

OFFERED BY COUNCILORS BENJAMIN J. WEBER, COLETTA ZAPATA, DURKAN,
FERNANDES ANDERSON, FITZGERALD, FLYNN, MEJIA, MURPHY, PEPÉN,
SANTANA, WORRELL AND LOUIJEUNE



CITY OF BOSTON

IN THE YEAR TWO THOUSAND TWENTY FIVE

ORDER TO IMPLEMENT A NONDISCLOSURE AGREEMENTS PROHIBITION POLICY FOR BOSTON CITY COUNCIL

- WHEREAS,** Transparency and accountability promote public confidence in government; *and*
- WHEREAS,** The use of nondisclosure agreements as a condition for employment in the Boston City Council raises several important public policy concerns; *and*
- WHEREAS,** Pursuant to the Massachusetts Whistleblower Act, M.G.L. c. 149, § 185, a City Councilor cannot take any retaliatory action if a staffer discloses or provides information to a public body of “an activity, policy or practice of” a City Councilor “that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment”; *and*
- WHEREAS,** Accordingly, to the extent that a nondisclosure agreement between a Councilor and a staffer obstructs a City employee’s ability to engage in the activities protected in the Massachusetts Whistleblower Act, such agreements would violate both State law and the public policy of the Boston City Council; *and*
- WHEREAS,** In addition, nondisclosure agreements may be used to prevent individuals from disclosing harassment, discrimination, and other worker rights violations; *and*
- WHEREAS,** In light of the negative impact nondisclosure agreements can have on the workplace and its impact on the public’s ability to be informed of unlawful activity, states such as California, New York, and Washington have passed legislation banning predispute nondisclosure agreements as a condition of employment; *and*
- WHEREAS,** Similarly, the federal Whistleblower Protection Enhancement Act of 2012, requires that any nondisclosure or nondisparagement agreement contain language expressly allowing the employee to cooperate with an investigation or to disclose information to any oversight body; *and*
- WHEREAS,** In 2019, in response to concerns about the negative impact of nondisclosure agreements between legislators and staffers, the Massachusetts Senate enacted Rule 11G which states: “The Senate shall not include or permit a nondisclosure,

nondisparagement or other similar clause in an agreement or contract between the Senate and a member, officer or employee. The Senate shall not seek to enforce a nondisclosure, nondisparagement or other similar clause in an existing agreement or contract between the Senate and a member, officer or employee. This rule shall not be suspended.”; *and*

WHEREAS, In the interests of the use of nondisclosure, nondisparagement or confidentiality provisions could create a power imbalance and hinder staff from coming forward with any potential concerns; ***NOW, THEREFORE BE IT***

ORDERED: That the Boston City Council adopt a Prohibition of Nondisclosure Agreements Policy as follows.

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BOSTON CITY COUNCIL



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Policy Statement

Councilors shall be prohibited from requiring staff in their office, as a condition of employment, to sign or agree to any nondisclosure, nondisparagement or confidentiality provisions, or any other provision that attempts to restrict disclosure regarding unlawful acts in the workplace, including but not limited to harassment, discrimination, retaliation, or other forms of misconduct. Councilors shall not seek to enforce a nondisclosure, nondisparagement or other similar clause in an existing agreement between the City and a City Council staff member that was entered into as a condition of employment. The purpose of this policy is to promote transparency, accountability, and to promote public confidence in this body.

Implementation

It is the responsibility of the Staff Director and each City Councilor or staff designee to ensure that all employees, staff, volunteers, and interns who report to them are aware of this policy. Each Council office will ensure that a copy of this policy is provided to all of its employees, staff, volunteers, and interns on or before an employee's start date of hire, and will retain a signed record of acknowledgment that all staff members have read and understand the policy. The Staff Director will ensure the same for all Central Staff employees and volunteers.