

CITY OF WEST HOLLYWOOD
ADMINISTRATIVE REGULATION

No. 410

Effective Date: 4/18/16

SUBJECT: HARASSMENT, DISCRIMINATION, AND RETALIATION PREVENTION
POLICY AND COMPLAINT PROCEDURE

Purpose

The purpose of this Harassment, Discrimination, and Retaliation Prevention Policy and Complaint Procedure (“Policy” or “Regulation”) is to set forth the City’s policy of dignity and respect for all City employees; establish a strong commitment to prohibit and prevent harassment, discrimination, and retaliation in employment; to define those terms; and to set forth a procedure for investigating and resolving complaints.

The City expects all covered individuals, as defined below, to adhere to a standard of conduct that is respectful to all persons within the work environment. The City encourages all covered individuals to report, as soon as possible, all conduct that is believed to violate this Policy.

Authority

State and federal laws prohibit harassment, discrimination, and retaliation. (Gov. Code §§ 12926, 12940 et seq.; 29 CFR Sec. 1604.11; 42 U.S.C. § 2000e et seq.; Cal. Code Regs., tit. 2 § 7287.6(b)(1)).

Application

This Regulation applies to all City employees and applicants for employment, temporary employees, volunteers, interns, City elected officials, members of City Commissions, Boards, and Task-Forces, persons providing services under contract, and other non-employees doing business with or involved with the City (“covered individuals”).

Policy

Harassment or discrimination 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, sexual orientation (including homosexuality, bisexuality, or heterosexuality), or any other protected classification as defined below, constitutes a violation of this Policy and will not be tolerated. This Policy applies to all aspects of employment including, but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, training and work assignments, to be determined solely upon the qualifications of the individual, without regard to political affiliation or opinion, 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, sexual orientation (including homosexuality, bisexuality, or heterosexuality), or status as a veteran.

Additionally, the City strives to create a discrimination-free workplace and strives to protect all persons to whom this Policy applies from harassment, discrimination, and retaliation in the course of their contact with the City government.

Conduct need not rise to the level of a violation of law to violate this Policy. Instead, a single act can violate this Policy and provide grounds for discipline. Additionally, the City reserves the right to independently raise issues of harassment, discrimination, and retaliation, absent an employee complaint.

Disciplinary action or other appropriate sanction up to and including termination may be instituted for prohibited behavior as defined below.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

Policy Coverage

This Policy prohibits covered individuals from harassing or discriminating against one another based on: 1) an individual's protected classification; 2) 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. The coverage of this Policy is explained in the chart attached hereto as Exhibit A and incorporated herein by reference.

Definitions

- A. *Protected Classifications*: “Protected Classification” means 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, age, medical condition, genetic characteristics or information, physical or mental disability, or any other protected classification protected by law.
- B. *Discrimination*: Discrimination means treating individuals differently because of the individual’s protected classification as defined in this Policy.
- C. *Harassment*: Harassment means the following types of unwelcome behavior taken because of a person’s protected classification. Note that harassment is not limited to conduct that City employees engage in.
1. *Speech*, such as epithets, derogatory comments or slurs, and on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.
 2. *Physical acts*, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
 3. *Visual acts*, such as derogatory posters, cartoons, emails, pictures or drawings related to a protected classification.
 4. *Unwanted sexual advances*, requests or propositioning 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.
- D. *Retaliation*: Any adverse conduct taken because an applicant, employee, temporary employee, intern, volunteer, or contractor has reported harassment or discrimination, or has participated in the complaint and investigation process described herein. “Adverse conduct” includes but is not limited to: taking sides because an individual has reported harassment or discrimination, adverse employment action, spreading rumors about a complaint, shunning and avoiding an individual because he or she has reported 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, and those who associate with an individual who is involved in reporting harassment or discrimination or who participates in the complaint or investigation

process.

- E. *Workplace*: “Workplace” means any place where City business is conducted and includes off-site locations where City officials and employees are conducting City business, engaged in training or attending a conference.

Guidelines for Identifying Harassment

To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:

1. Harassment includes any conduct which would be “unwelcome” to an individual of the recipient’s same protected classification and which is taken because of the recipient’s protected classification. Examples are included in the definition above.
2. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many reasons, including the need to avoid being insubordinate or to avoid being ostracized. In addition, behavior which commences as consensual or welcomed may become nonconsensual or unwelcome, at which point it is harassment.
3. Simply because no one has complained about 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 anyone from complaining if the conduct is repeated in the future.
4. Even visual, verbal, or physical conduct between two employees who appear to welcome the conduct 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.
5. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has 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 an individual of the recipient’s same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).

While it is impossible to catalogue all of the specific situations that constitute harassment, discrimination, or retaliation within this Policy to provide hard and fast rules governing the myriad of situations that arise in the workplace, all of those to whom this Policy applies should be guided by these basic norms:

- < Preventing harassing situations is almost always a matter of exercising good judgment.
- < City Hall and other City facilities, meeting spaces, offices and places where City business is conducted or the City is being represented are workplaces, in

which people with widely varying backgrounds, values and sensibilities must be able to work in comfort.

- < All persons governed by this Policy should strive to achieve a workplace environment that creates a level of comfort and avoid behavior that causes alienation and embarrassment, particularly as it regards to issues involving harassment, discrimination, or retaliation.

Responsibilities Under This Policy

The City expects all employees, temporary employees, volunteers, interns, contractors and City elected or appointed officials to be responsible for adhering to and enforcing this Policy.

Department Directors, Managers and Supervisors are responsible for:

1. Informing employees of this Policy.
2. Modeling appropriate behavior.
3. Taking all steps necessary to prevent harassment, discrimination, or retaliation from occurring.
4. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
5. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
6. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
7. Assisting, advising, or consulting with employees and the Human Resources Manager and/or Director or Administrative Services regarding this Policy and Complaint Procedure.
8. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with the City's disciplinary procedures.
9. Implementing appropriate disciplinary and remedial actions.
10. Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the Human Resources Division or the department Director.
11. Participating in periodic training and scheduling employees for training.

Each employee, temporary employee, intern and volunteer is responsible for:

1. Knowledge and understanding of the Policy content.
2. Treating all employees, volunteers and contractors with respect and consideration.
2. Modeling appropriate behavior.
3. Participating in periodic training.
4. Fully cooperating with the City's investigations by responding fully and truthfully to all questions posed during the investigation.
5. Reporting any act he or she believes in good faith constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor, manager or department director, or Human Resources Manager or Director of Administrative Services.

Persons under contract with the City are responsible for:

1. Not engaging in behavior that violates this Policy.
2. Reporting any act that he or she believes in good faith violates this Policy in the course of performing services for the City.
3. Fully cooperating with the City's investigation of any complaint of violation of this Policy involving such person.

The Human Resources Manager, Director of Administrative Services, or other individual as designated by the City Manager, is responsible for promptly initiating an investigation after receiving a complaint or a formal or informal report of harassment, discrimination, or retaliation.

Complaint Procedure

The Human Resources Manager or Director of Administrative Services will be available to provide immediate assistance, information, and guidance, upon request, to any covered individual on all matters pertaining to this Policy.

- A. An employee, job applicant, temporary employee, intern, volunteer, contractor or other member of the public doing business with the City who believes that this Policy has been violated may report such incidents without any fear of reprisal by making a complaint verbally or in writing with any of the following. There is no need to follow the chain of command:
 1. Immediate supervisor;

2. Any supervisor, manager or director within or outside of the department;
 3. Human Resources Manager; or
 4. Director of Administrative Services.
- B. Any supervisor, manager or director who receives a harassment complaint should notify the Human Resources Manager or Director of Administration Services immediately.
- C. Upon receiving notification of a harassment complaint the Human Resources Manager, Director of Administration Services or other individual qualified to conduct investigations as designated by the City Manager shall:
1. Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will include interviews with: 1) the complainant; 2) the accused harasser; and 3) other persons who have relevant knowledge concerning the allegations in the complaint. Investigations shall be conducted promptly and in consultation with the City Attorney and shall provide the victim, the alleged harasser and witnesses a fair and meaningful opportunity to participate in the process.
 2. Review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, discrimination, or retaliation giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
 3. Report a summary of the determination as to whether harassment or discrimination occurred to appropriate persons, including the complainant, the alleged harasser, the supervisor, and the department director. If discipline is imposed, the level of discipline will not be communicated to the complainant.
 4. If conduct in violation of this Policy occurred, take or recommend to the department head prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
 5. Take reasonable steps to protect the complainant from further harassment, discrimination or retaliation.
 6. Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
 7. Preparation of a written report summarizing the investigation, which will be reviewed both by the City Manager and the City Attorney before it is finalized, and which will contain conclusions and recommendations.

8. Final action taken as a result of the investigation will be communicated to both the complainant and the alleged harasser as appropriate.
- D. The City takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, managers, supervisors, or department directors become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.
 - E. In the event a report of harassment, discrimination, or retaliation is not substantiated or is denied by the alleged victim, the Human Resources Manager or Director of Administrative Services shall, after consultation with the City Manager and City Attorney, memorialize the results of the investigation in a confidential file. Both the alleged harasser and the alleged victim shall be given the opportunity to review the confidential memorandum and place their own comments in the file.

Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. However, complete confidentiality generally cannot be guaranteed 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. 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. Any inappropriate or unauthorized breach of confidentiality shall result in disciplinary action.

Remedies

1. Employees found to have engaged in any form of harassment, discrimination, or retaliation as defined by this Policy, will be subject to disciplinary action, according to the City's disciplinary procedures. A statement of findings and disciplinary action taken will be included in the offending employee's permanent personnel file and in his/her performance evaluation in accordance with applicable provisions of any relevant Memorandum of Understanding.
2. Failure of a City official, director, manager and/or supervisory employee to follow the procedures set forth above when that official or employee knows or suspects harassment, discrimination, or retaliation in violation of the City's Policy shall be grounds for disciplinary action.
3. Customers, constituents or visitors found to have engaged in any form of harassment, discrimination, or retaliation as defined by this Policy in connection with City business or on City premises will be instructed by the City Manager or his/her designee to cease such behavior; failure to cease and desist from behavior violative of this Policy shall subject them to corrective action, which may include removal from the premises, restrictions on future contact with City personnel and/or filing by the City of a complaint seeking a temporary restraining order.

4. Volunteers found to have engaged in any form of harassment, discrimination or retaliation as defined by this Policy in the course of conducting City business or on City premises will be instructed by the City Manager or his/her designee to cease such behavior; failure to cease and desist from behavior violative of this Policy shall subject them to corrective action, which may include terminating the volunteer arrangement.
5. If an employee of an independent contractor or consultant is found to have engaged in any form of harassment, discrimination or retaliation as defined by this Policy in connection with City business or on City premises, the City Manager or his/her designee shall contact the contractor or consultant's responsible manager and direct that person to take appropriate action to assure the behavior will not be repeated, which action may include barring the person from working on the City contract and/or barring the person from City premises. If the contractor or consultant fails to take effective action, the City Manager and City Attorney will explore termination of the contract.
6. If a member of a City Commission, Board or Task-Force is found to have engaged in any form of harassment, discrimination or retaliation as defined by this Policy in the course of conducting City business, the City Manager, Director of Administrative Services and the City Attorney shall together determine a course of action. Should they fail to resolve the complaint they will consult with the Mayor or the appointing Councilmember (in the case of a directly appointed official) in order to determine an appropriate course of action. Resolution may include a recommendation to the City Council that the appointed official be removed from office.
7. If an Applicant for Employment is found to have engaged in any form of harassment, discrimination, or retaliation as defined by this Policy in the course of applying for a job with the City, the application process shall be discontinued and the Applicant shall be rejected.
8. In the case of harassment by City Council Members the City Manager and the City Attorney shall together determine a course of action. The City Manager and the City Attorney shall, should they fail to resolve the complaint consult with the Mayor (unless the Mayor is the subject of the complaint, in which event they shall consult with the Mayor Pro Tem or other Councilmember, in order of seniority, as is appropriate under the circumstances) in order to determine an appropriate course of action.
9. Retaliation against anyone who has complained of harassment, discrimination, or retaliation, or who has testified on behalf of one who made a complaint, or who has assisted or participated in any manner in an investigation, proceeding, or hearing conducted in the application of this Policy shall be grounds for disciplinary action;
10. If an employee believes that harassment or discrimination has not ceased and/or believes he/she is being subjected to retaliation for having reported, or investigated the conduct, such employee may report the incidents to any supervisory staff member, the Human Resources Manager, Director of Administrative Services, City Manager or the City Attorney. Employees are not required to report such matters first to their supervisor if it is the employee's supervisor who is the alleged harasser or retaliator. The reporting procedures are those detailed in this Policy.

11. Any person subject to this Policy who knowingly makes a false claim of harassment, discrimination, or retaliation will be subject to disciplinary action up to and including termination.
12. Substantiation of allegations of harassment, discrimination, or retaliation by a contractor (including any employee or agent of a contractor) shall constitute grounds for removal of the harasser from the contract team or termination of the contract and such other remedies as may be available under the law and recommended to the City Council by the City Attorney.

Dissemination of Policy

All employees and persons to whom this Policy applies shall receive a copy of this Policy. The Policy may be updated from time to time and redistributed.

Option to Report to Outside Administrative Agencies

An individual has the option to report harassment 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. Their nearest offices and contact information can be located by conducting an online search or consulting City bulletin boards.

Exhibit A

Alleged Harasser	Complainant / Victim	Employees / Interns / Temporary Employees	City Councilmember	Volunteers	Applicant for Employment	Members of Commissions, Boards and Task-Forces	Contractors/Consultants	Customer, Constituents or Visitors
Employees / Interns / Temporary Employees	I	I	I	I	I	I	I	I
Customer, Constituents or Visitor	II	II	II	II	II	II	II	II
Volunteers	III	III	III	III	III	III	III	III
Contractors/Consultants	IV	IV	IV	IV	IV	IV	IV	IV
Members of Commissions, Boards and Task-Forces	V	V	V	V	V	V	V	V
Applicant for Employment	VI	--	--	--	--	--	--	VI
City Councilmember	VII	VII	VII	VII	VII	VII	VII	VII

Legend

- I. Employees found to have engaged in any form of harassment, discrimination or retaliation as defined by this Policy, will be subject to disciplinary action, according to the City’s disciplinary procedures.
- II. Customers, constituents or visitors found to have engaged in any form of harassment, discrimination or retaliation as defined by this Policy in connection with City business or on City premises will be instructed by the City Manager or his/her designee to cease such behavior; failure to cease and desist from behavior violative of this Policy shall subject them to corrective action, which may include removal from the premises, restrictions on future contact with City personnel and/or filing by the City of a complaint seeking a temporary restraining order.

- III. Volunteers found to have engaged in any form of harassment, discrimination or retaliation as defined by this Policy in the course of conducting City business or on City premises will be instructed by the City Manager or his/her designee to cease such behavior; failure to cease and desist from behavior violative of this Policy shall subject them to corrective action, which may include terminating the volunteer arrangement.
- IV. If an employee of an independent contractor or consultant is found to have engaged in any form of harassment, discrimination or retaliation as defined by this Policy in connection with City business or on City premises, the City Manager or his/her designee shall contact the contractor or consultant's responsible manager and direct that person to take appropriate action to assure the behavior will not be repeated, which action may include barring the person from working on the City contract and/or barring the person from City premises. If the contractor or consultant fails to take effective action, the City Manager and City Attorney will explore termination of the contract.
- V. If a member of a City Commission, Board or Task-Force is found to have engaged in any form of harassment, discrimination or retaliation as defined by this Policy in the course of conducting City business, the City Manager, Human Resources Director and the City Attorney shall together determine a course of action. Should they fail to resolve the complaint they will consult with the Mayor or the appointing Councilmember (in the case of a directly appointed official) in order to determine an appropriate course of action. Resolution may include a recommendation to the City Council that the appointed official be removed from office.
- VI. If an Applicant for Employment is found to have engaged in any form of harassment, discrimination or retaliation as defined by this Policy in the course of applying for a job with the City, the application process shall be discontinued and the Applicant shall be rejected.
- VII. In the case of harassment by City Council Members the City Manager and the City Attorney shall together determine a course of action. The City Manager and the City Attorney shall, should they fail to resolve the complaint consult with the Mayor (unless the Mayor is the subject of the complaint, in which event they shall consult with the Mayor Pro Tem or other Councilmember, in order of seniority, as is appropriate under the circumstances) in order to determine an appropriate course of action.