



NEWPORT BEACH

City Council Staff Report

March 26, 2019
Agenda Item No. 6

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Resolution No. 2019-27: Amending Resolution No. 2001-100, Adopting a Revised Discrimination and Harassment Prevention Policy

ABSTRACT:

The City of Newport Beach promotes a workplace free of harassment and discrimination and reaffirms this commitment through its *Discrimination and Harassment Prevention Policy* (“Policy”). The Policy is an appendix to the City’s Employee Policy Manual, which was last adopted by the City Council on December 11, 2001. The Policy was updated and readopted on September 13, 2016 (Resolution No. 2016-111) to reflect changes in State and Federal laws that broadened the definition of discrimination and harassment and provided expanded protections under the law. With the California Legislature’s recent adoption of changes to the Government Code, it is necessary to revise the Policy to incorporate the new provisions and remain in compliance with the law. Staff recommends the City Council adopt the revised Policy as an expression of its ongoing commitment to preventing workplace discrimination and harassment.

RECOMMENDATION:

- a) Determine that the action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) and 15060(c)(3) of the CEQA Guidelines because it will not result in a physical change to the environment, directly or indirectly;
- b) Adopt Resolution No. 2019-27, *A Resolution of the City Council of the City of Newport Beach, California, Amending Resolution No. 2001-100, Adopting a Revised Discrimination and Harassment Prevention Policy*; and
- c) Approve the revised *City of Newport Beach Discrimination and Harassment Prevention Policy*.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

Under State and Federal laws, employers have an obligation to prohibit and prevent discrimination and harassment in the workplace. The laws define these terms and set forth procedures for investigating and resolving internal complaints. The City's commitment to comply with these mandates is reflected in its Policy.

On September 20, 2018, the California Legislature enacted additional legislation to broaden the scope of harassment claims that will violate the Fair Employment and Housing Act (FEHA) and further expanded workplace protections. This legislation became effective January 1, 2019 and includes (but is not limited to): SB 1300 added Government Code sections 12923, 12950.2 and 12964.5, eliminating the "severe or pervasive" legal standard used to determine if conduct rises to the level of unlawful harassment and declaring that a single incident of harassing conduct is sufficient to bring forward a claim; establishing that sexual harassment will not vary by type of workplace; allowing, but not requiring, that an employer may also provide bystander intervention training; and providing limitations on the use of non-disparagement agreements, confidentiality agreements and waiver of FEHA claims. In addition, SB1343 amended Government Code sections 12950 and 12950.1, to expand the requirements for employers to provide training to all employees, not just supervisors and managers, once every two years. While the City has kept abreast of these changes and maintained compliance through training and education, City staff recommends updating the Policy at this time so it more accurately reflects the City's continued compliance with current legal requirements and best practices.

Human Resources and the City Attorney's Office have worked together to revise the Policy to incorporate the legal updates. Attached for the City Council's consideration is the proposed new Policy (Attachment B) and a redline version (Attachment C), reflecting the changes from the prior version. If approved by the City Council, staff will work with supervisors, key managers and directors to affirm the City's commitment to preventing discrimination and harassment by distributing and promoting the new Policy.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

- Attachment A – Resolution No. 2019-27
- Attachment B – Discrimination and Harassment Prevention Policy
- Attachment C – Discrimination and Harassment Prevention Policy (Redline Version)