

## **29 Harassment and Discrimination Policy and Complaint Procedure**

### **29.1 Policy Statement**

The City of Pittsburg strives to provide a professional work environment where all employees can work together comfortably and productively, free from harassment and discrimination. The City of Pittsburg ("City") prohibits harassment and discrimination based on a protected classification, regardless of whether that harassment is targeted specifically to an applicant for employment, an employee, or an independent contractor.

While the legal standards and consequences of harassment and discrimination continue to evolve, the City's policy has been and remains more all encompassing than the law requires. This is because the City's policy rests on the fundamental precept that each individual treat all others with respect, dignity and professionalism. Therefore, the City has a zero tolerance for any conduct that violates this policy.

Whether or not the individual means to offend or believed his or her comments or conduct were welcome is not significant. Rather, the City's policy is violated when other applicants for employment, employees, or independent contractors, whether recipients or mere observers are, in fact, offended by comments or conduct based on a protected characteristic.

Our workplace is not limited to the City's facilities, but may also include client and vendor facilities, as well as anywhere a City business-related function is taking place.

Employees have an obligation to comply with this Harassment and Discrimination Policy and Complaint Procedure.

### **29.2 Definitions**

#### **29.2.1 Protected Classifications**

Protected classification includes race, color, religion, religious creed, sex or gender, sexual orientation (including heterosexuality, homosexuality, and bisexuality), national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age, medical condition, genetic characteristics, and physical or mental disability.

#### **28.2.2 Policy Coverage**

This policy prohibits employees or contractors from harassing or discriminating against applicants, employees, or contractors because: 1) of an individual's protected classification; 2) of 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.

### **29.2.3 Discrimination**

This policy prohibits treating individuals differently because of the individual's protected classification as defined in this policy.

### **29.2.4 Harassment**

Harassment may include, but is not limited to, the following types of behavior that is taken because of a person's protected classification. Note that harassment is not limited to conduct the employer's employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, 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 classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or protected characteristic-oriented stories and jokes.

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.

Visual insults, such as derogatory posters, cartoons, or drawings related to a protected classification.

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 creates an intimidating, hostile, or offensive working environment.

### **29.3 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.**
- 2. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue. A recipient might not protest for many legitimate**

reasons, including the need to avoid being insubordinate or to avoid being ostracized.

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. Small, isolated incidents might be tolerated up to a point. 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, and/or physical conduct between two employees who appear to welcome it can constitute harassment of a third applicant, employee, or contractor 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 the individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).

#### 29.4 Retaliation

Any adverse conduct taken because an applicant, employee, or contractor 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 complaint, 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, and those who associate with an individual who is involved in reporting harassment or discrimination, or who participates in the complaint or investigation process.

#### 29.5 Complaint Procedure

##### 29.5.1 Internal Procedure

If an individual believes that any City employee, vendor, client or other business contact has harassed, discriminated or retaliated toward him/her, then the individual should immediately report the incident to his/her supervisor and/or department head.

**Employees are highly encouraged to report incidents of actual or suspected harassment or discrimination immediately! Early and/or prompt report will ensure that the workplace investigation will be more productive and fair to all parties and that initial or minor instances of harassment or discriminatory behavior are not allowed to escalate to more serious problems.**

If the immediate supervisor, department head, Human Resources Director, or City Manager, then the individual should report directly to the Human Resources Director or member of the Human Resources Department.

If the individual feels uncomfortable about reporting to the Human Resources Director or member of the Human Resources Department, then the individual should report directly to the City Manager, who may refer the employee to his/her designee.

If the individual feels uncomfortable about reporting to his/her immediate supervisor, department head, Human Resources Director or member of the Human Resources Department, or City Manager, then the individual should report directly to a member of the City's "Collective Risk Management Team." (See below for details.)

If the individual feels uncomfortable about reporting to his/her immediate supervisor, department head, Human Resources Director or member of the Human Resources Department, City Manager, or a member of the City's "Collective Risk Management Team," then the individual should report through the "Employee Reporting Line."

The "Employee Reporting Line" is a confidential means for an employee to report workplace wrongdoing. An employee who utilizes this option shall not be required to provide his/her name but should provide enough information so that appropriate follow up action can be taken. The Employee Reporting Line shall be available 24 hours per day, seven days a week and managed by an independent third party. The independent third party vendor shall transcribe the individual's call (for employee's who telephone in their report) and send to the lead contact of the "Collective Risk Management Team" the transcription of phoned-in reports or web-completed reports. The City Manager or designee shall publicize to all employees the Employee Reporting Line's telephone number and web address.

Any supervisor, including department heads, who sees or learns of conduct that may constitute harassment under this policy, shall immediately advise the Human Resources Director of the incident and actions taken. Supervisors shall also contact their divisional manager (command staff) or department head. If the supervisor or department head feels uncomfortable reporting to the Human Resources Director, then the supervisor or department head should report to the

**“Collective Risk Management Team.”**

**“Collective Risk Management”:** This is a process in which a team of employees manages workplace risk and wrongdoing when discovered. Workplace risk and wrongdoing include such items as harassment, discrimination, drug and alcohol abuse, violence, unsafe acts, and misrepresenting a workers’ compensation claim. The team members are individuals selected by the City Manager to receive and manage reports of alleged wrongdoing. The City Manager or designee shall publicize the names of the Collective Risk Management Team members.

The role of the Collective Risk Management Team is to receive reports of alleged workplace wrongdoing, to categorize the complaint into the type or types of wrongdoing, to assign the complaint as appropriate to either an internal or external individual for investigation, and to receive notification from the investigator that an investigation has been completed and that the investigator has notified the appropriate individuals (typically expected to be the Human Resources Director and the department head) as to the results of the investigation.

The Collective Risk Management Team is to maintain confidentiality of the allegation(s) of wrongdoing, investigation(s) and investigative report(s). That means, discussions are to occur with and among only those individuals who have a legitimate business need to know.

The role of the Collective Risk Management Team is not to conduct investigations, learn the results of investigations, or provide disciplinary action recommendations.

Because of the Peace Officer Bill of Rights, whenever a complaint involves a police safety employee, the Collective Risk Management Team shall refer the complaint to the Police Chief for his/her investigation and follow-through. Should the complaint involve the Police Chief, or should the Collective Risk Management Team believe the Police Chief has a conflict of interest, whether real or perceived, then the Collective Risk Management Team shall solicit and abide by the opinion of the City Attorney’s Office as to the handling of the complaint.

Additionally, no member of the Collective Risk Management Team shall participate in any decisions of the Team when that member’s name is included in any verbal or written complaint or when either the Team member or the Collective Risk Management Team believes the member has a conflict of interest, whether real or perceived.

#### **29.5.2 Human Resources Director’s Responsibilities**

Upon receiving notification of a harassment, discrimination, or retaliation

complaint, the Human Resources Director shall:

1. Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will include interviews with: a) the complainant; b) the accused harasser; and c) other persons who have relevant knowledge concerning the complaint.
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 incident(s) occurred.
3. Report a summary of the determination as to whether violations of City policy occurred, including the complainant, the alleged harasser, and department head.
4. If violations of City policy occurred, the Human Resources Director shall work with the appointing authority or his/her designee to enact prompt and effective corrective action. The action will be commensurate with the severity of the policy violation and shall be governed by the applicable provisions of the City's Municipal Code, employee's collective bargaining agreement, or the City's Personnel Rules.
5. Take responsible 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.

#### 29.5.3 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 employer bulletin boards.

#### 29.6 Confidentiality

Every possible effort will be made to ensure 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 corrective 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 City 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.

**29.7 Dissemination of Policy**

All employees shall receive a copy of this policy when they are hired. The policy may be updated from time to time and, as such times, will be redistributed to all employees.