

CITY OF MODESTO POLICY AGAINST HARASSMENT AND DISCRIMINATION

It is the policy of the City of Modesto that harassment is unacceptable and will not be tolerated. Further, it is the policy of the City of Modesto to treat its citizens, customers and employees with respect and dignity and to strive to provide a working environment free of discrimination and harassment. This policy applies to all employees, officials, agents and volunteers, and all non-employees who have contact with employees during working hours.

Any City employee who has been found, after an investigation, to have harassed another City employee, official, agent, volunteer, consultant or non-employee because of their race, color, ancestry, religion or creed, sex, national origin, marital status, age, physical or mental disability or perceived disability, medical condition, pregnancy-related condition, sexual orientation or political affiliation or belief will be subject to disciplinary action up to and including termination.

Definition of Harassment

Harassment based on a person's race, color, ancestry, religion or creed, sex, national origin, marital status, age, mental or physical disability, or perceived disability, medical condition, pregnancy-related condition, sexual orientation, or political affiliation or belief can constitute a violation of Title VII of the Civil Rights Act, the California Fair Employment Act and/or the City of Modesto's Equal Opportunity Policy. Harassment based on a person's race, color, ancestry, religion or creed, sex, national origin, marital status, age, mental or physical disability, or perceived disability, medical condition, pregnancy-related condition, sexual orientation, or political affiliation or belief occurs when:

1. The focus and/or content of the harassing act is race, color, ancestry, religion or creed, sex, national origin, marital status, age, physical or mental disability or perceived disability, medical condition, pregnancy-related condition, sexual orientation or political affiliation or belief; and,
2. The harassing act tends to create an intimidating, oppressive, hostile or offensive working environment or tends to otherwise interfere with an individual's emotional well being or ability to perform work.

Sexual harassment is a form of sex discrimination. It includes an unwelcome or unsolicited sexual advance, a request for sexual favors, and other verbal or physical conduct of a sexual nature, and can constitute a violation of Title VII of the Civil Rights Act, and Fair Employment Housing Act.

Conduct is considered sexual harassment when:

- a. Submission is made an express or implied term or condition of employment; or
- b. Submission to or rejection of the harassing act is used as a basis for employment or business decisions affecting an individual; or
- c. Such conduct may have the purpose or effect of interfering with an individual's work performance and/or may create an intimidating, hostile or otherwise offensive work or business environment.

Examples of Harassment

- Written examples include suggestive or obscene letters, notes, jokes, e-mails and invitations.
- Verbal examples include derogatory comments, slurs, jokes, and racial epithets.
- Physical examples include assault, touching, impeding or blocking movements.
- Visual examples include leering, gestures or displays of sexually suggestive objects or pictures, cartoons or posters.

Other examples include, but are not limited to, threats of reprisal, implying or actually withholding support for appointments, promotion or transfer, rejection during probation, punitive actions, changes of assignments, or suggesting that a poor performance report will be prepared if requests for sexual favors are not met.

The harassing act may be focused on an individual who is not physically present at the time, or who was present but did not actually see or hear the acts.

Retaliation

It is also a violation of this Policy for an employee to retaliate against the complainant(s), witness(es) or other parties to a complaint of discrimination or harassment. A verified allegation of retaliation will be treated the same as any other violation of this Policy and may result in action taken against the retaliator, even if the original complaint is not determined to have merit.

Responsibilities

1. Except as set forth below, the City Manager is responsible for enforcement of the City Policy Against Harassment and Discrimination.
2. The City Attorney is responsible for ensuring that all complaints of harassment are investigated thoroughly and promptly, including presentation of recommendations for any necessary action to the City Manager, Department Director, or Supervisor.
3. Every Department Director is responsible for informing all employees of the City Policy Against Harassment and Discrimination and for taking the steps necessary to set a positive example in the prevention of harassment.
4. Every Supervisor is responsible for taking immediate and appropriate corrective action upon the observation of any incident of harassment or upon receipt of an oral or written report of any occurrence of harassment.
5. Every City Employee is responsible for reporting any act of harassment to the immediate Supervisor or Department Director, or the City Attorney.

Complaint Resolution Procedures

City employees shall report any act of harassment to their immediate Supervisor or Department Director, and to the City Attorney. The City Attorney will investigate and attempt resolution of harassment complaints in accordance with the City's Complaint Process as outlined in Exhibit B to the City's Equal Opportunity Plan.

**CITY OF MODESTO
COMPLAINT PROCEDURE
VIOLATION OF POLICY AGAINST HARASSMENT AND DISCRIMINATION**

1. **Intent** - Any person who feels that he/she has encountered discrimination and/or harassment is encouraged to come forward and present that information. All complaints are kept confidential to the extent permitted by law. However, it should be noted that when a supervisor or other management employee is made aware of a situation of potential harassment or discrimination, he/she is required to take steps to verify whether or not the discrimination/harassment occurred and to take whatever action is necessary to correct the situation. A prompt and appropriate investigation may require disclosure of the allegations, the person making the allegations and may necessitate the use of other parties to assist in the investigation.

It is the intent of this procedure to provide an effective means for resolving individual or group problems of a sensitive nature quickly and with a minimum of formal procedural requirements.

2. **Scope** - This procedure should be used for perceived discrimination or harassment based on age (40 and over), ancestry, color, mental or physical disability including HIV and AIDS or perceived disability, marital status, medical condition (cancer and genetic characteristics), pregnancy-related condition, national origin, race, religion or creed, sex, sexual orientation or political affiliation or belief.
3. **Limitations** - This procedure for resolving complaints of discrimination and harassment is not intended to supplant or prohibit employees or applicants from filing complaints with the federal Equal Employment Opportunity Commission (EEOC), the state Department of Fair Employment and Housing (DFEH), other appropriate state or federal agencies, or with the courts.

PROCEDURE: **The procedure for reporting incidents of discrimination or harassment is meant to be as flexible as possible. It is the goal that complaints be resolved informally, if possible. If informal resolution is not achieved, then a process for formal resolution is provided.**

- a) Complainants should come forward as soon as possible after an incident of harassment or discrimination. Generally, an issue or concern should be raised no later than 30 days from the date the complainant knew or should have known about the incident.
- b) Complainants have the option of contacting their immediate supervisor for assistance or contacting the City Attorney. If an employee goes directly to a supervisor, the supervisor should notify the City Attorney that he/she has received the complaint. This can be done informally and confidentially.
- c) Depending on the nature of the complaint, the supervisor may refer the complaint immediately to the City Attorney so that a formal investigation be conducted. Alternatively, the supervisor may conduct an informal investigation or may recommend an alternative means of dispute resolution. If the complainant declines the informal or alternative process, a formal investigation by the City Attorney will be initiated.

- d) The City Attorney should begin a confidential investigation of the complaint as soon as possible. A reasonable time line to begin an internal investigation would be two-five (2-5) working days, depending on employees' work schedules.
- e) The complainant should be assured that the matter will be kept confidential to the extent possible, but be advised that a full investigation will include advising the alleged discriminator/harasser of the charges and interviewing witnesses. The alleged discriminator/harasser should be cautioned that DFEH, EEOC and this Policy prohibit any retaliation against the complainant, witnesses or other parties to the complaint. A verified allegation of retaliation will be treated as a violation of this policy and the City may take action against the retaliator, even if the original complaint is not determined to have merit.
- f) The investigation may include witness interviews, review of documents or materials and discussions with the complainant and the alleged discriminator/harasser. Witnesses shall be directed to maintain confidentiality during the investigation and shall be admonished not to engage in retaliation against either the complainant or alleged discriminator/harasser.
- g) The investigation should be completed in a timely manner. If the investigation will require greater than 30 days, the investigator or department shall notify the complainant of the status of the investigation and anticipated completion date.
- h) The investigator will prepare a written report including a finding related to each allegation. The complainant and the alleged discriminator/harasser shall be notified of the findings.
- i) If the investigator finds that discrimination or harassment has occurred, the department management, in consultation with the City Attorney and the Personnel Director, shall determine what remedial action is appropriate. Remedial action may include but is not limited to coaching the responsible employee, training, a record of discussion, written reprimand, or formal discipline.
- j) If the complainant has first taken their complaint to a supervisor and is not satisfied with the supervisor's or department's timeliness or efforts, he/she may then contact the City Attorney and the Personnel Director. He/she should notify the department that this is being done. If the supervisor or department cannot effect conciliation and negotiation within a reasonable amount of time, the complainant should contact the City Attorney. The City Attorney may assist the department in completing the investigation or in identifying an alternate investigator to complete the confidential investigation and come to a resolution.
- k) The complainant should be notified that he/she has the right to file a complaint with the federal Equal Employment Opportunity Commission (EEOC) or the state Department of Fair Employment and Housing (DFEH) or other appropriate state or federal agency or the court.

- 1) Complaints against the City Attorney shall be made to and investigated by the City Manager in a manner consistent with this procedure who shall report his/her findings to the City Council who shall determine the appropriate remedial action.

Describe the Activity that Occurred: _____

List Any Witnesses to the Alleged Activity: _____

I have not been coerced into making this complaint.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matter I believe it to be true.

Date _____

Complainant's Signature

Received By:

Date: _____