

APPENDIX A

CITY OF NEWPORT BEACH  
DISCRIMINATION AND HARASSMENT PREVENTION POLICY

**Section 1. Policy Statement**

*The City of Newport Beach has a strong commitment to prohibiting and preventing discrimination, harassment and retaliation in the workplace.*

The City ~~of Newport Beach~~ will take all reasonable steps to prevent discrimination, harassment and retaliation from occurring. *The City has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of Federal or State law to violate this Policy.*

The City will not tolerate *any* harassment or discrimination because of, or on the basis of, ~~an individual's protected Protected Classification class~~ such as race, color, national origin, ancestry, religious creed, physical or mental disability, medical condition, marital status, military and veteran status, sex (including pregnancy), gender, gender identity, gender expression, sexual orientation, age, genetic information, *or any other basis protected by applicable Federal or State laws*, association with *an individuals who has or is perceived to have a Protected Classification* ~~with these characteristics~~, or the perception that an individual has *a Protected Classification* ~~one of these characteristics or any other basis protected by applicable Federal or State laws~~.

**Section 2. Covered Individuals and Scope of Policy**

This ~~Policy covers prohibition of discrimination and harassment applies to~~ job applicants as well as all Employees, including provisional, temporary and contract employees; City Council and other members of City Boards and Commissions; and volunteers, unpaid interns or apprentices. This Policy is intended to protect Employees, to the extent possible, from harassment by clients, vendors, independent contractors, or others doing business with the City. As such, Employees shall follow the procedures in this Policy as if the harasser were an Employee of the City. Employees are likewise prohibited from harassing clients, vendors, independent contractors, residents or anyone with whom an Employee deals with on the job. This Policy also protects Employees from retaliation for complaining of discrimination or harassment under this Policy.

A copy of this Policy shall be provided to all persons who are subject to it, ~~and shall be posted on City bulletin Boards in all City facilities.~~

**Section 23. Definitions**

The following definitions that apply to this Policy are derived from the California Fair Employment and Housing Act ("*FEHA*") and include, but are not limited to:

**Discrimination** means treating covered individuals differently and adversely because of or on the basis of the individual's Protected Classification, actual or perceived; because the individual associates with a person who is member of a Protected Classification, actual or perceived; or because the individual participates in a Protected Activity as defined in this Policy.

**Harassment** includes, but is not limited to, the following types of behavior that are taken because of a person's actual or perceived Protected Classification: (1) Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This includes inappropriate comments about appearance, dress, physical features, gender identification, or race-oriented stories and jokes; (2) Physical acts, such as assault, impeding or blocking movement, offensive touching, or physical interference with normal work or movement. This includes pinching, grabbing, patting, 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; and (4) 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 create an intimidating, hostile, or offensive working environment.

**Protected Activity** includes making a request for an accommodation for a disability; making a request for accommodation for religious beliefs; making a complaint under this Policy; opposing violations of this Policy; or participating in an investigation under this Policy.

**Protected Classification** means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age (40 and over), sexual orientation, or military and veteran status, or any other basis protected by law. This Policy prohibits discrimination, harassment and retaliation because: (1) of 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.

**Retaliation** means adverse conduct is taken against a covered individual because of the individual's Protected Activity as defined in this Policy. "Adverse conduct" includes, but is not limited to: (1) disciplinary action; (2) counseling; (3) taking sides because an individual has reported harassment or discrimination; (4) spreading rumors about a complainant or about someone who supports or assists the complainant; (5) shunning or avoiding an individual who reports harassment or discrimination; or (6) making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination.

**Age** refers to the chronological age of any individual who has reached his or her 40th birthday.

~~**Abusive Conduct** means conduct of the City or Employee in the workplace, with malice, that a reasonable person would find hostile, offensive and unrelated to the City's legitimate business interest. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating or the gratuitous sabotage or undermining of a person's work performance.~~

~~**Genetic Information** means information about any of the following: (1) the individual's genetic tests, (2) the genetic tests of family members of the individual, and (3) the manifestation of a disease or disorder in family members of the individual. "Genetic information" also includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual. "Genetic information" does not include information about the sex or age of any individual.~~

~~**Medical Condition** means (1) any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer, or (2) genetic characteristics, as defined by California Government Code section 12926 (f)(3)(i)(2).~~

~~**Mental Disability** includes, but is not limited to, all of the following: (1) having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity, (2) any other mental or psychological disorder or condition that requires special education or related services, (3) having a record or history of a mental or psychological disorder or condition described herein, which is known to the employer, (4) being regarded or treated by the employer as having, or having had, any mental condition that makes achievement of a major life activity difficult, and (5) being regarded or treated by the employer as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability in the future. "Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.~~

~~**Physical Disability** includes, but is not limited to, all of the following: (1) having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that limits a major life activity and affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine, (2) any other health impairment that requires special education or related services, (3) having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described above, which is known to the employer, (4) being regarded as having, or having had, any physical condition that makes achievement of a major life activity difficult, and (5) being regarded or treated by the employer as having, or having had, a disease, disorder, condition,~~

~~cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability in the future.~~

~~**Religious Creed** includes all aspects of religious belief, observance, and practice, including religious dress and grooming practices. "Religious dress" is construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of the observance by an individual of his or her religious creed. "Religious grooming" is construed broadly to include all forms of head, facial, and body hair that are part of the observance by an individual of his or her religious creed.~~

~~**Sex** includes: (1) pregnancy or related medical conditions, (2) childbirth or related medical conditions, (3) breastfeeding or related medical conditions, (4) gender, (5) gender identity, and (6) gender expression. "Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.~~

~~**Sexual Orientation** includes heterosexuality, homosexuality, and bisexuality.~~

**Supervisor** means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

## **Section 34. Harassment**

### **Sexual Harassment**

Federal and State laws consider sexual harassment to be one form of unlawful discrimination. Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other visual, verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment, or
2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual., ~~or~~
3. ~~Such conduct is so severe or pervasive it has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.~~

~~The definition of sexual *Sexual* harassment includes many forms of offensive behavior.~~

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*A single incident of harassing conduct may have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment, and such conduct is prohibited under this Policy.*

The City considers the following conduct to represent some examples of the types of prohibited conduct. This list is neither exhaustive nor all-inclusive.

1. Unwanted sexual advances, *including verbal sexual advances, such as propositions or requests.*
2. Offering employment benefits in exchange for sexual favors.
3. Making or threatening reprisals after a negative response to sexual advances.
4. Physical conduct: touching, pinching, patting, or coerced sexual conduct.
5. Visual or non-verbal conduct: whistling, leering, ogling, making suggestive or insulting sounds, making sexual gestures, or displaying pictures, posters, cartoons, calendars, objects, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic, or possessing in the work environment any of these materials. *Production, transmission, or display of any sexually explicit material electronically via fax, e-mail, through social media, or any other forms of communication.*
6. Verbal conduct: making or using derogatory comments, epithets, slurs, sexually explicit jokes, sexual innuendo and insults, comments about an employee's body or dress.
- ~~7. Verbal sexual advances, propositions or requests.~~
8. Verbal abuse of a sexual nature, including graphic verbal commentary or communications about an individual's body or sexual activities, using sexually degrading words or names to describe an individual, or sending suggestive or obscene letters, e-mails, texts, communication or posts via social media, notes, invitations, or other forms of communication.
- ~~9. Production, transmission, or display of any sexually explicit material electronically via fax, e-mail, through social media, or any other forms of communication.~~

It is unlawful for male Employees to sexually harass female Employees or other male Employees, and for female Employees to sexually harass male Employees or other female Employees. ~~Sexual Harassment~~ *harassment on the job* is unlawful whether it involves co-worker harassment, harassment by a supervisor or manager, or harassment by persons doing business with or for the City.

Other conduct that has the purpose or effect of unreasonably interfering with an Employee's work performance or working conditions on the basis of gender, pregnancy, gender identity, and gender expression may ~~also constitute~~ *prohibited* sexual harassment ~~and is, therefore, prohibited.~~

#### **Section 4. ~~Harassment (Other Than Sexual Harassment)~~**

In addition to sexual harassment described above, harassment of Employees based on other ~~protected~~ *Protected Classifications* ~~classes, such as race, color, national origin, ancestry, religious creed, physical or mental disability, medical condition, marital status, military and veteran status, sexual orientation, age, genetic characteristics, association with individuals with these characteristics or the perception that an individual has one of these characteristics~~ is *also expressly* prohibited by this Policy.

Such harassment *may* include ~~s~~ visual, verbal or physical conduct based on any ~~of the above protected~~ *Protected Classification*.

~~classes when such conduct is so severe or pervasive it has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. It may also include conduct that constitutes gratuitous sabotage or undermining of a person's work performance.~~

*A single incident of harassing conduct may have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment, and such conduct is prohibited under this Policy. Conduct based on any Protected Classification that constitutes gratuitous sabotage or undermining of a person's work may also be considered Harassment under this Policy.*

#### **Section 5. Discrimination**

~~Prohibited discrimination under this Policy includes refusing to hire or employ a person, refusing to select a person for a training program leading to employment, to bar or to discharge a person from employment or from a training program leading to employment, or to treat an individual differently in compensation or in the terms, conditions or privileges of employment based on the protected classes identified above in Section 1.~~

*Federal and State laws consider discrimination based on an individual's Protected Classification to be unlawful.*

*The City considers the following conduct to represent some examples of the types of prohibited Discrimination when based on the individual's Protected Classification. This list is neither exhaustive nor all-inclusive.*

- 1. Refusing to hire or employ a person.*
- 2. Refusing to select a person for a training program leading to employment.*

3. *Treating an individual differently in compensation or in the terms, conditions or privileges of employment.*

## **Section 6. Retaliation**

*Federal and State laws consider adverse conduct based on an individual's Protected Activity to be unlawful.*

*The City considers the following adverse conduct to represent some examples of the types of prohibited Retaliation when based on the individual's Protected Activity. This list is neither exhaustive nor all-inclusive.*

1. *Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing.*
2. *Refusing to hire an individual because of Protected Activity.*
3. *Denying promotion to an individual because of Protected Activity.*
4. *Taking any form of disciplinary action because of Protected Activity.*
5. *Altering work schedules or work assignments because of Protected Activity.*

## **Section 67. ~~Complaint~~—Procedure for Reporting *and* Processing Discrimination, ~~and~~—Harassment, *and* Retaliation Complaints**

1. ~~An Employee who believes he or she has been harassed or discriminated against on the basis of a ~~protected~~ Protected Classification, class or retaliated against on the basis of his or her participation in a Protected Activity may shall provide a written or verbal complaint ("Complaint") to his or her immediate any supervisor Supervisor, or any other supervisor, the Human Resources Director or the City Manager as soon as possible. The Complaint should include details of the incident(s), names of individuals involved, and the names of any witnesses. Supervisors and managers must immediately refer all Complaints to the Human Resources Director.~~
2. ~~The City will investigate all allegations of harassment or discrimination that are reported. The Human Resources Director shall notify the City Attorney of the Complaint and shall undertake or direct a fair, timely, and thorough investigation of the Complaint that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. The Human Resources Director or his or her designee shall:~~
  - a. ~~Meet with the Employee(s) alleging harassment or discrimination, discuss the~~

~~incident(s), obtain any relevant information, confirm that an investigation will be initiated and advise the Employee(s) to report any possible retaliation.~~

~~b. In consultation with the City Attorney, initiate a prompt investigation to determine all the facts surrounding the incident. The investigation will be conducted in as confidential manner as possible subject to the need to conduct a thorough investigation.~~

~~c. Conclude the investigation in a reasonable period of time and communicate the results of the investigation to the Employee(s) who complained, the accused harasser(s), the Director of the Department in which the Employee works and the City Manager.~~

~~d. Ensure that appropriate disciplinary and/or corrective action is initiated and implemented where conduct in violation of this Policy is found to have occurred.~~

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~~3. The City will take effective disciplinary or remedial action as warranted, up to and including termination if it is found that harassment or discrimination has occurred. Due to employee privacy issues, if discipline is imposed on the Employee accused of harassment or discrimination, the discipline will not be communicated to the Complainant.~~

~~4. The City will take reasonable steps to protect the Complainant from further harassment. If appropriate, the City will take action to remedy the victim's job loss, if any, which resulted from the harassment or discrimination.~~

*2. The Supervisor shall immediately notify his/her Department Director and the Human Resources Director.*

*3. The Human Resource Department shall complete or delegate the following steps:*

*a. Notify the City Attorney of the complaint in order to initiate an investigation of the incident.*

*b. Meet with the Employee(s) alleging harassment or discrimination.*

*c. Take reasonable steps to protect the complainant from further harassment, discrimination and retaliation.*

*d. Authorize and supervise the investigation of the complaint and/or investigate the complaint.*

*e. Review the factual information gathered during the investigation to determine whether the alleged conduct violates this Policy.*

*f. Report a summary of the determination to the appropriate persons.*

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*g. Ensure that appropriate disciplinary and/or corrective action is initiated and implemented where conduct in violation of this Policy is found to have occurred.*

4. Clients, independent contractors, vendors, or others doing business with the City shall be required to use the Complaint procedure outlined in this Policy for any claim of harassment or discrimination by a City Employee.
5. *Every effort will be made to assure the confidentiality of Complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. An Employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An Employee may discuss his or her interview with a designated representative. 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.*

#### **Section 7. ~~Retaliation~~**

~~In accordance with applicable law, this Policy prohibits any retaliation (i.e., Adverse Action) against any person for engaging in a legally protected activity, such as filing a Complaint about conduct that the person reasonably believes constitutes harassment or discrimination. This Policy also prohibits retaliation against any person because of his or her participation in an investigation, proceeding or hearing related to an alleged violation of this Policy or for associating with the alleged harasser or victim. Any Complaint alleging retaliation in violation of this Policy shall be processed in the same manner as a Complaint alleging harassment or discrimination. The City will promptly, thoroughly and objectively investigate any claim of retaliation. If the City determines that retaliation has occurred, the City will take effective disciplinary or remedial action as warranted, up to and including termination.~~

~~Adverse Action may include, but is not limited to, any of the following: Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing; refusing to hire an individual because of protected activity; denying promotion to an individual because of protected activity; taking any form of disciplinary action because of protected activity; or altering work schedules or work assignments because of protected activity.~~

#### **Section 8. Violation of Policy**

*An Employee who violates any provision of this Policy is subject to discipline or remedial action as warranted, up to and including termination.*

#### **Section 9. Personal Liability for Harassment or Retaliation**

### **APPENDIX A OF EMPLOYEE POLICY MANUAL**

*In certain circumstances, an Employee who engages in harassment and/or retaliation may be held personally liable for monetary damages associated with prohibited conduct.*

## **Section 810. Management-Supervisor Responsibilities**

All Supervisors are responsible for ensuring a workplace free from discrimination or harassment, *and retaliation* as defined in this Policy. Supervisors shall be responsible for the following:

1. *Completing the training requirements for Supervisors.*
- ~~1.2.~~ Promptly filing a report with the Department Director and Human Resources Director whenever the Supervisor receives information about or observes an incident that he or she knows or reasonably suspects could constitute discrimination, ~~or harassment,~~ *or retaliation.* ~~The report shall be filed even if the Employee(s) who allege(s) discrimination or harassment request(s) that no action be taken. The report shall not be filed with the Department Director if the Department Director is alleged to have participated in the discrimination or harassment.~~ Any verbal report shall be followed up by a written report documenting the incident.
- ~~2.3.~~ Ensuring that appropriate action is taken in response to the Supervisor's report of discrimination, ~~or harassment,~~ *or retaliation.*
- ~~3.4.~~ Ensuring that:
  - a. *All Employees that they supervise are provided a Department of Fair Housing and Employment ("DFEH") informational pamphlet regarding sexual harassment and retaliation prevention.*
  - ~~a.b.~~ All Employees *that* they supervise attend *and complete any and all required training requirements regarding prevention of sexual harassment and retaliation* ~~designed to prevent harassment, discrimination, abusive conduct and retaliation.~~
  - ~~b.c.~~ All Employees *that* they supervise receive a copy of, and opportunity to discuss and ask questions about, ~~7~~ this Policy.
  - ~~e.d.~~ Materials that violate this Policy ~~(such as sexually suggestive objects, pictures, posters or cartoons)~~ are not circulated, presented, transmitted, or openly displayed within the workplace.
  - ~~d.~~ All Employees they supervise are informed of their rights to report discrimination, harassment or retaliation and of the assistance available under this Policy.

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**Section 9. — Violation of Policy**

~~An Employee who violates any provision of this Policy is subject to discipline or remedial action as warranted, up to and including termination. Supervisors shall be held to a higher standard of conduct and may be subject to a higher level of discipline if found to have engaged in discrimination, harassment or retaliation in violation of this Policy.~~

**Section 10. — Personal Liability for Harassment or Retaliation**

~~An Employee who engages in harassment or retaliates against an Employee who complains of harassment, including any Supervisor or manager who knew about the harassment and took no action to stop it, may be held personally liable for monetary damages if the Employee complaining of harassment or retaliation files a legal action.~~

**Section 11. Employee's Responsibilities**

*All Employees are responsible for ensuring a workplace free from discrimination and harassment as defined in this Policy. Employees shall be responsible for completing training requirements required by the City and by State law, and reviewing the DFEH informational packet and this Policy.*

**Section 11.12. Employee's Rights**

The goal of this Policy is to identify and prevent discrimination, harassment ~~or and~~ retaliation. ~~If problems or concerns arise,~~ Employees are encouraged to make use of the process described in this Policy. However, any Employee also has the right to *report discrimination, harassment and retaliation* go directly to *the DFEH and the California Department of Fair Employment and Housing* or the Federal Equal Employment Opportunity Commission ("EEOC") ~~for assistance.~~

~~Employees may contact the DFEH~~*The California Department of Fair Employment and Housing may be contacted* at the following telephone number or website:

Los Angeles: (213) 439-6799  
<http://www.dfeh.ca.gov/>

~~Employees may contact the EEOC~~*The Federal Equal Employment Opportunity Commission may be reached* at the following telephone number or website:

Los Angeles: (213) 894-1000  
<http://www.eeoc.gov/employees/charge.cfm>

The City maintains a posted Notice regarding harassment and discrimination at all Employee work sites, which contains additional information about how to contact these agencies.

Adopted by Council: 9/13/16