

CITY OF FOSTER CITY/ESTERO MUNICIPAL IMPROVEMENT DISTRICT POLICY AGAINST WORKPLACE DISCRIMINATION, HARASSMENT AND RETALIATION

I. PURPOSE

The purpose of this Policy is to establish a strong commitment on the part of the City/District to prohibit and prevent all forms of workplace harassment, discrimination, and retaliation, to define those terms, to establish management and employee responsibility regarding workplace harassment, discrimination, or retaliation and to set forth a procedure for investigating and resolving internal complaints of workplace harassment. The City/District encourages all covered individuals to report—as soon as possible—any conduct or behavior that is believed to violate this Policy.

II. POLICY

The City/District has zero tolerance for any conduct that violates this Policy. Conduct need not arise to a violation of law to violate this Policy. A single act can violate this Policy and provide grounds for discipline or other appropriate sanctions.

Harassment, discrimination, or retaliation against an applicant or employee by a supervisor, management employee, co-worker, or contractor on the basis of race, religion or religious creed, color, sex (including gender and pregnancy), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), sexual identification, military and veteran status, gender identification, gender expression, status as a victim of domestic violence, sexual assault or stalking, receipt of a subsidy to purchase insurance via a public health insurance exchange, or any other protected classification, as defined below, will not be tolerated.

This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

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

Any retaliation against a person for filing a complaint, participating in the complaint resolution process, or with reasonable cause, reporting a violation of a federal, state or local rule or regulation to a government or law enforcement agency 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.

III. SCOPE

This Policy applies to applicants, employees, volunteers, or persons providing services pursuant to a contract. This Policy also applies to elected and appointed officers of the City of Foster City/Estero Municipal Improvement District. This Policy prohibits discrimination or harassment because of: (1) an individual's protected classification; (2) the perception that an individual has a protected classification; or (3) an individual's association with a person who has or appears to have a protected classification.

IV. DEFINITIONS AND EXAMPLES

A. Protected Classifications: This Policy prohibits harassment, discrimination, or retaliation because of an individual's protected classification. "Protected Classification" means an individual's race, religion or religious creed, color, sex, gender, sexual orientation (including heterosexuality, homosexuality, and bisexuality), sexual identification, national origin, ancestry, citizenship status, military and veteran status, marital status, pregnancy, age, medical condition, genetic characteristics, physical or mental disability, gender identification, gender expression, status as a victim of domestic violence, sexual assault or stalking, and receipt of a subsidy to purchase insurance via a public health insurance exchange.

B. Discrimination: Discrimination means treating individuals differently because of their protected classification as defined by this Policy.

C. Harassment: Harassment can consist of any form or combination of verbal, physical, visual or environmental conduct that is taken because of a person's protected classification. It need not be explicit, or even specifically directed at the victim.

Harassment is not limited to conduct taken only by City/District employees. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, volunteers, or even members of the public.

Harassment includes, but is not limited to, the following types of misconduct:

1. Unwanted sexual advances, including 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 such 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. Sexually harassing conduct can occur between people of the same or different genders. Sexually harassing conduct need not be motivated by sexual desire.
2. Verbal conduct or speech, such as epithets, derogatory comments or slurs on the basis of actual or perceived race, religious creed, color, national origin, ancestry, physical

handicap, medical condition, age, marital status, sex, sexual preference, political opinions or affiliations, or lawful employee organization activities. Verbal conduct or speech may also include sexual remarks, well-intentioned compliments about a person's clothing, body, or sexual activities, or race-oriented stories or jokes.

3. Physical conduct, such as assault, unwelcome touching, impeding or blocking movement and/or any physical interference with normal work or movement. This includes, but is not limited to, kissing, punching, grabbing, patting, propositioning, leering, looking a person up and down, or making explicit or implicit job threats or promises in return for submission to physical acts.
4. Visual acts, including displaying or viewing derogatory posters, notices, bulletins, cartoons, drawings, emails, internet sites, or other electronic media related to a protected classification.

D. Retaliation: Any adverse conduct taken because an applicant, employee or contractor has reported harassment or discrimination, has participated in the complaint and investigation process described in this Policy, or with reasonable cause, has reported a violation of a federal, state or local rule or regulation to a government or law enforcement agency. "Adverse conduct" includes, but is not limited to: taking sides because an individual has reported harassment, discrimination, or retaliation, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment, discrimination, or retaliation, or real or implied threats of intimidation to prevent an individual from reporting harassment, discrimination, or retaliation.

V. GUIDELINES FOR IDENTIFYING HARASSMENT

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

- A. Harassment includes any conduct that would be "unwelcome" to an individual of the recipient's same protected classification and that is taken because of the recipient's protected classification.
- B. 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.
- C. 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.
- D. Even visual, verbal and/or physical conduct between two employees who appear to welcome it can constitute harassment of a third applicant, officer, official, 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.

E. 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).

VI. RESPONSIBILITIES

It is the responsibility of all employees and contractors of the City to comply with the provisions of this Policy. Further responsibility for the Policy is delegated as follows:

A. Department Heads, Division Managers, and Supervisors are responsible for:

1. Informing employees of this Policy;
2. Modeling appropriate behavior;
3. Taking all steps necessary to set a positive example and 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 is no retaliation;
7. Informing those who complain of harassment, discrimination, or retaliation of his or her option to contact the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH) regarding alleged policy violations;
8. Assisting, advising, or consulting with employees and the Human Resources Director regarding this Policy and the complaint procedure;
9. 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 City/District policies, up to and including termination;
10. Implementing appropriate disciplinary and remedial actions;
11. 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 Director; and

12. Participating in periodic training and scheduling employees for training.
- B. All employees, elected and appointed officials, volunteers and contractors are responsible for:
1. Treating each other with respect and consideration;
 2. Not engaging in actions or behaviors that violate or encourage violation of this Policy;
 3. Participating in periodic training;
 4. Fully cooperating with any City/District investigation by responding fully and truthfully to all questions posed during the investigation;
 5. Maintaining the confidentiality of any investigation that the employer conducts by not disclosing the substance of any investigatory interview, except as directed by the Human Resources Director; and
 6. Reporting any act he or she believes in good faith constitutes harassment, discrimination or retaliation as defined by this Policy to his or her immediate supervisor, department head or the Human Resources Director.

VII. DISSEMINATION OF POLICY

A copy of this Policy shall be provided to all employees, elected and appointed officials, and volunteers of the City/District. The Policy may be updated from time to time and redistributed.

Each employee will be asked to sign a statement that he or she has received this Policy. This Policy and statement will be provided by the Human Resources Director upon hire, when City trainings are provided on this topic and when the Policy is updated.

VIII. COMPLAINT PROCESS AND PROCEDURES

To accommodate the unique and sensitive nature of harassment, discrimination and retaliation complaints under this Policy, a separate process is provided for the primary purpose of resolving these complaints at the earliest possible date. This process is contained below

- A. An employee, job applicant, or contractor who believes he or she has been harassed, discriminated against or retaliated against may make 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 or manager within or outside of the department;
 3. Department head; or

4. Human Resources Director.

B. Any supervisor or department head who receives a harassment, discrimination, or retaliation complaint shall notify the Human Resources Director immediately, unless the complaint concerns the Human Resources Director; in that instance, the City Manager shall be notified.

C. 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.
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, discrimination, or retaliation occurred to appropriate persons, including the complainant and the alleged harasser. 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 appointing authority 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.

D. The City/District takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.

E. 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 for office locations and telephone numbers.

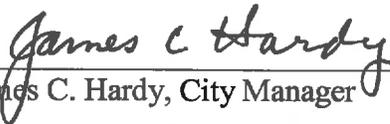
IX. CONFIDENTIALITY

Every possible effort will be made to assure 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 remedial 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 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 an adversarial proceeding, or to comply with the law or a court order.

X. EFFECTIVE DATE

The effective date of this revised policy is January 1, 2014. It replaces the previous Policy Against Workplace Discrimination, Harassment and Retaliation dated June 3, 2013.

APPROVED BY:



James C. Hardy, City Manager

3-20-14

Date

Attachments:

- Acknowledgement Form
- Complaint Form



**CITY OF FOSTER CITY/ESTERO MUNICIPAL IMPROVEMENT DISTRICT
ACKNOWLEDGEMENT OF RECEIPT AND UNDERSTANDING OF POLICY AGAINST
WORKPLACE DISCRIMINATION, HARASSMENT AND RETALIATION**

I acknowledge receipt of a copy of the City's/District's Policy Against Workplace Discrimination, Harassment and Retaliation. I have read and understand my responsibilities under the Policy, and I agree to abide by it. I understand that I will be subject to discipline for violating this Policy, or subject to other appropriate sanctions for failing to fulfill my responsibilities as outlined in this Policy.

Employee Signature

Print Name

Date

**CITY OF FOSTER CITY/ ESTERO MUNICIPAL IMPROVEMENT DISTRICT
CONFIDENTIAL WORKPLACE HARASSMENT/DISCRIMINATION/RETALIATION
COMPLAINT FORM**

Name of Complainant _____ Job Title _____
Department _____ Supervisor _____

Work phone number _____ Ext. _____ Home phone number _____
I Prefer to be contacted at: Home Work Best time to contact: _____ a.m. p.m.

**STATEMENT OF COMPLAINANT
(Attach Other Sheets If Necessary)**

Date(s) of Incident _____
Name(s) of Person(s) Accused _____
Witness(es) _____

Description of Harassment Incident(s): *(describe actions/behaviors of all persons involved, including yourself and any witnesses, attaching additional sheets as necessary)*

Resolution Requested:

Signature _____ Print Name _____ Date _____

Complaint Submitted To:

Name _____ Title _____ Date Received _____

Human Resources Director Signature _____ Date Received _____