



ADMINISTRATIVE CODE

CMD NUMBER 131

CITY MANAGER'S DIRECTIVE PROCEDURE

DATE: April 25, 2017

CANCELS: January 1, 2014

SUBJECT : EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY  
AND DISCRIMINATION COMPLAINT PROCEDURE

PURPOSE : To reaffirm the City's existing and long term commitment to assure equal employment opportunity to all persons regardless of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, or military and veteran status as required by law; to offer employment and employment advancement to all persons on the basis of merit and job-related knowledge, skills and abilities; and to provide a workplace free of unlawful discrimination or harassment.

To ensure full compliance with applicable state and federal law affecting the City's employment and the workplace environment, including but not limited to Title VII of the 1964 Civil Rights Act, as amended in 1972, the Fair Employment and Housing Act (FEHA), the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), ADA Amendments Act of 2008, Section 504 of the Rehabilitation Act of 1973, the California Family Rights Act, the Family and Medical Leave Act of 1993, and the Patient Protection and Affordable Health Care Act (ACA).

POLICY : It is the policy of the City of Santa Clara to provide equal employment opportunity for all employees and employment applicants based upon merit and job-related knowledge, skills and abilities. Unlawful discrimination or harassment based on race, sex, color, religion, gender, religious creed, national origin, ancestry, age, marital status, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, family care status, military and veteran status, sexual orientation, gender identity, gender expression, or victims of domestic violence is prohibited. There shall be no unlawful discrimination or harassment in the work environment or in employment including recruitment, testing, hiring, training, promotion, transfer, demotion, lay off, compensation, benefits, working conditions, disciplinary action, or retirement.

This policy is to ensure that every employee is aware that the City strongly disapproves of and will not tolerate unlawful discrimination against or

harassment of any employee in the workplace, or affecting the workplace, by a manager, supervisor, co-worker, or agent of the City. Following an investigation where appropriate, the City will take immediate corrective action against any violator who does not comply with this policy. The City will also make every reasonable effort to protect employees from unlawful discrimination or harassment by non-employees in the workplace. Confidentiality will be maintained to the extent possible for investigation and corrective action.

In keeping with this policy, the City will not tolerate retaliation, intimidation, coercion or discrimination against any employee or employment applicant who makes a complaint; participates in any manner in an investigation; associates with an individual who has filed a complaint; or receives a health insurance tax credit or subsidy through the ACA.

An employment action is considered retaliatory if it discriminates against any employee with respect to compensation, terms, conditions, or other privileges of employment. Retaliation can include termination, demotion, denial of overtime, denial of promotion or other benefits, failure to hire or rehire, intimidation, reassignment, discipline, blacklisting, and the reduction of pay or hours.

#### **Workplace Harassment**

It is the policy of the City of Santa Clara that unlawful workplace harassment is considered unacceptable behavior and will not be tolerated.

Workplace harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, or disability, or that of his/her relatives, friends, or associates, and that:

Has the purpose or effect of creating an intimidating, hostile, or offensive work environment;

Has the purpose or effect of unreasonably interfering with an individual's work performance; or

Otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to, the following:

Jokes, epithets, slurs, negative stereotyping; or threatening, intimidating or hostile acts, that relate to race, color, religion, gender, national origin, age, or disability; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of race, color, religion, gender, national origin, age, or disability and that is placed on

walls, bulletin boards, or elsewhere on the City's premises or circulated in the workplace.

### **Sexual Harassment**

It is the policy of the City of Santa Clara that unlawful sexual harassment is considered unacceptable behavior in the workplace and will not be tolerated. Sexual harassment is a form of sex discrimination and violates Section 703 of Title VII of the 1964 Civil Rights Act, and general provisions of the Fair Employment and Housing Act, (particularly Government Code Section 12940).

Sexual harassment includes any unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature when:

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

Offensive behavior which constitutes sexual harassment can include, but is not limited to:

Verbal conduct, e.g., sexually derogatory or suggestive comments, remarks, innuendoes, slurs, jokes, epithets, threats, or sexual propositions (Note: It is not necessary to use graphic or sexually explicit language to verbally harass someone. Otherwise benign language, spoken in a suggestive tone of voice or accompanied by visual or physical conduct, can also be considered sexual harassment);

Visual conduct, e.g., leering, looking, making suggestive or obscene sexual gestures or noises, displaying sexually suggestive objects, pictures, posters, cartoons, drawings, letters, poems, or graffiti;

Physical conduct, e.g., touching, pinching, whistling, brushing, impeding or blocking movement, or any physical interference with normal work or movement.

In determining whether any alleged conduct constitutes unlawful discrimination or harassment, the City will look at the record as a whole and at the totality of the circumstances, such as the nature of the conduct

and the context in which the alleged incidents occurred. The determination on the allegations and any corrective action will be made on the facts on a case-by-case basis taking into consideration the severity of the conduct, the frequency, the pervasiveness, and any prior complaints.

### Disabilities

It is the policy of the City of Santa Clara that unlawful discrimination on the basis of disability against a qualified individual with a disability will not be tolerated. This policy prohibits unlawful discrimination against qualified individuals with disabilities in regard to, but not limited to, recruitment, advertising, job application procedures, hiring, promotion, transfer, lay off, termination, compensation, job training, job assignment, leaves of absence, fringe benefits and any other term, condition and privilege of employment.

An individual with a disability is a person who:

1. Has a physical or mental impairment that substantially limits one or more major life activities;
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

The City is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the City's business.

RESPONSIBILITY :

All City Employees

### ACTION

Make it your personal responsibility to promote and maintain a work

environment free from unlawful discrimination and harassment in the workplace. Employees are urged to cooperate with the City's designated representative (whether that is the City's EEO Officer or outside investigator) to complete an investigation into a claim of discrimination or harassment. This may take the form of providing documents or submitting to an interview. Employees should not fear reprisal or retaliation for participation in any such investigation. The City may decide in some circumstances that in order to achieve the objectives of a full and fair investigation, employees must maintain the investigation and their role in it in strict confidence. If the City reasonably imposes such a requirement upon participating employees, then the participating employees must maintain that confidentiality.

All City  
Employees/Employment  
Applicants

1. You are strongly encouraged to promptly report to your supervisor or manager and/or to the City's Equal Employment Opportunity Officer (EEO Officer)<sup>1</sup>, any incidents of work-related discrimination or harassment by any City employee or non-employee, without fear of reprisal or retaliation. (Note: It is encouraged that the chain of command be followed when complaints are made. However, following the chain of command is not required. You may prefer to report the complaint to the City's EEO Officer or elsewhere.)
2. Employment applicants should report any such incidents to the City's EEO Officer.
3. Employees and employment applicants may obtain information about discrimination and harassment, and complaint forms from the City's EEO Officer who can be contacted in the Human Resources Department, City Hall, 1500 Warburton Avenue, Santa Clara, CA 95050.

Department/Division  
Heads/Supervisors

1. Make every reasonable effort to ensure that a discrimination-free and harassment free work environment exists for all employees under your scope of authority.
2. If an incident of discrimination or harassment is reported, or if you become aware of an incident of discrimination or harassment, immediately notify the City's EEO Officer. Coordinate immediate corrective actions and fully cooperate with the City's EEO Officer to resolve complaints of discrimination or harassment. This may be accomplished informally at the department level or more formally depending upon the circumstances of the complaint. All complaints shall

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<sup>1</sup> Currently the Assistant Director of Human Resources

be timely reported to the City's EEO Officer.

3. If the discrimination or harassment has occurred within your scope of authority, immediately consult with the City's EEO Officer and take immediate corrective action to stop any further inappropriate conduct and to amend any effects of the discrimination or harassment. If the occurrence of discrimination or harassment was not within the scope of your authority, immediately notify the City's EEO Officer and the manager or supervisor of the workplace impacted by the inappropriate conduct.
4. In the case of City employees, if unlawful discrimination or harassment is established as having occurred, take immediate corrective action including disciplinary action against the violator(s), if necessary, after conferring with the City's EEO Officer. Action for a violation of this policy can range from a verbal warning up to and including termination. In cases of violations by non-employees, take appropriate corrective action, as feasible. The goal of any such corrective action is to effectively stop the discrimination or harassment.

Director of Human Resources

Include a copy of this CMD for review as a part of the New Employee Orientation and when employees are promoted to supervisory and/or management positions.

Equal Employment  
Opportunity Officer (EEO  
Officer)/City Manager  
Training Officer

Periodically remind and review this policy with employees to ensure continued compliance providing a workplace free of discrimination.

Provide on-going Citywide EEO training for supervisors and employees.

DISCRIMINATION COMPLAINT PROCEDURE

EEO Officer

1. The City's EEO Officer serves as an assistant to the City Manager for affirmative action and equal employment opportunities. The EEO Officer will review any complaints from applicants or employees alleging discrimination. [Complaint forms may be obtained from the City's EEO Officer who can be contacted in the Human Resources Department, City Hall, 1500 Warburton Avenue, Santa Clara, CA 95050.] A written complaint is not necessary to prompt investigation and corrective action, but it is helpful to enable a full investigation to be conducted.
2. To the extent practicable, the EEO Officer will resolve any such complaints with the cooperation of the managers and supervisors. The EEO Officer, in consultation with the Director of Human Resources and/or the City Attorney's Office, may determine that outside investigation resources are necessary depending upon the

circumstances of the complaint.

Employee or Employment  
Applicant

In addition to notifying the City about harassment or retaliation complaints, an employee or employment applicant may also direct their complaints to the following external agencies:

California Department of Fair Employment and Housing (DFEH)  
Bay Area Regional Office  
39141 Civic Center Dr., Suite 250  
Fremont, CA 94538  
1-800-884-1684  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

Equal Employment Opportunity Commission (EEOC)  
San Jose Local Office  
96 N. Third St., Suite 250  
San Jose, CA 95112  
1-800-669-4000  
[www.eeoc.gov](http://www.eeoc.gov)

There are time limits for filing complaints with the DFEH and EEOC. Employees are advised to contact the DFEH or EEOC directly to obtain information on the time limits for filing complaints with these agencies.