

# ANTI-DISCRIMINATION AND UNLAWFUL HARASSMENT POLICY

All covered individuals are encouraged to report any conduct that is believed to violate this policy as soon as possible.

## Policy:

It is the policy of the City of San Luis Obispo that employees have a working environment free of unlawful discrimination and harassment. Discrimination against or harassment of an employee, job applicant, contractor, advisory body member, elected or appointed official or a member of the public by an employee, job applicant, contractor, advisory body member, elected or appointed official or member of the public on the basis of race, religion, sex (including gender, gender identity, gender expression, transgender, pregnancy and breastfeeding), national origin, ancestry, disability, medical condition, genetic characteristics or information, marital status, age (40 years and older), or sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, denial of family and medical care leave or any other protected category as defined below, is strictly prohibited and will not be tolerated. The work environment should be business-like and assure fair, courteous treatment for employees and the public we serve. Discrimination and harassment may violate both State and Federal law, but conduct need not arise to the level of violation of law to violate this Policy. This type of employee misconduct could decrease work productivity, undermine the integrity of employment relationships, decrease morale and cause severe emotional and physical stress.

All employees will be informed of the harassment and discrimination complaint process and be assured of their right to file complaints without fear of reprisal. All employees are strongly encouraged to attend, and supervisors shall attend training every two years regarding behavior that constitutes prohibited workplace harassment and discrimination. In addition, employees appointed as a new hire or promoted from a non-supervisory position to a supervisory position will be trained within 6 months of the appointment- or promotion. Employees should also understand the importance of reporting incidents promptly to assure that further incidents do not occur.

Department Heads will convey to their employees strong disapproval of discrimination and harassment. All employees, including supervisors and managers, should be clearly informed regarding behavior that constitutes prohibited harassment or discrimination or creates the perception of harassment or discrimination and the consequences of such actions, including disciplinary action. Employees also should be aware that ignoring harassment or discrimination complaints is also grounds for disciplinary action.

Retaliation against a person for filing or otherwise making a harassment or discrimination complaint in good faith, or other good faith involvement in a harassment or discrimination investigation, is prohibited. Employees found to be retaliating against another employee shall be subject to disciplinary action.

Definitions:

- A. Protected Category: includes race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy and breastfeeding), sexual orientation (including heterosexuality, homosexuality, and bisexuality), national origin, ancestry, citizenship status, marital status, pregnancy, age (40 years and older), medical condition, genetic characteristics or information, physical or mental disability, military or veteran status, or denial of family and medical care leave.
- B. Covered Individuals: This Policy prohibits the employer, employees, job applicants, contractors, advisory body members, elected or appointed officials or members of the public from harassing or discriminating against employees, job applicants, contractors, advisory body members, elected or appointed officials or members of the public because of: 1) an individual's protected category or characteristic; 2) the perception that an individual is a member of a protected category or has a protected characteristic; or 3) the individual associates with a person who has or is perceived to have a protected category.
- C. Discrimination: Treating covered individuals differently because of the individual's protected category as defined in this Policy.
- D. Harassment may include, but is not limited to, the following types of behavior that is taken because of a person's protected category. Note that harassment is not limited to conduct that employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as persons providing services under contracts or even members of the public:
  - ◆ Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected category. This includes, without limitation, inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification and race-oriented stories or jokes.
  - ◆ Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement when directed at an individual on the basis of a protected category. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied threats or promises in return for submission to physical acts.
  - ◆ Visual acts, such as derogatory posters, cartoons, drawings, pictures, emails, text messages, or other electronic means of communication related to a protected category.
  - ◆ Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an

intimidating, hostile, or offensive working environment.

- ◆ Adverse employment actions carried out on account of a protected category.
  - ◆ Adverse employment actions carried out in retaliation for good faith submission of harassment or discrimination charges, or good faith participation in an investigation made pursuant to this policy.
- E. Retaliation: Any adverse conduct taken because an employee, job applicant, contractor, advisory body member, elected or appointed official or member of the public has reported harassment or discrimination, or has participated in the complaint and investigation process described herein, is prohibited. "Adverse conduct" includes but is not limited to: taking sides because an individual has reported harassment or discrimination, spreading rumors about a complainant or investigation participant, shunning and avoiding an individual who reports harassment or discrimination, or real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination. The following individuals are protected from retaliation: those who make good faith reports of harassment or discrimination or who participates in the complaint or investigation process, and those who associate with an individual who is involved in reporting harassment or discrimination or who participates in the complaint or investigation process.

#### Complaint Procedure:

- A. Any employee, job applicant, contractor, advisory body member, elected or appointed official, or member of the public who feels he/she has been the victim of harassment or discrimination as defined above should contact, either verbally or in writing, any of the following. (There is no need to follow the chain of command):
- 1) Immediate supervisor;
  - 2) Any supervisor or manager within or outside of the department;
  - 3) Department Head; or
  - 4) Director of Human Resources.

The initial complaint can be verbal or written, but a written and signed complaint should be submitted by the complaining employee within five (5) working days of the initial complaint so an investigation can begin promptly. The written complaint should include as much detail as possible, such as names of those involved, witnesses, nature of the problem as well as the desired resolution.

The City discourages anonymous complaints, because anonymity may compromise the City's ability to conduct a thorough investigation. However, any covered individual who is uncomfortable disclosing his or her identity may file a complaint anonymously.

- B. Any supervisor or department head who receives a complaint should notify the

Director of Human Resources immediately, unless the Director is the subject of the complaint in which case the department head should notify the City Manager or City Attorney immediately. The Director of Human Resources will advise the City Manager of the receipt of all harassment or discrimination complaints.

- C. Upon receipt of the written complaint, the Department of Human Resources, or other authority receiving notice, will conduct (or refer to others to conduct) an investigation of the charges, including contacting the person who allegedly engaged in the prohibited behavior, informing him/her of the basis of the complaint, and providing him/her an opportunity to respond. The Department of Human Resources may attempt an informal resolution of the complaint. If the complaint is incomplete or contains insufficient information to conduct an investigation, the Department of Human Resources will ask for more information from the claimant, or find that the claim is unfounded.
- D. All City employees must cooperate fully, and be truthful and forthright when providing information in response to a City investigation under this policy.
- E. The Department of Human Resources, , or other authority receiving notice, shall notify the complainant(s) and respondent(s), Department Head, the City Manager, and other appropriate persons, regarding the disposition of complaints made pursuant to this policy. If discipline is imposed, the level of discipline will not be communicated to the complainant.
- F. 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 and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent possible. 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 employer 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 court order.
- G. Regardless of whether a formal complaint is submitted, the City will take 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.
- H. **Option to Report to Outside Administrative Agencies:** An individual has 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 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 on City bulletin boards for office locations and telephone numbers.

Remedial Action:

1. If harassment or discrimination is found to have occurred in violation of this policy, the City shall take action to ensure or confirm that the harassment or discrimination at issue is stopped. The City may take whatever measures are appropriate to ensure its workplaces remain free of unlawful discrimination or harassment.
2. Employees found to have engaged in discrimination or harassment covered by this policy may be subject to disciplinary action up to and including termination of employment. The severity of the discipline will be determined by the severity and/or frequency of the offense.
3. Employees found to have been dishonest or uncooperative during an investigation made pursuant to this policy may be subject to disciplinary action up to and including termination of employment.

Appeal:

1. Disciplinary action taken under this procedure may be appealed with or without representation subject to appeal or grievance procedures indicated in the appropriate Memorandum of Agreement or Personnel Rules and Regulations.
2. If the employee who submitted the complaint is not satisfied with the disposition of the investigation, he or she may submit an appeal to the City Manager within ten (10) calendar days from receipt of the conclusion of the Director of Human Resources, , or other authority. The appeal shall be in writing, verified under penalty of perjury, and contain an explanation why the complainant believes the pending disposition is incorrect. Failure to appeal within the ten day period means that the earlier disposition is final. The City Manager (or his/her designee) shall respond in writing after considering the appeal.
3. Complainants may appeal the City Manager's disposition of the investigation to the Personnel Board within ten (10) calendar days from receipt of the conclusion of the City Manager (or his/her designee). Failure to appeal within the ten day period means that the City Manager's disposition is final.

Dissemination of Policy:

This policy shall be disseminated to all City employees. The City may require employees to sign an acknowledgment of the policy's receipt, which may be maintained in the employee's personnel file.