



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: July 1, 2020

TO: All City Employees, Elected Officials, Contract Workers, Interns, and Volunteers

FROM: Kevin L. Faulconer, Mayor
Mara W. Elliott, City Attorney
Kris Michell, Chief Operating Officer
Julie Rasco, Human Resources Director
Douglas Edwards, Personnel Director
Elizabeth Maland, City Clerk

SUBJECT: Equal Employment Opportunity (EEO) Policy – Annual Statement

The opportunity to seek, obtain, and hold employment without discrimination is a civil right. Through this Policy, we reaffirm our commitment to the principles of Equal Employment Opportunity (EEO). The City is committed to providing all City employees, elected officials, contract workers, interns, and volunteers with fair and equal treatment in the workplace, equal opportunities to succeed, and a work environment free of discrimination, harassment, and retaliation. The City will not tolerate discrimination, harassment, or retaliation in any form. Allegations of conduct contrary to the principles of EEO or the standards of conduct stated in this Policy will be taken seriously and investigated in a prompt, thorough, and objective manner. Violations of this Policy will result in disciplinary action, up to and including termination, even if it is the first time such conduct has occurred.

We are committed to ensuring that the principles of fair and equal treatment are understood, respected, and practiced throughout the workplace. Federal and state laws make it unlawful to discriminate on the basis of any protected classification, including age, ancestry, color, creed, physical or mental disability, gender, gender identity, gender expression, genetic information, marital status, medical condition, military and veteran status, national origin, pregnancy (including childbirth, breastfeeding, or related medical conditions), race, traits historically associated with race (including hair texture and protective hairstyles such as braids, locks, and twists), religion, religious belief or observance, religious creed, sex, sex stereotype, sexual orientation, transgender status or transitioning, use of family or medical leave, or any other classification protected by federal, state, or local law (including being perceived or regarded as or associated with any protected classification). This Policy reflects the City's commitment to preventing discrimination, harassment, and retaliation from occurring, promptly correcting any improper conduct, and providing a workplace that promotes the highest level of performance, professionalism, and civility. Conduct may violate the City's EEO Policy, but not rise to the level of unlawful conduct.

All City employees, elected officials, contract workers, interns, and volunteers are expected to support and adhere to the principles of EEO and the standards of conduct stated in this Policy. Managers and supervisors must understand the importance of these principles and standards, enforce them, and work diligently to provide every City employee, elected official, contract worker, intern, and volunteer with fair and equal treatment in the workplace, equal opportunities to succeed, and a work environment free of discrimination, harassment, and retaliation. Managers and supervisors will be held accountable to ensure that EEO practices and standards are adhered to in their work units.

1. FAIR AND EQUAL TREATMENT

All City employees, elected officials, contract workers, interns, and volunteers are entitled to equal opportunities and fair and equal treatment in all employment actions (e.g., pre-employment inquiries, hiring and firing, promotions, discipline, transfers, job rotations, work assignments, training, overtime, merit increases and rewards) and other terms, conditions, and privileges of employment without regard to age, ancestry, color, creed, physical or mental disability, gender, gender identity, gender expression, genetic information, marital status, medical condition, military and veteran status, national origin, pregnancy (including childbirth, breastfeeding, or related medical conditions), race, traits historically associated with race (including hair texture and protective hairstyles such as braids, locks, and twists), religion, religious belief or observance, religious creed, sex, sex stereotype, sexual orientation, transgender status or transitioning, use of family or medical leave, or any other classification protected by federal, state, or local law (including being perceived or regarded as or associated with any protected classification). These classifications are the “protected classifications” covered under this Policy. The City also supports the reasonable accommodation of employees with disabilities or religious beliefs or practices in order to enable those employees to perform the essential duties of their positions.

2. WORK ENVIRONMENT FREE OF DISCRIMINATION, HARASSMENT, AND RETALIATION

All City employees, elected officials, contract workers, interns, and volunteers are entitled to a work environment free of discrimination, harassment, and retaliation. Therefore, discrimination, harassment, and retaliation will not be tolerated.

All City employees, elected officials, contract workers, interns, and volunteers are strictly prohibited from engaging in discrimination or harassment in the workplace based on a protected classification. In addition, all City employees, elected officials, contract workers, interns, and volunteers are prohibited from engaging in retaliation against any City employee, elected official, contract worker, intern, or volunteer who requests accommodation or reports, opposes, complains of, provides a statement or testimony, or otherwise participates in an investigation or other proceeding regarding an alleged act of discrimination, harassment, or retaliation in violation of this Policy.

Discrimination is when a person’s protected classification is a substantial motivating reason for an adverse employment action. Examples of adverse employment actions include termination of employment, discipline, a negative performance evaluation, denial of promotion, demotion, or reduction in pay.

Harassment includes any unwelcome, unsolicited, or unwanted conduct because of a person's protected classification that offends, demeans, humiliates, embarrasses, intimidates, or otherwise causes the person distress. Harassment creates a negative work atmosphere, which reduces work productivity and morale, undermines the integrity of the workplace, and destroys professionalism. Harassment also creates a hostile, offensive, oppressive, or intimidating work environment, and deprives a person of their right to work in a place free of discrimination, when the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon the person so as to disrupt the person's emotional tranquility in the workplace, affect the person's ability to perform the job as usual, or otherwise interfere with and undermine the person's personal sense of well-being. Examples of harassment include derogatory comments, slurs, demeaning jokes, threats, unwanted touching, offensive pictures, cartoons or posters, or sexual advances.

Retaliation includes threatening, intimidating, or harassing conduct or an adverse employment action because a person opposed or reported discrimination, harassment, or retaliation in violation of this Policy; filed or assisted another with a complaint under this Policy; provided a statement or testimony or otherwise participated or assisted in an investigation or other proceeding arising from an alleged violation of this Policy; or requested accommodation for a disability or religious belief or observance. Managers and supervisors are reminded that employees have a right to report any conduct or employment action that the employee reasonably believes violates this Policy. In addition, subtle retaliation (e.g., an unwarranted change in work assignment or location, unreasonable denial of a leave request, or uncooperativeness) is prohibited and will not be tolerated.

Good faith employment actions do not constitute unlawful discrimination, harassment, or retaliation. Good faith employment actions taken by a manager or supervisor, such as offering constructive feedback or criticism, holding an employee accountable, or providing discipline, where appropriate, do not constitute, and should not be mistaken for, discrimination, harassment, or retaliation. These employment actions are aimed at enhancing workplace productivity, or addressing work performance or conduct, and are within the responsibilities and obligations of City managers and supervisors.

The City has a 100% Response Policy in regard to claims of discrimination, harassment, and retaliation. This means the City will respond to all reports and complaints of discrimination, harassment, or retaliation in the workplace, conduct fair, timely, and thorough investigations, as needed, and take appropriate action. The City's action may range from informal counseling to more severe disciplinary action, up to and including termination, even if it is the first time such conduct has occurred. Prior incidents may be considered when assessing the facts and circumstances and determining the appropriate corrective action.

Every City employee, elected official, contract worker, intern, and volunteer is expected to support and enforce this Policy. Managers or supervisors who observe or are aware of harassment of an employee, elected official, contract worker, intern, or volunteer, including by a third-party (e.g., a member of the public), and fail to take prompt corrective action, may be disciplined even if the harassment did not take place in their work units.

3. SEXUAL HARASSMENT

All City employees, elected officials, contract workers, interns, and volunteers are prohibited from engaging in sexual harassment in the workplace. Sexual harassment is harassing conduct

that creates an intimidating, hostile, or offensive working environment on the basis of sex or gender, including gender identity, gender expression, or sexual orientation. Sexual harassment is a form of discrimination based on sex, gender, gender identity, gender expression, or sexual orientation. Sexual harassment is unprofessional and detrimental to a high-performance work environment. As with other forms of harassment based on a protected classification, the City has a 100% Response Policy regarding sexual harassment.

Sexual harassment is unlawful and includes verbal, physical, and visual harassment, as well as unwanted sexual advances. Sexually harassing conduct need not be motivated by sexual desire. A person alleging sexual harassment is not required to sustain a loss of tangible job benefits or productivity in order to establish harassment. It suffices that a reasonable person subjected to the conduct would find, as the harassed person did, that the harassment so altered working conditions as to make it more difficult to do their job.

Sexually harassing conduct may be either "quid pro quo" or "hostile work environment" sexual harassment:

- "Quid pro quo" (Latin for "this for that") sexual harassment is when a person explicitly or implicitly conditions a job, promotion, or other work benefit on submission to sexual advances or other conduct based on sex.
- "Hostile work environment" sexual harassment occurs when unwelcome comments or conduct based on sex unreasonably interfere with a person's work performance or create an intimidating, hostile, or offensive work environment.

To be unlawful, the harassment must be severe or pervasive. That means that it alters the conditions of employment and creates a hostile or abusive work environment. A single incident of harassing conduct may be sufficiently severe, so as to create an unlawful hostile work environment, if the harassing conduct unreasonably interfered with the person's work performance or created an intimidating, hostile or offensive working environment. To be unlawful, the harassment must also be both subjectively and objectively offensive.

The existence of a hostile work environment depends upon the totality of the circumstances. In determining whether harassing conduct was severe or pervasive, the totality of the circumstances is considered, including any or all of the following:

- The nature of the conduct;
- How often, and over what period of time, the conduct occurred;
- The circumstances under which the conduct occurred;
- Whether the conduct was physically threatening or humiliating;
- The extent to which the conduct unreasonably interfered with an employee's work performance.

Sexually harassing conduct can be verbal, physical, visual or written, and can occur between people of the same or opposite sex. Individuals of any gender can be the target of sexual harassment. Sexual harassment may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity. Sexual harassment can occur in any working relationship, such as between peers, supervisor to subordinate, subordinate to supervisor, by a member of the public toward an employee, elected

official to employee, contract worker to employee, within or across departments, as well as in other situations.

Verbal harassment may include sexual, derogatory, or demeaning comments; insults, slurs, threats, obscene language, or sexually degrading words; sexual jokes; graphic comments about a person's appearance or physique; conversations or comments with sexual undertones; recounting one's sexual exploits or inquiring about a person's sex life; starting or spreading rumors about the sex life of another person; or remarks or jokes about a person's ability to do a job because the person is male or female or because of sexual orientation.

Physical harassment may include unwelcome touching, hugging, kissing, groping, or massaging; sexually suggestive leering or vulgar gestures; physically blocking, cornering, or impeding movement; or revealing parts of the body when such exposure violates common decency.

Visual or written forms of harassment may include displaying derogatory, sexually suggestive, offensive, or explicit objects or pictures, including cartoons, posters, drawings, or computer graphics; or sending letters, notes, e-mails, text messages, electronic messaging, tweets, social media status updates, or invitations, including social media invitations, that are or may be perceived as sexually suggestive, demeaning, offensive, or obscene.

Sexually harassing conduct may also include:

- Unwanted sexual advances;
- Job actions taken to pressure a person into accepting sexual advances; or
- In some circumstances, repeatedly asking a person for a date after being turned down.

Sexually harassing conduct by managers or supervisors can include offering employment benefits in exchange for sexual favors; sexual advances that condition an employment benefit upon an exchange of sexual favors; or a statement or insinuation that a refusal to provide sexual favors, or a rejection of sexual favors or advances, will cause reprisal, lack of support for appointments, promotions or transfers, failure of probation, change of assignment, poor performance rating, or some other adverse employment action.

It is unlawful and prohibited under this Policy to retaliate or threaten retaliation against a person for rejecting sexual advances or complaining about harassment.

In addition, sexual favoritism can create a hostile work environment under certain circumstances. "Sexual favoritism" means that an employee has received preferential treatment in regard to promotion, work hours, assignments, or other significant employment benefits or opportunities because of a sexual relationship with a manager or supervisor who was in a position to grant those preferences.

Whether alleged harassing conduct constitutes sexual harassment is determined on a case-by-case basis by assessing the entire situation and the totality of the circumstances. Factors such as the nature of the conduct and the context in which the alleged conduct occurred will be considered in assessing the allegations and in determining the resolution.

It is the impact of the conduct that is determinative, not whether the conduct was intended to cause harm. For example, a person who teases in a sexual manner or tells sexual jokes may

create an offensive work environment for another person even though the comments or actions were intended to be merely “in good fun.” This applies to all types of job classifications and work environments. If a person’s conduct is harassing to an individual or group of individuals, it does not matter that the person failed to recognize their conduct as unwelcome, offensive, or harassing.

This Policy does not prohibit mutually consensual social relationships between employees.¹ However, persons involved in consensual relationships must exercise caution to prevent the development of harassing conduct or the use of authority inappropriately. For example, if a consensual relationship changes and is no longer mutual, conduct once welcome by both individuals may become offensive and harassing to one. Sexually harassing conduct can occur in relationships that began as reciprocal relationships, but later ceased to be reciprocal.

All City employees, including elected officials, are required to complete sexual harassment prevention training within the first six months of hire or assuming their positions, and then again once every two years.

4. PERSONS WITH DISABILITIES

The Americans with Disabilities Act (ADA) and California Fair Employment and Housing Act (FEHA) are the federal and state laws that protect employees with disabilities. Under these laws, the City will provide reasonable accommodation to a qualified applicant or employee with a disability, unless doing so would cause undue hardship. The City determines reasonable accommodations through timely, good faith interactive processes involving the Human Resources Department’s Reasonable Accommodations Manager, the employee’s supervisor or designee, and the employee in need of a reasonable accommodation.²

Additionally, the City will engage in a timely, good faith interactive process with qualified job applicants who request accommodation.

5. FAMILY AND MEDICAL LEAVE

The federal Family and Medical Leave Act (FMLA) and the California Family Rights Act provide that employees who have worked at least half-time during the previous 12 months, and have worked for the City at least one year, shall be allowed to request up to 12 weeks of unpaid, job-protected leave per year to care for themselves or an immediate family member because of a serious health condition, or to care for the employee’s child after birth or placement for adoption or foster care. California law also allows an employee disabled by pregnancy, childbirth, or a related medical condition to request up to 17 and 1/3 weeks of additional unpaid, job-protected pregnancy disability leave per pregnancy. An employee’s medical leave of absence may be extended as a reasonable accommodation under the ADA and FEHA, depending on the circumstances.

¹ Administrative Regulation 95.60, Conflict of Interest and Employee Conduct, prohibits employees from supervising or influencing employment decisions associated with immediate family members or other persons with whom they have a close personal relationship.

² Administrative Regulation 96.21, City Policy for People with Disabilities: Employment, describes the disability reasonable accommodation process and consultation provided by the Human Resources Department (619) 236-5521.

In addition, the FMLA provides leave rights related to military service. Eligible employees are entitled to up to 12 weeks of unpaid, job-protected leave during a 12-month period because of a qualifying exigency arising out of a covered family member being on, or having been notified of an impending call to, covered active duty in the Armed Forces. The FMLA further provides for up to 26 weeks of unpaid, job-protected leave in a single 12-month period for an eligible employee to care for a covered family member recovering from a serious illness or injury sustained in the line of duty.

It is unlawful and a violation of this Policy to interfere with, restrain, or deny an employee's exercise or attempt to exercise any right provided under these leave laws. An employee who exercises their rights under any of these laws shall not be subject to discrimination, harassment, or retaliation.

6. CITY EMPLOYEE RECRUITMENTS

The Mayor, through the Human Resources Department, and the heads of all Independent City Departments will ensure that the recruitment methods and strategies for Unclassified City Recruitments and Appointments follow this Policy. The Civil Service Commission, through the Personnel Director, will ensure that the recruitment methods and strategies for all Classified City Recruitments follow this Policy.

7. INTERVIEWS AND SELECTIONS BY APPOINTING AUTHORITY

All interviews and selections by Appointing Authority shall be job-related and conducted in a non-discriminatory manner (Personnel Manual, Index Code F-1). Interview questions and selection materials must be based on job-relevant criteria and carefully designed to not discriminate or have an adverse impact on applicants based on age, ancestry, color, creed, physical or mental disability, gender, gender identity, gender expression, genetic information, marital status, medical condition, military and veteran status, national origin, pregnancy (including childbirth, breastfeeding, or related medical conditions), race, traits historically associated with race (including hair texture and protective hairstyles such as braids, locks, and twists), religion, religious belief or observance, religious creed, sex, sex stereotype, sexual orientation, transgender status or transitioning, or any other classification protected by federal, state, or local law (including being perceived or regarded as or associated with any protected classification).

8. PERFORMANCE EVALUATIONS OF SUPERVISORS

Job performance evaluations for managers and supervisors should include a review of their support of and adherence to this Policy.

9. ENFORCEMENT OF EEO POLICY

The City's procedures for investigation and resolution of reports and complaints of potential violations of this Policy are described in Administrative Regulation 96.50 (Equal Employment Opportunity Policy and Complaint Resolution Procedures), Civil Service Rule XVI (Discrimination Complaints), and the Personnel Manual, Index Code K-2 (Non-Discrimination Policy and Complaint Procedures), and apply to all City employees, elected officials, contract workers, interns, and volunteers. To constitute a potential EEO violation under this Policy, the alleged conduct or employment action must be based on an individual's protected

classification or protected conduct under this Policy (e.g., filing an EEO complaint or requesting accommodation).

10. REPORTING A VIOLATION

Any City employee, elected official, contract worker, intern, or volunteer who believes that a violation of this Policy has occurred or is occurring should immediately bring the matter to the attention of any of the individuals or offices listed below:

- Department Director, Deputy Director, or other department Appointing Authority;
- Any supervisor (it is not necessary to follow the chain of command);
- Departmental Human Resources staff;
- Human Resources Department, Employee Relations (619) 236-6313;
- Personnel Department, Equal Employment Investigations Office (EEIO) (619) 236-7133.

City employees, elected officials, contract workers, interns, and volunteers may also file a complaint with the following external agencies:

- California Department of Fair Employment and Housing (DFEH) (800) 884-1684 or www.dfeh.ca.gov;
- U.S. Equal Employment Opportunity Commission (EEOC) (800) 669-4000 or www.eeoc.gov.

Complaints with the DFEH must be filed within three years of the harassment, discrimination, or retaliation. If the DFEH finds sufficient evidence, and efforts to resolve the dispute fail, the DFEH may file a civil complaint in state or federal court on behalf of the complaining party. Complainants can also pursue a private lawsuit in civil court after the DFEH issues a Right-to-Sue Notice. Civil remedies can include damages for emotional distress, backpay, reinstatement, promotion, changes in policy or practice, and attorney's fees and costs.

It is unlawful and prohibited under this Policy to retaliate against a person for reporting or filing a complaint of discrimination, harassment, or retaliation, or participating in any investigation or other proceeding under this Policy.

Confidentiality. When responding to a report or complaint of a potential violation of this Policy, the City will strive to protect the privacy interests of all individuals involved. However, anonymity and complete confidentiality cannot be guaranteed once inappropriate conduct is reported or a complaint is made. While an individual's expressed desire for confidentiality will be taken into consideration, those interests must be weighed against the responsibility of the City to investigate alleged violations of this Policy and take appropriate corrective and preventive action. Information pertaining to EEO complaints will be maintained in confidence to the fullest extent permitted by law.

EEO Report Form (EDP 100). Individuals may utilize the processes of the City's Equal Employment Investigations Office (EEIO) (Personnel Manual, Index Code K-2), or those set forth in Administrative Regulation 96.50, to report any potential violation of this Policy. If the Administrative Regulation 96.50 EEO Report Form (EDP 100) is used, a reference tracking number must be assigned to the report form to proceed with the fact-finding investigation. A reference tracking number can be obtained by calling the City's EEIO at (619) 236-7133. Departments can order EEO Report Forms through Central Stores and should maintain them

with their respective EEO Liaisons (Deputy Director, Human Resources, etc.) and Payroll Specialists. The report form may also be found online by following this [link](#).

Employee Assistance Program. City employees have access to free and confidential support to personal short-term counseling and referral services with assistance in managing everyday concerns from the Employee Assistance Program (EAP). EAP mental health providers are available 24/7 to discuss employee and household members concerns to ensure they receive the assistance needed, EAP can be reached at (800) 999-7222. City employees also have access to the 24-Hour Crisis Line at (888) 724-7240. For an emergency, please call 911.

Through this Policy, the City seeks to ensure that all City employees, elected officials, contract workers, interns, and volunteers know of their rights and responsibilities. Every City employee, elected official, contract worker, intern, and volunteer is expected to support and adhere to the principles of EEO and the standards of conduct stated in this Policy in order to create and maintain a high-performance, professional work environment at the City, free of any and all discrimination, harassment, and retaliation.

Signature On File
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