



CITY OF SAN RAFAEL POLICIES AND PROCEDURES

Subject:	Policy Against Harassment, Discrimination and Retaliation
Resolution No.	N/A
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Prepared By	Leslie Loomis, Human Resources Director
Approved By:	Ken Nordhoff, City Manager

POLICY AGAINST HARASSMENT, DISCRIMINATION AND RETALIATION

PURPOSE:

It is the City’s intent and purpose to provide all officials, employees, applicants, and contractors with an environment that is free from any form of harassment, discrimination or retaliation as defined in this Policy. It is also the policy of the City to provide a procedure for investigating alleged harassment, discrimination and retaliation in violation of this Policy.

RESPONSIBILITY:

All City Departments, Divisions and City Officials.

REFERENCES:

AB 1825

DEFINITIONS:

- A. Protected Classifications: This Policy prohibits harassment or discrimination because of an individual’s protected classification(s). “Protected Classification” includes race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual).

- B. Policy Coverage: This Policy prohibits City officials, officers, employees and contractors from harassing or discriminating against applicants, officers, officials, employees, and contractors because: (1) of an individual’s protected classification, (2) of the perception that an individual has a protected classification, or (3) the individual associates with a person who has or is perceived to have a protected classification.

- C. Discrimination: This Policy prohibits treating individuals differently because of the individual’s protected classification as defined by this Policy.

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D. *Harassment*: Harassment means unsolicited words or conduct which tends to annoy, alarm or abuse another person. Harassment includes, but is not limited to, the following examples of behavior undertaken because of an individual's protected classification:

1. *Verbal harassment*, such as epithets (nicknames and slang terms), derogatory or suggestive comments, jokes or slurs, including graphic verbal commentaries about an individual's body, or that identify a person on the basis of his or her protected classification. Verbal harassment includes comments on appearance and stories that tend to disparage those with a protected classification.
2. *Visual forms of harassment*, such as derogatory posters, notices, bulletins, cartoons, drawings, sexually suggestive objects, or e-mails on the basis of a protected classification.
3. *Physical harassment*, such as assault, touching, impeding or blocking movement, grabbing, patting, propositioning, leering, making express or implied job-related threats in return for submission to physical acts, mimicking, taunting, or any physical conduct of a sexual nature or any physical interference with normal work or movement.
4. *Sexual harassment*, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or any of the above described conduct when:
 - a. Submission to such conduct is either an expressed or implied term or condition of an individual's employment, or
 - b. Submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual, or
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment.
5. *Retaliation*: Retaliation against a person (and his or her associates) who reports or provides information about harassment or discrimination is strictly prohibited. Any act of reprisal violates this Policy and will result in appropriate disciplinary action. Examples of actions that might be retaliation against a complainant, witness or other participant in the complaint process include: (1) singling a person out for harsher treatment; (2) lowering a performance evaluation; (3) failing to hire, failing to promote, withholding pay increases, assigning more onerous work, abolishing a position, demotion or discharge; and (4) spreading rumors about a complaint or a complainant; (5) shunning and avoiding an individual who reports harassment or discrimination; or (6) real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination.

Even where well-intentioned attempts to insulate or protect a complainant by changing his or her work environment or schedule or duties or by transferring the complainant to another office may be retaliatory. Before a supervisor takes such action, the supervisor should contact the Human Resources Director.

Any act of retaliation will be treated as a separate and distinct incident, regardless of the outcome of the harassment complaint.

POLICY:

This Policy prohibits harassment or discrimination which can occur when prohibited verbal, visual or physical conduct is directed at individuals because of their race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS related medical condition, genetic characteristics, and physical or mental disability, whether perceived or actual (“protected classification”). Retaliation against individuals for having taken action either as a complainant or grievor, or for assisting a complainant or grievor in taking action, or for acting as a witness or advocate on behalf of an employee in a legal or other proceeding to obtain a remedy for a breach of this policy is also prohibited.

In order to constitute harassment, discrimination or retaliation, as defined by law, the prohibited verbal, visual or physical conduct must be directed at an individual because of the individual’s protected classification or perceived classification, but the City has zero tolerance for any verbal, visual or physical conduct prohibited by this Policy. That means that conduct need not rise to the level of a violation of law in order to violate this Policy. Instead, a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions no matter what is motivating the behavior. This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation and training.

If you are in doubt as to whether or not any particular conduct may violate this Policy, do not engage in the conduct, and seek guidance from a supervisor or the Human Resources Director.

COMPLAINT PROCEDURE:

Reporting Harassment, Discrimination, or Retaliation:

An applicant, employee, officer, official or contractor who feels he or she has been harassed, discriminated against or retaliated against in violation of this Policy should report the conduct immediately as outlined below so that the complaint can be resolved quickly and fairly.

All employees involved in the complaint process may be represented by a person, union representative, or legal counsel of their choosing and at their own expense.

1. *Object to the Conduct:* Sometimes an individual is unaware that his/her conduct is offensive. In these situations the offensive behavior may be eliminated by simply informing the offender that the conduct or language in question is unwelcome and offensive and request that it be discontinued immediately.

A person who believes he/she is being harassed is encouraged, but is not required to use this process. When the conduct in question continues after the offending person has been informed it is offensive, or if a person does not feel comfortable talking to the offending person directly, the employee should make a report in accordance with Paragraph B below or go directly to the formal reporting process.

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2. *Oral Report:* If a person who believes this Policy has been violated does not want to confront the offending person, he/she should report the conduct to a supervisor, department head or any City management employee. The individual may also seek the advice, assistance or consultation of a supervisor, department head, or any City management employee. Any supervisory or management employee who receives such a report must, in turn, direct it to the Human Resources Director. The Human Resources Director will determine what level of investigation and response is necessary.
3. *Written Process:* An individual who believes this Policy has been violated and does not feel comfortable using the process outlined above may provide a written complaint to a supervisor, department head or any management employee who, in turn, must direct the complaint to the Human Resources Division. Individuals are encouraged to use the Confidential Complaint Form for this purpose.
4. *Option to Report to Outside Administrative Agencies:* Applicants, employees, officers, officials and contractors have the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These governmental agencies offer legal remedies and a complaint process. The nearest offices are listed in the government section of the phone book as well as on posters located on City bulletin boards.

City's Response to Complaint of Harassment, Discrimination, or Retaliation:

1. *Investigation:* Upon receipt of a complaint of alleged harassment, discrimination or retaliation, the Human Resources Director will be responsible for coordinating a thorough investigation (unless he/she is named in the complaint). The Human Resources Director may coordinate the investigation with the complainant's department head and may hire an outside investigator if deemed appropriate. The type of investigation undertaken, and the party chosen to conduct the investigation will depend on the nature of the complaint made and shall be determined by the Human Resources Director. The Human Resources Director will report the status of investigations to the City Manager as appropriate.

The Human Resources Director, in concurrence with the City Manager, may take interim action to diffuse volatile circumstances, such as placing the alleged perpetrator on paid administrative leave or temporarily transferring the alleged perpetrator. No interim action should be taken to change the complaining individual's working conditions unless the complaining individual voluntarily consents to the temporary change.

The investigator will review the complaint allegations in an objective manner and to the extent that the City deems necessary. The investigation will normally include interviews with the reporting individual, the accused, and any other person who is believed to have relevant knowledge concerning the allegations. The investigator will remind all witnesses to maintain the confidentiality of the content of the interview and that retaliation against those who report alleged harassment or who participate in the investigation is prohibited.

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The City takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination or retaliation may be occurring, regardless of whether or not the recipient of the alleged action or a third party reports a potential violation.

At the conclusion of the investigation, if it is determined that the alleged conduct did not occur or that it did not violate this Policy, the Human Resources Director will notify the complainant and the alleged perpetrator, if appropriate, of the general conclusion(s) of the investigation and whether any further action is warranted.

2. *Remedial and Disciplinary Action:* If the investigation determines that the alleged conduct occurred and that the conduct violated this Policy, the City will notify the complainant and perpetrator of the general conclusion(s) of the investigation and take effective remedial action that is designed to end the violation(s). Any employee or officer determined to have violated this Policy will be subject to disciplinary action, up to and including termination. Disciplinary action may also be taken against any official, supervisor or manager who condones or ignores potential violations of this Policy, or who otherwise fails to take appropriate action to enforce this Policy. Any official or contractor found to have violated this Policy will be subject to appropriate sanctions.
3. *Closure.* At the conclusion of the investigation, the Human Resources Director shall notify the complainant in general terms of the outcome of the investigation.
4. *Confidentiality.* Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate potential Policy violations and take effective remedial action. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor *or* the Human Resources Director. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or a court order.

TRAINING:

As part of its commitment to ensuring a work environment free from harassment and discrimination, the City requires that all of its employees receive training on this policy at least once every two years. Human Resources will arrange for such training sessions in the spring of the effective year to ensure that employees are able to schedule this mandatory training. Attendance at the training will be documented.

Additionally, Assembly Bill 1825 requires that all employees who become supervisors after July 1, 2005, must receive training on sexual harassment within six months of assuming a supervisory position. Human Resources will track all individuals who are required to receive this mandated training and will work with department heads or their designee to ensure that training needs are met.

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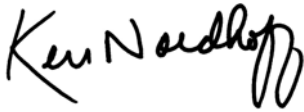
DISSEMINATION OF POLICY:

The Human Resources Director shall ensure that all employees shall receive a copy of this Policy when they are hired. The Policy may be updated from time to time and redistributed to all employees.

ATTACHMENTS:

- Harassment Policy - Acknowledgement of Receipt
- Harassment/Discrimination/Retaliation Complaint Form
- Departmental Action Form

APPROVED BY:



10-21-09

Ken Nordhoff, City Manager

Date



HARASSMENT POLICY ACKNOWLEDGEMENT OF RECEIPT

I acknowledge receipt of the City's Policy Against Harassment, Discrimination and Retaliation.

I understand that I am responsible for reading, understanding and complying with this policy and all standards of conduct referenced and contained in this document.

Employee Name: _____
(Printed name - Last, First and Middle Initial)

Employee Signature: _____

Department: _____

Date: _____

This form must be returned to the Human Resources Department as soon as possible and **no later** than two weeks after receipt of the policy



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**HARASSMENT/DISCRIMINATION/RETALIATION
COMPLAINT FORM**

Name of Complainant: _____ Date: _____

Classification: _____ Department: _____

Street Address: _____

Work Phone Number: _____ Home Phone Number: _____

I prefer to be contacted at Home Work Best time to Contact: _____ a.m. p.m.

Nature of complaint: *(Please provide as much information as possible. Include description of incident, date, location, parties involved and other details you feel that we need to know. Use additional sheets if necessary)*

Corrective Action Desired:

I certify that the above statement is true and accurate:

Signature _____

Date _____



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CONFIDENTIAL

DEPARTMENTAL ACTION
(If Complaint Form has not been forwarded to Human Resources)

Name of Complainant: _____ Date of Complaint: _____

Classification: _____ Department: _____

Name of Department Head or Supervisor: _____

Investigative Action Taken: *(Include dates and other pertinent details)*

Witnesses Contacted:

Name: _____ Phone Number: _____

Name: _____ Phone Number: _____

Name: _____ Phone Number: _____

Name: _____ Phone Number: _____

Resolution:

Department Head or Supervisor's Signature: _____

Date Submitted to Human Resources: _____