

City of Mission Viejo Personnel Policy

Subject: HARASSMENT, DISCRIMINATION, ABUSIVE CONDUCT, and RETALIATION

Statement of Intent:

It is the policy of the City to prohibit harassment, discrimination, abusive conduct, and retaliation in the workplace and to provide a procedure for submitting, investigating, and resolving complaints regarding such conduct. The City encourages all employees and/or individuals to report any conduct that they believe violates this policy. The City shall take appropriate and immediate corrective action when it concludes that discrimination, harassment, abusive conduct, and/or retaliation has occurred.

Policy:

- 1) Harassment or discrimination, as defined herein, of an applicant, employee, intern or volunteer by any employee, supervisor, agent, non-employee or officer of the City on the basis of a legally recognized protected classification is prohibited and will not be tolerated. This policy prohibits harassment and discrimination because:
 - a) of an employee's protected classification;
 - b) of the perception that an employee is a member of a protected class; or
 - c) the employee associates with a person who is or is perceived to be a member of a protected class.

If the City concludes that harassment or discrimination has occurred, appropriate disciplinary action, up to and including termination, will be instituted for such behavior as further outlined below.

- 2) Abusive conduct, as defined herein, between supervisors, employees, co-workers, and non-employees is prohibited and will not be tolerated while on City property or premises, and/or performing services on behalf of or for the City.

If the City concludes that abusive conduct has occurred, appropriate action, including, but not limited to, disciplinary action up to and including termination, will be instituted for such behavior.

- 3) Retaliation, as defined below is prohibited. No employee shall be subject to any form of retaliation for reporting any violation, or participating in any investigation under this Policy, provided that they have done so truthfully and in good faith.

- 4) A violation of this policy can still occur, even if there appears to be voluntarily or implied consent to the conduct at issue. Simply because no one has complained about unlawful conduct such as a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. The fact that no one is complaining now does not preclude someone from complaining if the conduct is repeated in the future. Even visual, verbal, and/or physical conduct between two employees who appear to welcome it can constitute harassment of a third person who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual. Conduct can constitute harassment even if the person engaging in the conduct had no intention to harass. Even well intentioned conduct can violate this Policy if the conduct is directed at or implicates a protected classification, and if a reasonable person in the same circumstance would find it offensive.

Definitions:

For purposes of this policy, the following definitions shall apply:

- 1) Protected classification – any classification that is statutorily protected (whether actual or perceived) including age, ancestry, citizenship status, color, creed, disability (mental or physical), exercise of rights relating to Family Care and Medical Leave, gender identity, marital status, medical condition, national origin, political affiliation (or political beliefs), pregnancy, race, religion, sex, sexual identity, sexual orientation, and uniformed service member status.
- 2) Discrimination – treating individuals differently because of the individual’s protected status as defined by this Policy.
- 3) Harassment – unsolicited words or conduct, based on an individual’s protected class, which subjectively and objectively offends another person. Harassment includes, but is not limited to:
 - a) Physical Forms of Harassment: For example assault, touching, impeding or blocking movement, grabbing, patting, leering, making express or implied job-related threats in return for submission to physical acts, mimicking, taunting, or any physical interference with normal work or movement because of an individual’s protected status.
 - b) Sexual Forms of Harassment: For example, unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature where:
 - i) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or affects benefits, services or activities available through the City;

- ii) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual's welfare; or
- iii) Such conduct is sufficiently severe and pervasive that it has the purpose or effect of substantially interfering or having a negative impact upon an individual's work performance, or creates an intimidating, hostile, offensive, or demeaning work environment.

Sexual "desire" does not have to be a motivating factor to find sexual harassment has occurred.

- c) Verbal Forms of Harassment: For example, epithets (nicknames and slang terms), derogatory or suggestive comments, propositioning, jokes or slurs, intimidation, threats, gestures, flirtations, or graphic verbal commentaries about an individual's body or that identify a person on the basis of his/her protected status. Verbal harassment includes patronizing or ridiculing statements that tend to disparage those of a protected class.
 - d) Visual Forms of Harassment: For example, derogatory posters, notices, bulletins, cartoons, calendars, drawings, sexually suggestive objects, publications or e-mails on the basis of protected status.
- 4) Abusive conduct – means conduct occurring in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include, but is not limited to, repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.
- 5) Retaliation – includes any adverse conduct taken against an individual because he/she has: reported harassment, discrimination and/or abusive conduct; has instituted or participated in the complaint and/or investigation process regarding such a complaint; testifies or is about to testify in any such proceeding or investigation; has provided information or assisted in an investigation regarding a complaint of harassment, discrimination or abusive conduct; and/or associates with a person who is involved in reporting harassment, discrimination and/or abusive conduct or who participated in the complaint or investigation process regarding the same. "Adverse conduct" includes but is not limited to:
- a) Taking sides because an individual has reported harassment and/or discrimination
 - b) Spreading rumors about a complaint
 - c) Shunning and/or avoiding an individual who reports harassment and/or discrimination; or

- d) A direct or implied threat of intimidation to prevent an individual from reporting harassment and/or discrimination.
- 6) Non-employee – shall include City elected and appointed officials, job applicants, vendors, contractors, business associates, volunteers, and members of the public, who are on any City property or premises, and/or performing services on behalf of or for the City pursuant to contract or other arrangements. Except where the context requires otherwise, all references to employees in the Policy shall include non-employees specified in this subsection.

Responsibility:

- 1) Directors, managers, supervisors, and other City management personnel are responsible for compliance with this Policy and each of the following:
 - a) Informing employees and non-employees of this Policy.
 - b) Modeling appropriate behavior.
 - c) Taking reasonable steps to prevent harassment, discrimination, abusive conduct, and retaliation from occurring.
 - d) Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
 - e) Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
 - f) Following up with employees who have complained to ensure that the behavior has stopped and that there are no reprisals.
 - g) Informing employees who complain of harassment, discrimination, and/or abusive conduct of their option to contact the federal Equal Employment Opportunity Commission (EEOC) or the State of California Department of Fair Employment and Housing (DFEH) regarding alleged violations.
 - h) Assisting, advising, or consulting with Human Resources regarding this Policy.
 - i) Assisting in, or conducting, the investigation of complaints involving employee(s), and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with the City's Personnel Policies, up to and including termination.
 - j) Implementing appropriate disciplinary and remedial actions.
 - k) Reporting potential violations of this Policy of which he/she becomes aware, regardless of whether a complaint has been submitted to any City department or management personnel.
 - l) Participating in periodic training and scheduling employees for training.

Supervisory personnel who are aware of ongoing harassment, discrimination, abusive conduct, and/or retaliation, as defined in this Policy, but do not take responsible appropriate steps, as set forth above, shall be subject to appropriate disciplinary action, up to and including termination.

- 2) All employees are responsible for compliance with this Policy and for each of the following:
 - a) Treating all employees and non-employees with respect and consideration.
 - b) Modeling appropriate behavior.
 - c) Participating in periodic training.
 - d) Cooperating with the City's investigation by responding fully and truthfully to all questions posed during the investigation.
 - e) Maintaining the confidentiality of any investigation that the City conducts by not disclosing the substance of any investigatory interview, except as directed by the department director, Human Resources Division, or the City Manager.
 - f) Reporting any act he/she believes in good faith constitutes harassment, discrimination, abusive conduct, and/or retaliation as provided for in this Policy.

- 3) While the City vigorously defends an employee's right to work in an environment free of harassment, discrimination, and abusive conduct, and also free of retaliation, the City also recognizes that false accusations can have serious consequences. Accordingly, any employee who is found, through the City's investigation, to have knowingly and falsely accused another person of harassment, discrimination, abusive conduct, and/or retaliation will be subject to appropriate disciplinary action, up to and including termination.

Education and Training:

- 1) The City shall provide at least two (2) hours of classroom or other effective interactive training and education regarding sexual harassment and prevention of abusive conduct to all supervisory employees within six (6) months of their assumption of a supervisory position. In addition, the City shall provide refresher training to each supervisory employee once every two (2) years.

- 2) The training and education shall include information and practical guidance regarding the federal and state statutory provisions concerning the prohibition against and the prevention and correction of sexual harassment, including abusive conduct, discrimination and retaliation and the remedies available to victims of the same. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, abusive conduct, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the subject matter.

Complaint Procedure:

- 1) An employee or job applicant who believes he/she has been discriminated against and/or harassed based on his/her protected classification, or has been a recipient of abusive conduct or retaliated against, may make a complaint, orally or in writing, to any of the following individuals:
 - a) Immediate supervisor
 - b) Any supervisor or manager within, or outside, the department
 - c) Any Department Director

- d) Any Analyst in Human Resources, or
 - e) City Attorney
- 2) Any supervisor, manager, or director who receives a harassment, discrimination, abusive conduct, and/or retaliation complaint shall immediately notify the Senior Human Resources Analyst. A complaint accusing the Senior Human Resources Analyst of harassment, discrimination, abusive conduct, and/or retaliation shall be reported to the Director of Administrative Services or the City Manager.
 - 3) Employees, contractors, or applicants for employment may file complaints of harassment, discrimination or retaliation with the California Department of Fair Employment and Housing (DFEH) or the U.S. Equal Employment Opportunity Commission (EEOC). These administrative agencies offer legal remedies and a complaint process.

The nearest offices are listed in the government section of the telephone book or employees can check the posters that are located at each City facility for office locations and phone numbers.

Investigation:

- 1) Upon receipt of notification of a harassment, discrimination, abusive conduct, and/or retaliation complaint, the Human Resources Division, in coordination with the City Attorney's Office, shall:
 - a) Authorize and supervise or conduct an investigation of the complaint.
 - b) Determine the scope of investigation and who shall conduct the investigation, as well as designated the lead Investigator. The scope of the investigation shall include, but shall not be limited to, interviews with: (a) the complainant, (b) the alleged perpetrator, and (c) other persons who may have relevant knowledge and/or information concerning the complaint.
- 2) The lead Investigator shall submit a fact-finding report to the Human Resources Division in which the Investigator shall make a determination as to whether the alleged conduct did occur and whether there has been a violation of this Policy. The following terminology shall be used to describe the findings of the investigation:
 - a) Unfounded – The investigation clearly established that the allegation(s) is not true.
 - b) Exonerated – The investigation clearly established that the conduct occurred but did not violate the City's policies.
 - c) Not Sustained – There is insufficient evidence to determine whether the alleged misconduct occurred.
 - d) Sustained – The alleged conduct occurred.
- 3) The Investigator's report will provide an executive summary of the findings, the methodology used, a discussion of the evidence obtained, how credibility issues were resolved, and detailed findings of the investigation. The Investigator shall not

reach any legal conclusions, or speculate regarding the legal significance of any claim or defense, or make any recommendations for discipline.

- 4) If the Investigator determines that a violation of this Policy has occurred, the Human Resources Division shall recommend to the City Manager the appropriate disciplinary action, up to and including termination. The severity of the disciplinary action shall be determined by the City Manager, who may consult with the appropriate supervisor, department director, legal counsel, or other City Management, with consideration given to the severity and/or frequency of the offense.
- 5) In each case, the Human Resources Division shall provide the complainant with written confirmation that the investigation is complete, the results of the investigation and the action taken, if any. However, specifics as to the disciplinary action taken, if any, or other personnel information, shall not be disclosed to the complainant. If an employee of the Human Resources Division is the alleged perpetrator or the complainant, the written confirmation shall be provided by the City Manager.
- 6) The City shall take reasonable steps to protect the victim(s) from further harassment, discrimination or abusive conduct, and from retaliation. Nothing herein, however, obligates the City to release information about any disciplinary actions.
- 7) If a complaint of harassment, discrimination, abusive conduct, and/or retaliation is against or made by an employee of the Human Resources Division, the City Manager shall be responsible for investigating such complaint in accordance with Paragraph 1 immediately above.
- 8) The City takes a proactive approach to potential violations of this Policy and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, abusive conduct, or retaliation may be occurring, regardless of whether a recipient of the conduct (victim) or third party reports a potential violation.

Confidentiality:

- 1) All reports of harassment, discrimination, abusive conduct, and/or retaliation, and all records, including the complete investigative report, will be kept confidential to the greatest extent possible, but some disclosure may be necessary to conduct a proper investigation, to support disciplinary action, to take effective remedial action, and/or to comply with applicable laws and court orders.
- 2) The identity of the person(s) who has furnished information relating to or assisting in the investigation of a possible violation of this Policy shall be kept confidential to the greatest extent possible.

- 3) Any person who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by the Human Resources Division or the City Manager. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.

Administration:

In accordance with City of Mission Viejo Municipal Code chapter 2.60 "Personnel System", this Personnel Policy is deemed not to have a direct financial impact on the City. The City Manager may implement and amend this policy subject to prior City Attorney legal review and approval, and City Council review.

Implemented: Resolution No. 89-92, September 11, 1989.
Revised: Resolution No. 15-04, January 19, 2015.