




CITY OF MILPITAS

Revision	Date
Original	08/04/1998
4	05/01/2019

CITY ADMINISTRATIVE POLICY

Policy No: 2.2.1	ANTI-DISCRIMINATION, HARASSMENT AND RETALIATION	Effective Date: 11/1/2021
Revision No: 5	Policy Administrator: Human Resources	Next Review Due: As needed
Related Policies and Procedures: Replaces SOP 001	Approved by: Steve McHarris, City Manager 	Date Approved: 11/1/2021

1. PURPOSE

1.1. The purpose of this policy is:

- (1) To underscore the City's commitment to providing a workplace where all are treated with dignity and respect;
- (2) To reaffirm the City's commitment to prohibit and prevent unlawful discrimination (including harassment) in all workplaces of the City of Milpitas;
- (3) To define discrimination and harassment prohibited under this policy; and
- (4) To set forth a procedure for investigating and resolving complaints of prohibited discrimination and harassment.

1.2 This policy is intended to prohibit discrimination, harassment, and retaliation in compliance with applicable state and federal laws affecting employment, including but not limited to, Title VII of the Civil Rights Act of 1964, as amended, the American with Disabilities Act (ADA), ADA Amendments Act of 2008, the Age Discrimination in Employment Act (ADEA), the California Family Rights Act (CFRA), the Family and Medical Leave Act (FMLA) of 1993, the California Fair Employment and Housing Act (FEHA), California Labor Code Section 1102.5, and the Affordable Health Care Act (ACA). The Policy is intended to be stricter than applicable legal requirements in terms of demanding professionalism and respectful conduct, but it does not create a private or independent legal right of action.

2. POLICY

- 2.1. The City of Milpitas has a zero tolerance policy to discrimination and/or harassment in the workplace that is based on any status protected by law, including but not limited to race, color, religion (including dress and religious grooming), religious creed, sex (including pregnancy, childbirth, breastfeeding and related medical conditions), gender, gender identity (including transgender and non-binary identity), gender expression, national origin, ancestry, physical and/or mental disability, medical condition, genetic information, marital status, victim of domestic violence, age, sexual orientation, denial of medical and family care leave, or military and veteran status. Collectively these statuses are legally protected are referred to in this policy as "Protected Status".
- 2.2. Discrimination against or harassment of an applicant, intern, volunteer, or employee based on any Protected Status- whether by a co-worker, supervisor, manager, elected or appointed



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official, or other third party with whom the applicant, intern, volunteer, or employee has a work-related contact or relationship- is strictly prohibited and will not be tolerated.

- 2.3. Disciplinary action up to and including dismissal may be instituted for behavior described in the definition of prohibited discrimination and harassment set forth below.
- 2.4. Similarly, retaliation, intimidation, coercion, or discrimination against a person for filing or otherwise making a discrimination or harassment complaint in good faith, associating with an individual who makes a complaint, or participates in a discrimination or harassment investigation, is prohibited.
- 2.5. Retaliation can take many forms, including formal adverse employment actions taken for improper motives or without a legitimate business reason (e.g. termination, discipline, denial of promotion or other benefits) or informal conduct (e.g. physical or verbal intimidation, ostracism, etc.) that negatively impacts the work environment or an employee's ability to perform job duties.
- 2.6. Employees found to be retaliating against another employee shall be subject to disciplinary action up to and including dismissal.

3. DEFINITIONS

- 3.1. Prohibited discrimination and harassment for purposes of this policy, includes but is not limited to:
 - 3.1.1. Speech, such as epithets, derogatory jokes or comments or slurs, and lewd propositioning on any Protected Status basis such as race, color, religion (including dress and religious grooming), religious creed, sex (including pregnancy, childbirth, breastfeeding and medical conditions related to), gender and gender identity (including transgender and non-binary identity), gender expression, national origin, ancestry, familial status, sources of income, physical and/or mental disability, medical condition, genetic information, marital status, victim of domestic violence, age, sexual orientation, denial of medical and family care leave, or military and veteran status. This includes inappropriate sex-oriented comments on appearance, including dress or physical features, and stories and remarks relating to any Protected Status.
 - 3.1.2. 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 any Protected status. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied threats or promises in return to submission to physical acts.
 - 3.1.3. Visual insults, such as derogatory and/or sexually-oriented posters, photography, cartoons, or drawings related to Protected Status.



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- 3.1.4. Communication via electronic media of any type that includes harassing conduct based on any Protected Status.
- 3.1.5. Adverse employment actions carried out on account of any Protected Status.
- 3.1.6. Adverse employment actions carried out in retaliation for good faith submission of discrimination or harassment charges, or good faith participation in an investigation made pursuant to this policy.
- 3.2. Prohibited sexual harassment, in particular, includes 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 work environment. Such conduct need not be based on sexual desire or attraction.

4. PROCEDURE

- 4.1. Reporting and Complaint Procedure:

Any individual who feels comfortable doing so should let a fellow employee or other co-worker (e.g. volunteer, contractor) know when that person's behavior or comments are offensive or unwelcome, even if the situation does not rise to the level of a violation of this Policy. However, individuals are not required to handle these situations on their own. If an individual is not comfortable handling a situation directly with another employee, or if direct attempts are not immediately effective, the individual should immediately report the conduct through the channels described below.

 - (A) An employee, intern, volunteer, job applicant, or independent contractor who believes he or she has been subjected to discrimination or harassment in violation of this policy by another employee, intern, volunteer, job applicant, or an elected or appointed City official, a contractor, or member of the public shall notify (orally or in writing) any of the following:
 - a. Immediate Supervisor
 - b. Any supervisor or manager within or outside of the department
 - c. Department head
 - d. Human Resources Director
 - e. City Manager
 - f. City Attorney (if the issue relates to the City Manager or elected/appointed official)

Ideally, for confidentiality and efficiency reasons, keeping a complaint within one's "chain of command" is preferred, but it is not required. The key is to report the concern as soon as possible because nothing can be done to remedy the situation if the City does not know it exists.

- (B) Each supervisor at every level has the responsibility to maintain a work environment free of harassment or discrimination. This responsibility includes being able to discuss this policy



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- with workers that the supervisor oversees and to assure the workers that they are not required to endure any form of prohibited harassment or discrimination. Any supervisor, manager, or department head who (1) receives a discrimination or harassment complaint or (2) observes or otherwise learns of harassing behavior against an employee, intern, volunteer, job applicant, or independent contractor, shall document the issue and notify the Human Resources Director immediately. Supervisors and managers should take corrective action to ensure that the inappropriate conduct stops. Any supervisor at any level who fails to take appropriate action to report or address harassment, discrimination or retaliation issues can and will be disciplined by the City up to and including termination from employment.
- (C) Dealing with the public can be challenging and sometimes contentious. While employees are expected to interface with the public as their duties dictate, sometime in difficult or even volatile situations, employees are not expected to endure actual harassment by members of the public. If an employee feels that he or she is being subjected to harassment by a member of the public, the employee should report such harassment to his or her supervisor (or other person listed above) for investigation and appropriate action. Employees will not be penalized for refusing to tolerate harassment from a member of the public.
- 4.2. Investigative Procedure
- (A) Individuals who believe they have been subject to discrimination, harassment or retaliation covered by this policy may submit a complaint on the form designated by the Human Resources Director but use of this form is not required. Individuals are encouraged to submit a complaint as soon as reasonably possible after first being subject to discrimination, harassment or retaliation.
- (B) The City will investigate all complaints of harassment, discrimination or retaliation in a prompt, objective, and thorough manner that provides all parties with appropriate due process and reached reasonable conclusions based on the evidence collected, including interviews of those with relevant knowledge by either an internal or outside investigator. Typically, the Human Resources Director is responsible for directing an investigation into such allegations and for implementing appropriate remedial action, where warranted. However, in some circumstances, the City Attorney's office may direct the inquiry. The City's investigation will be tailored to the particular situation and circumstances. Whenever appropriate, the Human Resources Director will inform the Department Head of the affected department(s) that a complaint has been filed.
- (C) All City employees must cooperate fully, and be truthful and forthright, when providing information in response to a City investigation under this policy. The City will maintain confidentiality of all parties involved in the investigation to the greatest extent possible and share investigation information only as legally required or on a "need to know" basis.
- (D) The Human Resources Director shall notify the complainant(s) and respondent(s) regarding the findings of complaints made pursuant to this policy (e.g. sustained, not sustained). Others (such as the applicable department head) may also be informed on a "need to know" basis, particularly if remedial action is warranted.



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(E) The City may take lawful measures to assure appropriate confidentiality during the complaint process and related time periods to the extent possible.

(F) Employees shall not be exposed to retaliation as a result of filing a complaint or participating in any workplace investigation.

4.3. Remedial Action

(A) In some cases, informal resolution of complaints may be appropriate and will be overseen by the Human Resources Director or designee. However, if discrimination, harassment, or retaliation is found to have occurred in violation of this policy, the City shall take action to ensure or confirm that the discrimination or harassment at issue is stopped. The City may take whatever measures are appropriate to ensure its workplaces remain free of unlawful discrimination, harassment, and retaliation.

(A) If misconduct is found after an investigation, appropriate remedial measures shall be taken. For example, employees found to have engaged in discrimination, harassment, or retaliation covered by this policy will be subject to disciplinary action up to and including termination of employment.

(B) Employees found to have been dishonest or not fully forthcoming during an investigation made pursuant to this policy will be subject to disciplinary action up to and including termination of employment.

4.4. Outside Agency Resources

4.4.1. In addition to notifying the City, an employee or applicant may direct their complaint to the following external agencies:

California Department of Fair Employment and Housing (DFEH)
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
1-800-884-1684
www.dfeh.ca.gov

Equal Employment Opportunity Commission (EEOC)
San Jose Local Office
96 N. Third Street, Suite 250
San Jose, CA 95112
1-800-669-4000
www.eeoc.gov

Employees are advised to contact the DFEH or EEOC directly to obtain information on the time limits required for filing complaints with these agencies.



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4.5. Miscellaneous

4.5.1. The City may allow alternative procedures for complaints, investigations and remedial efforts made pursuant to this policy as the Human Resources Director, City Manager or City Attorney deem appropriate under particular circumstances.

This policy may be periodically amended to ensure its consistency with state or federal legal requirements.

The City will provide training to its supervisors, employees and local agency officials (including City Council members) regarding this policy, the laws prohibiting discrimination and harassment in the workplace, and the reporting and complaint procedure outlined in this policy, as well as regarding the City's prohibition against general abusive treatment or "bullying" in the workplace.

Anti-Harassment Training: All employees, including temporary or seasonal employees will be provided with effective interactive sexual harassment training. All employees hired as or promoted to a supervisory or management position must undergo at least two (2) hours of interactive sexual harassment training within the first six (6) months of assuming a new supervisory or management position. Additionally, all supervisors and managers must complete at least two (2) hours of interactive sexual harassment training at least once every two (2) years thereafter. At least one (1) hour of sexual harassment training must be provided to non-supervisory employees within the first six (6) months following hire, and then once every two (2) years thereafter. Temporary employees hired for a time period of less than six (6) months shall complete the training within the first 30 days after hire, or first 100 hours of work, whichever date comes first. An employee who fails to comply with this section may be subject to disciplinary action, up to and including termination of employment.

Similarly, the City will provide at least 2 hours of training to its "local agency officials" (including City Councilmembers and City Commissioners) in compliance with Government Code sections 53237 *et seq.* This training shall be provided within six (6) months of taking office and every two (2) years thereafter.

4.5.2 Dissemination of Policy

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