the woman, this poor woman that has been mistreated and that's not always the case.

COMMISSIONER RIGGS: So, let's say you flip that situation and it's an employee making the comment and the person is uncomfortable and they file a complaint. What happens after that? What happens to the employee?

CITY ATTORNEY SMITH: So, there are two employees, right, involved?

COMMISSIONER RIGGS: Well, yes, let's say yes, two employees involved.

CITY ATTORNEY SMITH: So, if they make a complaint, you know, to HR, HR would conduct an investigation so, the person who made the comment would probably be put on paid administrative leave during the pendency of the investigation, because legally, we can't put them on unpaid leave until we find out what really happened. But, you can have them on leave just with pay while you investigate what happened. That person, depending on the severity, going back to Jim. So, if we go back to the first fact pattern, that's exactly what happened. We put him on paid administrative leave, he had worked for that City, by the way, for over 20 years. He called every member of that Commission to ask for his job and the Manager ultimately said, "No, we did an investigation, we brought everybody in, we spoke to everyone, and we feel that even though it wasn't sexual

harassment ..." because they consulted with me, "Even though it was not sexual harassment, it is so inappropriate from the standpoint of a supervisor that we are going to terminate this person". So, whether it is inappropriate conduct in violation of policy or it is sexual harassment, your discipline can be up to and including termination of your employment. Yes, good to know. Good to know. So, it is very very important.

One of the things I was asked too, I've been asked too, by some of our employees when I've done training is "How do you handle it if we have a resident that let's say they come to one of our facilities and they are sexually harassing an employee, they are actually engaging in sexual harassment of our employee". And, I have had that before, not here, but I've had that in other Cities. For instance, we had a City where they had a gym, they had like a gym facility open to the public, open to the residents, and this one resident used to go to the gym and used to sexually harass the receptionist who would have to sign everybody in and give them like a towel and other things like that. She wrote a complaint, she sent a written complaint to HR and it was a long, it was about ten years ago, and in her complaint, she said, "He used to refer to her as BAE", this was like ten years ago. So, I thought her name was Barbara or something, I said, "Is this a shortening for Barbara" and she said, "No, it's like baby or honey or babe", and I said, "Oh, okay". Now everybody says BAE but at the time nobody said it. And, so what we did was we sent a letter that came from the Manager's office to that resident that said, "Mr. so and so, you are utilizing the gym located at such and such address. The gym has rules and regulations and these rules and regulations say you will not engage in conduct that is not going to be offensive to our staff members. Be advised that we reserve the right to prohibit you from utilizing the facility if you are going to continue to engage in that conduct. Please govern yourself accordingly." It never happened again, and this was about ten years ago. I've done it twice with two different facilities where that happened where a resident was doing that, was engaging in that type of conduct. So, there are resources that we have available if it is happening here that we can address it.

Alright, so moving on. More testing your knowledge because I think you learn by being tested. That's how I learn anyway so I try to do the same thing. So, harassment in the workplace is a form of workplace discrimination. Is that true or false? Harassment in the workplace is a form of discrimination?

COMMISSIONER CHAMBERS: Could be.

CITY ATTORNEY SMITH: Could be.

COMMISSIONER CHAMBERS: You might be harassing the person about their color or their sexual orientation.

CITY ATTORNEY SMITH: So, it's a could be. Okay, anybody else want a try at it

before I tell you what the answer is?

COMMISSIONER BARNES: Yes.

CITY ATTORNEY SMITH: It is and I stick on this point when I do training for employees because the reason why this is so vital, I do a ton of investigations, not here, but for other Cities because generally their HR does not want to do it because they feel conflicted out so they call me because I don't know the people, I don't need to find one way or the other, I'm going to find where the truth is and that's going to be my response. What happens is 99% of the time there is no basis to the claim because people don't understand the distinction. So, harassment must be tied to a protected category. Okay, it has to be. A lot of times when I get complaints, I just finished one and I'm starting another one next week for another City, a lot of times when I get complaints it is, you know, my boss is really picking on me, they are singling me out, they are treating me differently, that's not harassment from a legal standpoint; there is probably a policy issue. Like if you have a policy against bullying, maybe he's being a bully if he's not being very nice to you. There is no lawsuit that you can file for that because, unfortunately, I tell this to people, if your boss is an Equal Opportunity jerk, it is not illegal, we don't tolerate it, we don't like it, and it is probably violating a policy, but you can't say, "Well, now I'm going to sue the person". So, if they are just like, I literally know somebody who says, "I hate people, I just hate people, and the fact that you are alive and breathing oxygen is a problem to me". That's okay, we don't like it but that's not illegal. The point is for harassment, it has to be tied to a protected category, it is discriminatory, it is not just this person is picking on me, they are not very nice to me, they are not very friendly; that does not qualify. I just finished one investigation. The person said, "You know, every time I work they put me on this shift and they are only putting me on this shift because they don't like me". Maybe they don't, they probably don't, but unless you can tie it to something that is protected, unless you are able to say, "They are putting me on this shift because I am black, because I'm white, because I'm Hispanic, because I'm Cuban, because I'm Jamaican, because I am Jewish", it has to be tied to something, it can't just be that they don't like you. Okay, that's not actionable legally. Okay, good, everybody thought of the answer there.

If you fail to report harassment, even if you did not participate in the harassment, you are subject to disciplinary action. Is that true or false?

COMMISSIONER CHAMBERS: True.

CITY ATTORNEY SMITH: What do you say, Commissioner Barnes?

COMMISSIONER BARNES: Not so sure, not so sure. Under the provision of having to say something once you have seen something you could be culpable?



MAYOR MESSAM: If you are aware of it you can be brought in as well because you are allowing the environment, you are fostering the environment.

CITY ATTORNEY SMITH: This is the TSA rule. I ask people all the time, "How do you think we know half the time?" How do you think we know? Somebody says it. A lot of times the recipient of the alleged harassment doesn't want to come forward for whatever reasons. There are multiple reasons and there are all kinds of reasons about why people don't say anything. Third parties come forward all the time; people complain on your behalf. I have investigated complaints that were brought by somebody else. I was called in to investigate a complaint where a group of Police Officers had gone away, not our people, I never use our, by the way, none of these examples are from here. I never ever ever use examples from the Cities I am training at because people start to guess and try to figure out who it was, so I never do it. But, I was called in once to another City to go investigate where some Police Officers had gone for training to another State and there was an allegation that the Sergeant had sexually harassed a new female Officer who had just started and apparently everybody was going crazy over her because they thought she was so attractive, but apparently, he was doing that. So, he, another Officer came forward and said, "Hey, I know she's not going to say anything because she's new, but she was sexually harassed when we went on out retreat in Maryland" and I was called in to investigate that. So, a lot of times that is how we get it; it is from a bystander or from somebody who was there. Yes, Commissioner Riggs.

COMMISSIONER RIGGS: Doesn't that contradict what was said earlier in reference as to how it is perceived? Because, let's say the young woman didn't think she was being sexually harassed but a third party thinks she was, why would you; that could open a can of worms that's not ...

CITY ATTORNEY SMITH: Yes, so, but that's why you do your investigation. That's a very good point. So, in that exact scenario that's exactly what happened. He came forward and he said, "I looked at it and I perceived it as sexual harassment". This thing happened and this thing happened, we get specific facts so, you just can't throw something out, you have to say, "He said this, he told her that, he touched her here", you have to be very specific so we can actually confront the person because due process requires you to tell them what somebody is saying and have a response, so you have to give specific facts. When she came in, she said, "What? That never happened, that's not true. I'm a very very assertive person. I promise you, I don't care if I'm new, if something were to happen I would come in and say something". She wanted to turn around and file a complaint against him for going off and saying that she was sexually harassed. But that's why you do the investigation. A lot of times I try to leave employees with, because they get very very frustrated about this and very upset, any person can make any complaint about anything; you cannot stop that. A person can walk into the Police Station this moment and make an allegation against you; there is

nothing that you can do. What happens though is they have to have evidence, they have to have proof. So, just the fact that they are going to say something about it is absolutely meaningless. An allegation is meaningless. I spent two hours yesterday speaking to an employee who was very upset, not here again, I never use our City, but speaking to another employee who was upset over an allegation that was made against him. I said, "You were exonerated in the investigation", the allegation is meaningless. So, that's why you have to do the investigation, you don't just take somebody's word, you have to investigate it first. Okay, but that's a very good question. So, yes, you are subject to discipline if you don't report it, it is the TSA rule.

Next, if your intentions are good, your behavior cannot be considered harassment. Is that true or false?

COMMISSIONER BARNES: False.

CITY ATTORNEY SMITH: Why do you say false?

COMMISSIONER BARNES: Who knows your intentions. Nobody knows.

CITY ATTORNEY SMITH: So, if you come forward and say, "I didn't mean it, I know I said that, but I really didn't mean anything, I swear. I'm just a kidder, I like to just joke around".

COMMISSIONER RIGGS: Again, it goes back to how the other person perceives it.

CITY ATTORNEY SMITH: It doesn't. Yes, Commissioner Chambers.

COMMISSIONER CHAMBERS: Well, this one applies to me.

CITY ATTORNEY SMITH: It does? Okay.

COMMISSIONER CHAMBERS: So, this one applies to me. A few weeks I attempted to greet a young lady with a hug and she stated that she does not hug, so she shook hands and we went our separate ways. How is that a sexual harassment?

CITY ATTORNEY SMITH: Remember, if you have that contact, what's the rule for sexual harassment, for it to be a viable sexual harassment claim? What's the rule? Commissioner Barnes, you said it earlier.

COMMISSIONER BARNES: Unwelcome.

CITY ATTORNEY SMITH: Unwelcome but also? What's the other thing we need

to look at? Pattern, one off. So, if it is one time you had an exchange with somebody it is not going to rise to the level of sexual harassment. Also, if you respected the person and did not try to impose upon them, that mitigates any claim of sexual harassment. If you just said, "Okay, we will just shake hands and go work our business", that also mitigates the sexual harassment claim.

COMMISSIONER CHAMBERS: If you shook hands and go separate ways?

CITY ATTORNEY SMITH: Yes.

COMMISSIONER CHAMBERS: Okay.

CITY ATTORNEY SMITH: Alright, that mitigates it. So, but generally speaking, no, it does not matter if you had good intentions, it is the way that the recipient is receiving it. Also, we look at how would a reasonable person perceive it because you do have people who are a little bit more sensitive about things than others so, when it goes before a jury one of the standards that is used; it's two prompts, subjective and objective, so the objective prompt says, "How would a reasonable person who has received this contact perceive it? Would they be outraged and think this is sexual harassment or would they just think this is a normal part of life where we agree to hug and shake hands?" They are probably going to say, "It is perfectly normal, and it is not an issue".

COMMISSIONER CHAMBERS: Forget about the good intention.

CITY ATTORNEY SMITH: Yes, forget about the good intentions. So, I always say to people it is very important to gauge people when you interact with them, right? So, I have to interact, like you guys, with so many people in different Cities, different municipalities, different cultures all the time. One of my clients is a Latin-based institution, they are very warm and very friendly, they always hug, they always kiss, sometimes they kiss on both cheeks. There is one lady, one in the entire entity, that I know for a fact does not like to be touched or hugged and I learned that the very first time I hugged her, and her soul just came out of her body and left her, and I could feel it. I tell people because you feel it, you know, you can feel the person literally become rigid, like everything just dies within them because they don't; either they don't want you to touch them or they are just not a hugger, they don't leave their personal space. So, I tell our employees, I say, "If that happens to you, because we are in a culture where we do that, make a mental note this person does not like to be touched or this person doesn't want me to touch them and never do it again". I have represented them for years, I have never hugged that lady again, ever, not one time. I see her and say, "Hi" and she says, "Hi" and everything is good. Everything is good, from across the way, hi, everything is good. I always tell them, gauge people. I also tell our employees, engage people. "Listen, there are lots of times when you are going to be making like off the cuff remarks, sometimes you are joking around". Some of our

departments may be Fire or Police, it is very stressful, so they tend to have a little bit more levity going on and you try to break up the stress because they are seeing very very, sometimes, violent scenes, so they could joke around sometimes. I tell them, if you are in a group and you are joking around and you notice because you know, you notice that somebody is not laughing because somebody doesn't think it's funny, say to the person, preempt them. Preemption means, you say to them, "You know what, I don't even know why I said that, I'm just being silly. I apologize, that was totally, I don't know where my head is today, I'm just totally in the clouds today". What preemption does, what you are doing that does, is if that person were to go and complain it mitigates the complaint against you because you recognized it right away and you took care of it in that moment, so don't just let it go, watch the people around you and how they are responding when you speak and then you just say, right away you address it right away and say, "My goodness, that's just a silly comment, I don't even know where that came from. Just ignore me, I didn't get much sleep last night" or whatever. Just be sure that you try to mitigate it in that instant. Okay?

Alright, let's move on. If an employee does not immediately complain about offensive behavior, the behavior is probably welcome and not harassment. Is that true or false?

MAYOR MESSAM: False.

CITY ATTORNEY SMITH: It's false. So, you get a lot of people frustrated with this one that somebody can wait and wait and wait and sit on the allegation and not come forward, but if you think about the claims that were made against Bill Cosby, if you think about the claims that are being made about Harvey Weinstein, Russell Simmons, some of these claims are coming from the 80's, some of the claims are coming from decades ago where they are making these claims. What happens when there is such a delay, when there is such a lag in time between the alleged incident and the complaint, what actually happens to that claim? What do you think happens when you wait?

COMMISSIONER RIGGS: Less believable.

CITY ATTORNEY SMITH: It is less credible. Why?

COMMISSIONER RIGGS: Why didn't you complain at the time and also, especially if it's after a demotion or you have been fired and then you complain. You wonder why it didn't happen right away.

CITY ATTORNEY SMITH: So, for your case, when you go to court, you need what to be able to win?

COMMISSIONER RIGGS: Proof, you need evidence.

CITY ATTORNEY SMITH: Evidence. So, does the lag of time take away that evidence, especially if it is a sexual harassment thing where there is a physical component, because now we've lost all of the physical evidence. It wasn't maintained in any way, so that makes it less believable. I sat as a juror once in a case that was a sexual battery case, the allegation was, but the time delay was so significant that there was no physical evidence; we found the person not guilty in the criminal case and we said he's not guilty, there's no evidence. So, you have to be very mindful of that, that if somebody does delay the credibility is going to be an issue because you probably are not going to have the evidence that you need. Okay?

COMMISSIONER BARNES: There is no statute of limitation?

CITY ATTORNEY SMITH: For the Civil, for the Civil ones. So, you can bring your Civil lawsuit, so people can wear their ugly heads again. When you think everything is fine and you are bopping along in life and nothing is bothering you and here comes a Process Server serving you with a claim. That's why it is very important to watch your interactions and gage who you are talking to.

Okay, here is the one Commissioner Riggs was mentioning earlier. If you ask an employee on a date it is not sexual harassment. Is that true or false?

VICE MAYOR COLBOURNE: Not the first one.

CITY ATTORNEY SMITH: Not the first time. That is actually the answer. It is okay, unless we have an anti-fraternization policy, which we don't, so it's okay to actually say, "Hey, would you like to go dinner with me; would you like to go a date with me?" That's fine. I have had our employees say to me, I literally had one person stand up and say, "My wife rejected me seven times and she's my wife today". So, what about the concept of breaking somebody down? I said, "Don't break them down at work, no". You can break down the people on Match, or E-Harmony, or in your church; do not break them down here because you run the risk of a sexual harassment claim. If they say, "No", it's okay, there is other fish in the sea, it's totally fine. You don't have to keep pursuing them because you are going to run the risk of a sexual harassment claim. Okay, so no breaking people down. Then, I've also had people say, "Well, what constitutes asking somebody out on a date?". You know, if you ask somebody to lunch is that a date? No, we are not talking about asking somebody to lunch and not even necessarily saying, "Do you want to go to TGIF Fridays", it's more of how are you asking. You know when somebody is asking you on a date versus just a friendly, let's just go have some fries at Denny's. Okay?

Alright, next one. To bring a lawsuit for sexual harassment, a victim does not need to show that he or she suffered a monetary or economic harm such as being fired or demoted. Is that true or false? So, you can actually file a lawsuit even though

you haven't lost any money, any compensation. Is that true or false?

COMMISSIONER BARNES: True.

CITY ATTORNEY SMITH: It's true and it's a little different than most claims that we are used to where you have to show something. Like, for damages you have to show that you lost some compensation because there is a big component to harassment, sexual harassment and other forms that is psychological. How is the person feeling? Like, going back to the receptionist I talked about. She walked off her job even though she needed the money for her wedding. She left, they didn't fire her, she left because of the psychological effects of going every day, every day and having the owner proposition her basically every single day.

Okay, jokes, innuendos, flirtatious conduct, and sexually explicit statements are lawful as long as sexual favors are not demanded. Is that true or false?

COMMISSIONER CHAMBERS: False.

VICE MAYOR COLBOURNE: False.

CITY ATTORNEY SMITH: False. You never ever have to ask them to do anything sexual with you for it to be sexual harassment. There are lots and lots of things that can be sexual harassment. We are going to talk about, hopefully in the next couple of minutes, we are going to talk about how even visual conduct can be sexual harassment even if you have not said a word, you haven't even opened your mouth and it could be sexual harassment.

Sexually explicit jokes are lawful if the target of the joke laughs at the joke. Is that true or false?

COMMISSIONER BARNES: False.

MAYOR MESSAM: False.

CITY ATTORNEY SMITH: False. Why? Why is that false? Even if the person laughs at the joke, it can still be sexual harassment. Why do you think?

MAYOR MESSAM: Laughing doesn't mean acceptance.

CITY ATTORNEY SMITH: Laughing doesn't mean acceptance because people have nervous laughter sometimes. Sometimes people have nervous laughter. To bring it home to everybody I gave an example in one of the classes where I was going to the airport one day. I hate to wait at the airport, so I like to go literally on the nose of my flight, I like to be walking on the plane when they are announcing my seat number so I'm always running a little late. In the airport in Fort Lauderdale,

which I know like the back of my hand, in the corner, was a Police Officer, which I didn't know he was there, it was like 4:00 a.m., and he steps out into the roadway with his radar gun and stops me and I was going in the excess of the speed limit; I won't say speeding. I was going in excess of the speed limit in the airport, which is only 15 miles per hour, and he said, "You think this is funny?" and I had complete dissonance with what was going on, cognitive dissonance what was going on in my brain was showing on my face, because my brain was going, "Oh no, I'm going to miss my flight, I have a ticket, I have to deal with this". I was stressed out, but my face was doing something different because it was nervous laughter. I wasn't laughing, it certainly is not funny. That happens sometimes; you tell a joke, you catch somebody totally off-guard and they have that cognitive dissonance, their brain and their face are not connecting. So, we can't even use that to say, "Well, the person laughed so it must have been okay". But, generally speaking, they do show you, even with their body language that this is not appreciated so be aware; be mindful.

COMMISSIONER BARNES: And what could happen sometimes too, someone will laugh just to go along.

CITY ATTORNEY SMITH: Exactly. They don't want to be ostracized. Everybody else is laughing so they don't want to be the sore loser or somebody that is just not a team player. So, be aware of that too.

Okay, next one. Sexual harassment may include actions by members of the opposite sex as well as members of the employee's own sex. True or false.

COMMISSIONER BARNES: True.

COMMISSIONER CHAMBERS: True.

CITY ATTORNEY SMITH: True. One of the important things to know about this as well is it can be same sex harassment even if both persons are heterosexual. Do you understand that? So, even if they are not gay or homosexual, it can still be considered sexual harassment. You should be very mindful of that. Okay, now where can it happen? It can happen in a number of places, business trips, that's a big big place where that happens, is people think they have like a hall pass and they can just do whatever they want, so that could happen there. The advice I tend to give clients and even our employees is, "If you go on a business trip, do not pair off, there is no pairing". If somebody comes to you and says, "Hey, let's go downstairs for a drink". No, no, let's, all of us together, as a group, okay, because you don't want to have that left open to perception. Because even if you go, let's say you and your friend, who happens to be a male, go down but you are literally just friends, and other people see you, people perceive things too. So, somebody from the restaurant could come forward and say, "Yep, I saw them, it was just the two of them. They were having a cozy, looked very intimate dinner to

me. I don't know what's taking place between the two of them, but they were so close, they were whispering sweet nothings in each other's ears". I always tell our employees, "Do not pair off, go as a group, go as a group, it's better".

Okay, business meetings, business related social events as well, that could happen, so be very mindful. Holiday parties because usually there is some alcohol and alcohol lowers inhibitions. So, after parties, after holiday parties, I never go ever, ever, ever to after parties. Off-site meetings, after hours meetings, client entertainment, happy hours, and I like to tell antidotally to our staff, I always tell them, the prosecutor and the defense for the State, they always seem like they are Arch Nemesis, well they actually go to happy hours all the time, almost every Friday they are at happy hour drinking together, but that's a place where that could happen as well. And even social events that are not sponsored by the employer can be places where harassment occurs.

Now, we have talked a lot about harassment that occurs in person, like face to face harassment, but harassment can occur in other ways too, and because we are in an era of technology, I'm not a text savvy person myself and I have no social media, but lots of people do so you have to be mindful of when you are using social media. For instance, I will use the example of, I try to tell our superior employees, "Do not friend your subordinates, do not friend them, do not have them as your friends" because of things like this. Let's say you are a supervisor and you have a subordinate employee, male or female, it doesn't matter.

Let's use a male for this example. This person likes to post selfies in the gym because they are just very into fitness and they want to show off, which is okay, it's their right, it's freedom of expression. So, they want to show off on Instagram. Let's say that they are just very muscular and built and fit, and they are shirtless most of the time because that's the whole point, I have this six-pack and I'm like very fit, and they have that on there. That's your subordinate employee and every time they post a picture you are liking it. That could be a problem, that could be a problem because they can actually see who liked their picture, who is going on and liking it and it is a picture where they are half naked, where they are shirtless. Right? Worse, if they say something like "Nice view", which has happened, which has happened. And, then I've heard people, I have used it for example and I have had employees say to me, "What if they are saying nice view of the gym equipment?", really? Remember what I said about the reasonable person standard in court; they are going to look at what would a reasonable person think. A reasonable person would not think you think that very old gym equipment looks nice, no, we know what you are talking about, we know. Okay, so be mindful when you are liking things. Then I have people; people get very very angry with this, so, I have people saying, "I have a right to like it". No, because you are going to expose the City to liability when you are liking these pictures. There is no requirement on any of the social media platforms to like anything, to push a button, to comment, to say anything in response; see and keep it here. If it stays here and



it never comes out, nobody can see into your mind no matter how much they tell you they are Miss Cleo, they can't see in it, so it's okay as long as it stays here and never comes out, it's okay. So, I always tell our employees, "Do not hit that like button all the time, be very mindful". Also, in your texting and sending text messaging; people love emoji's; they just love emoji's. It's just a thing where nobody wants to write anything anymore; it's all abbreviated or it's all emoji's. Be care of your emoji's. If Jamie and I worked together and I haven't seen Jamie in three months and I send him, out of the blue, we have not spoken, I have not seen him, we have not spoken, and I send him a text, no words at all, just emoji's and I have two kissy faces sent to Jamie, what am I saying? What does that message construe?

COMMISSIONER RIGGS: It depends on how Jamie takes it.

CITY ATTORNEY SMITH: It depends on if it is welcome or not welcome, right? If it's not welcome I might be starting a troublesome pattern here. He has a Process Server serve me for sexually harassing him, so you have to be careful. Try not to use the kissy faces; the wink eyes, which are very popular, try not to do that. Try not to blow kisses with your emoji's, try to keep it very PC, as PC as you possibly can if you are going to be texting. Lots of people just like to do that; they like to use emoji's, so be very mindful. I had somebody send me a text with a bunch of emoji's and I just deleted it because I didn't want to bother trying to interpret what they wanted to say to me. Alright, so be careful, knowing that it is not just in person, but it is also social media that can get you in trouble.

We are going to skip some of these, so we can go ahead to the two forms of sexual harassment that actually exist. One is called Quid Pro Quo; Quid Pro Quo is Latin. Do you know what it means? Anybody ever heard it before? Quid Pro Quo?

COMMISSIONER RIGGS: What does it mean?

CITY ATTORNEY SMITH: One thing in exchange for another; this for that. Right? So, if you do this I'll do that. So, even if it's just understood, even if you don't explicitly state it, and generally speaking, it is supervisor and subordinate involved. Then, we have hostile environment sexual harassment, which is where you are making the terms and conditions of somebody's employment so intolerable that they can't do their job. So, when I talked about the receptionist earlier and what she was experiencing, which one of these two would her scenario fit more neatly into? The receptionist, she was so overwhelmed with the behavior from the owner. Which one of these two? Is it Quid Pro Quo or is it hostile environment.

COMMISSIONER CHAMBERS: Hostile.

CITY ATTORNEY SMITH: It's the hostile environment because it's not really Quid Pro Quo, it's more that she literally could not do her job because of the harassment

she was enduring every single day; she was feeling sick to her stomach even coming to work. Alright, so some of the key points, it's unwelcome, they have it underlined because if somebody says, "It's okay, I'm a hugger, I like to hug, I'm warm" it's fine.

Verbal, visual, or physical conduct. How can sexual harassment be visual? What can somebody do that is visual that could be sexual harassment? Don't do it obviously, just tell me. What could somebody do? Have you ever heard the term, "Elevator eyes?" Anybody ever heard that? Elevator eyes, somebody is using elevator eyes. Anybody heard that? What does an elevator do?

COMMISSIONER CHAMBERS: Goes up and down.

COMMISSIONER BARNES: Goes up and down.

CITY ATTORNEY SMITH: Takes you up and down, stops on different floors, has a look around, goes back on the elevator. So, you are doing that to the person, up and down, coming off on whichever floor you think is a good floor to come off on, look around, go back on and take a ride up and down. So, that is elevator eyes; that is visual sexual harassment and there have been lots of cases that pertain to that. So, you want to make sure you are not engaging in that type of conduct; be careful. I have had employees say to me after the training, "Well, I'm going to start wearing shades". Well, if you know you are a wanderer that has elevator eyes, you may want to do that because you could get in trouble for looking somebody up and down and coming off on various floors. Okay? So, for hostile environments it is unwelcome; it is unwelcome, visual, verbal, or physical of a sexual nature, it is severe and pervasive, so it is not a one off, it happens on more than one occasion or it creates a hostile work environment for the person. Quid Pro Quo, like we said, I'll do this if you do that. Like, if you want the position you need to go out on a date with me, those types of things where you are asking for something in exchange. Conduct is not sexual harassment if it is welcome. If it is not welcome, we try to encourage our employees to make sure that the person knows I don't like it, it's not something that is welcome for me.

Just some common ones that you should be aware of; some verbal comments that you make could be a problem. I have some words up there; honey, babe, girl, sweetie, the "B" word, bimbo, hunk, stud, and people sometimes say to me, "Girl", like there is nothing wrong with saying girl, some people are offended by that term and it refers to a person's gender. Right? So, you have to be mindful of saying that. It should always create a red flag whenever you say, "Okay, girls". I was just somewhere yesterday, and somebody said it to me and another employee, who was much older than me, and they said, "Okay, girls" and she just looked like a deer in the headlights. I literally had it before, I used to work with an attorney a long time ago who was much more senior to me at the time, she was about ten years more senior to me, and we went and prepped some witnesses for trial and

the very last witness for the day, who was one week away from retirement, when we walked into the room said, "Hi girls" and at that end of our meeting when we prepped him he walked out and she said to me, "I am so offended" and I said, "Why" and she said, "Don't you remember what he said when we walked into the room" and I said, "No, I don't remember" and she said, "He said hey girls" and I said, "But we are girls" and she said, "No we are not, we are ladies, we are ladies and that is a pejorative term, that is a put on, that is a way for him to demean us, so you should never accept someone calling you a girl, you are a lady" and she called him back into the room and she confronted him and told him. So, be mindful when you have terms like that, like "Girl" to make sure you are not saying something that could potentially offend somebody. Use their name. Okay? So, it could be comments about the persons clothing. It doesn't mean; because people have said to me, "So, I can't tell somebody they have on a nice outfit?". No, that's not what we are saying. It's the way you say it. You can say, "That's a nice dress or I like the color of that dress" but you don't want to say something like, "Wow, the way that dress just sits on your curves and hugs your curves, it really accentuates your figure". No, you don't want to say that. So, that's the idea. You can say things but don't go so into depth and in detail where you are offending the person with your communication. Okay?

So, I have a whole slew of things that are prohibited. I will skip ahead. It can be physical as well. I have assault on there, I don't mean assault in a criminal offense, there are many things that can be assault like unwanted touches can be an assault, like giving somebody a massage, where you are blocking their movement so they can't go by you, they are touching their clothing or finding a reason to have to touch this person. Kissing, hugging, patting, or stroking; remember again, it has to be unwelcome. If you are standing too close to a person or you are brushing up against them.

Non-verbal, we are talking about the elevator eyes or if you are making derogatory gestures, which I won't show you, but you can use your imagination. Following people around. Somebody asked me at one of the training sessions, "How about if I'm in Publix and every time I go to Publix there is another employee there and essentially they are following the person". I said, "That could potentially be stalking so I would advise you to go to another Publix, stop going to the same Publix as that person". Be very mindful of that.

Okay, then we talked about severe or pervasive where it has to happen more than once; it can't just be a one off situation. So, just as a closer, to kind of like bring it home, there is a distinction between flirting and sexual harassment, right? So, flirting is welcome attention, sexual harassment makes us feel uncomfortable, flirting goes both ways, sexual harassment is one-sided, flirting makes you feel attractive, sexual harassment feels degrading, flirting makes you feel in control, sexual harassment makes you feel powerless, flirting makes you feel good about yourself, sexual harassment makes you feel bad about yourself, flirting is legal,

whereas, sexual harassment is not only illegal, but also a violation of City policy. With that, there are a few more slides, but you do have them there and you can always approach me if you have any questions because I can go on and on and on. I enjoy training way too much. Unless anybody has any questions, we will bring it to a close. Thank you so very much.

MAYOR MESSAM: Alright, thank you so much, Attorney Smith, for a very comprehensive Workshop on sexual harassment. It is great that the City of Miramar has done this throughout all of our City Departments including the City Commission. So, thanks so much for this session. On that note, we will adjourn this Workshop and we are really close on our Commission meeting; it is 6:57 p.m. If we can just take, I guess, a five-minute bio-break, and we will start the Commission meeting shortly. This Workshop is adjourned.

### **ADJOURNMENT**

The meeting was adjourned at 6:57 p.m.

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Denise A. Gibbs, CMC  
City Clerk  
DG/cc