



CITY OF SAN RAFAEL POLICIES AND PROCEDURES

Subject:	Disability Policy
Resolution No.	
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Prepared By	Leslie Loomis, Human Resources Director
Approved By:	Ken Nordhoff, City Manager

DISABILITY POLICY

PURPOSE:

Title I of the Americans with Disabilities Act (ADA) of 1990, which took effect July 26, 1992, prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. Additionally, Title II of the Americans with Disabilities Act (ADA) requires public employers to establish and publish grievance procedures that provide prompt and equitable resolution of complaints alleging violation of disability discrimination.

The purpose of this policy is to ensure that the City of San Rafael takes appropriate actions to:

- Prohibit and eliminate any discrimination in employment against a qualified individual with a disability.
- Establish a procedure to determine “disability”, “a qualified individual with a disability” and identify “accommodation” or “undue hardship” actions under the current law.
- Establish a procedure for investigating and resolving employment-related disability discrimination complaints.

RESPONSIBILITY:

All City Employees

REFERENCES:

- Title I – Americans with Disabilities Act
- Hiring Practices policy
- Applicable Memorandum of Understanding

DEFINITIONS:

“Disability” as defined under the American with Disabilities Act is: (1) a physical or mental impairment that substantially limits one or more major life activities; or (2) having a record of such a physical or mental impairment; or (3) being regarded as having impairment.

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A. Physical or Mental Impairments

Physical or mental impairment may include, but are not limited to: vision, speech and hearing impairments; emotional disturbance and mental illness; seizure disorders; mental retardation; orthopedic and neuron-motor disabilities; learning disabilities; diabetes; heart disease; nervous conditions; cancer; asthma; Hepatitis B; HIV infection; and drug addiction, if the addict has successfully completed (or is participating in) a rehabilitation program and no longer using illegal drugs.

Conditions which are not considered to be permanent or physical impairments include, but are not limited to those which are set forth under 29 C.F.R., Sections 1630.3(d)(1)-(3) and 1630.3(e); 56 Fed. Reg. 35740-41 (1991), and 56 Fed. Reg. 35742 (1991), and other modifications and additions to those sections, and any other conditions otherwise considered not to be specifically designated as permanent or physical impairments. In accordance with the provisions of the ADA, the City of San Rafael adopts all such permissible exclusions from coverage under the Act.

B. Substantial Limitation of Major Life Activities

An individual is disabled if he or she has a physical or mental impairment that (a) renders him or her unable to perform a major life activity, or under the California Fair Employment and Housing Act (FEHA) has a disability that limits a major life activity; or that (b) substantially limits the condition, manner, or duration under which he or she can perform a particular major life activity in comparison with other people. Major life activities are functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

In determining whether physical or mental impairment substantially limits the condition, manner, or duration under which an individual can perform a particular major life activity in comparison to other people, the following factors shall be considered:

1. The nature and severity of the impairment;
2. The duration or expected duration of the impairment; and
3. The permanent or long-term impact (or expected impact) of, or resulting from, the impairment.

In determining whether a physical or mental impairment substantially limits an individual, with respect to the major life activity of "working," the following factors should be considered:

1. The geographical area to which the individual has reasonable access;
2. The number and types of other jobs within that geographical area utilizing similar training, knowledge, skills, or abilities (to the job from which disqualified) from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

C. Having a Record of Impairment

An individual is disabled if he or she has a history of having an impairment that substantially limits the performance of a major life activity; or has been diagnosed, correctly or incorrectly, as having such impairment.

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D. Regarded as Having a Disability

An individual is disabled if he or she is treated or perceived as having an impairment that substantially limits major life activities, although no such impairment exists.

POLICY:

The City of San Rafael will not discriminate against any employee, or applicant for employment, because he/she is disabled in regard to any position for which the employee or applicant is qualified. The City will not discriminate in any job application process or terms or conditions of employment including, but not limited to, hiring, placement, promotion, leave of absence, disciplinary action, demotion or transfer, layoff or termination, rates of pay or other forms of compensation, and training.

All complaints of discrimination on the basis of disability will be promptly and objectively investigated. Disciplinary action, up to and including termination, will be instituted against any employee whose actions are found to be discriminatory. Any retaliation against a person for filing a discrimination charge or making a discrimination complaint is prohibited.

PROCEDURES:

QUALIFIED INDIVIDUAL WITH A DISABILITY

A "qualified individual with a disability" is a person who (1) satisfies the job related requirements for the position, and (2) can perform the "essential functions" of the position despite their disability, or who (3) with "reasonable accommodation" can perform the essential functions of the position.

A. Satisfies Job-Related Requirements

Determine whether the disabled individual satisfies the job-related requirements of the position. Satisfying the job-related requirements of the position means that the disabled individual possesses the appropriate educational background, knowledge, employment experience, skills, and license required for the position.

B. Essential Functions

Determine whether the individual can perform the essential functions of the position despite their disability. Essential functions are the fundamental duties of a position. Marginal or peripheral functions of a position are not essential functions. A function may be essential because:

- The reason the position exists is to perform that function;
- Of the limited number of employees available among whom the performance of that function can be distributed; and
- It is highly specialized and requires specific expertise or skill to perform.

The following factors shall be considered in determining whether a particular function is an essential functions of the position: the City's judgment as to which functions are essential; written job descriptions; the amount of time spent on the job performing the function; if the department can reassign the duties to another employee and then not requiring the performance of the function; the terms of a collective bargaining agreement or MOU; and the work experience of past and present incumbents in the position.

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C. Reasonable Accommodation

If the individual cannot perform the essential functions despite their disability, the third step is to determine whether reasonable accommodation would enable the individual to perform the essential functions of the position. Accommodation is any change in the work environment, or in the way things are customarily done, that enables a disabled individual to enjoy equal employment opportunities. Accommodation means modification or adjustments:

- To a job application process so as to enable an individual with a disability to be considered for the position;
- To the work environment in which a position is performed so that a disabled person can perform the essential functions of the position; and
- That enables disabled individuals to enjoy equal benefits and privileges of employment as other similarly situated employees without disabilities enjoy.
- Accommodation includes making existing facilities and equipment used by employees readily accessible to, and usable by, individuals with disabilities.

Accommodation applies to:

1. All employment decisions, and to the job application process;
2. All services and programs provided in connection with employment;
3. Non-work facilities provided by the City to all employees; and
4. Known disabilities only.

Accommodation is not required if:

1. It eliminates essential functions of a position from the disabled individual's job; or
2. Adjustments or modifications requested are primarily for the benefit and not the necessity of the disabled individual.

D. Undue Hardship

The City will not provide an accommodation that imposed an "undue hardship" on the operation of the City's business. Undue hardship refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

Whether a particular accommodation will impose an undue hardship is determined on a case-by-case basis. The following factors will be considered in determining whether an accommodation will create an undue hardship: the nature and cost of the accommodation; the financial resources of the department to accommodate a change in operating practices; the number of employees available to assist with the accommodation; and the type of operations of the City, including the composition and functions of its workplace.

E. Determining the Appropriate Accommodation

If a qualified individual with a disability requests the provision of a reasonable accommodation, the City shall engage in an informal, interactive process with the disabled person to identify the

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precise limitations resulting from the disability and the potential accommodations that could overcome those limitations.

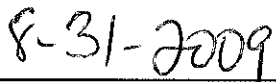
The accommodation process shall generally involve five steps. First, the City shall analyze the particular job at issue and determine its purpose and essential functions. Second, the City shall consult with the disabled individual to ascertain the precise job-related limitations imposed by the individual's disability. Third, the City shall consult with the disabled individual to identify potential accommodations. Fourth, the City shall assess the effectiveness of each potential accommodation with regard to enabling the individual to perform the essential functions of the position. Finally, the City shall consider the preference of the individual to be accommodated, and select and implement the accommodation that is most appropriate for both the employee and the City.

If it is determined after the interactive process that the City cannot reasonable accommodate the disabled person, the City has satisfied its obligation and will notify the individual in writing as to the determination.

APPROVED BY:



KEN NORDHOFF, City Manager



Date