

RESOLUTION NO. 2015-131

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING AND APPROVING THE CITY OF ROHNERT PARK UPDATING AND
REAFFIRMING THE CITY'S POLICY AND COMPLAINT PROCEDURE AGAINST
HARASSMENT, DISCRIMINATION AND RETALIATION**

WHEREAS, Title VII of the Civil Rights Act of 1964 (Title VII) is the federal law that prohibits discrimination, harassment, and retaliation in the workplace and the California Fair Employment and Housing Act (FEHA) establishes the state prohibition against harassment, discrimination and retaliation based on a protected status; and

WHEREAS, the City of Rohnert Park is committed to promoting and maintaining a work environment in which all individuals treat each other professionally and with mutual respect; and

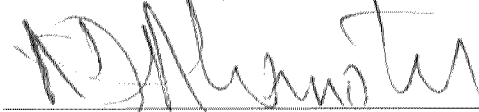
WHEREAS, staff recommends that the City Council adopt the updated City of Rohnert Park Policy and Complaint Procedure Against Harassment, Discrimination and Retaliation in compliance with Title VII and FEHA attached as Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize and approve the updated City of Rohnert Park Policy and Complaint Procedure Against Harassment, Discrimination and Retaliation attached hereto as Exhibit "A" and incorporated by this reference.

BE IT FURTHER RESOLVED that this Resolution supersedes and replaces Resolution no. 2007-117.

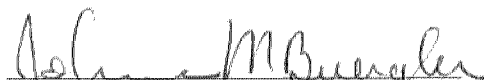
DULY AND REGULARLY ADOPTED this 11th day of August, 2015.

CITY OF ROHNERT PARK



Amy O. Ahanotu, Mayor

ATTEST:


JoAnne M. Buerger, City Clerk

Attachment: Exhibit A

CALLINAN: AYE MACKENZIE: AYE STAFFORD: AYE BELFORTE: ABSENT AHANOTU: AYE
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

CITY OF ROHNERT PARK
CITY COUNCIL POLICY



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I. PURPOSE

The purpose of this Policy is to: establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in employment; to define those terms; and to set forth a procedure for investigating and resolving internal complaints. The City encourages all covered individuals to report—as soon as possible— any conduct that is believed to violate this Policy.

II. POLICY

The City has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of law to violate this Policy. Instead a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. Disciplinary action or other appropriate sanction up to and including termination will be instituted for prohibited behavior as defined below.

Harassment or discrimination on the basis of race, religion, color, sex (including gender, gender identity, gender expression, transgender), sexual orientation (including heterosexuality, homosexuality, and bisexuality), national origin, ancestry, citizenship status, marital status, pregnancy, age, medical condition, genetic characteristics or information, military and veteran status, physical or mental disability, 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.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process 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.

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Definitions

- A. **Protected Classifications:** This Policy prohibits harassment or discrimination because of an individual's protected classification. "Protected Classification" includes race, religion, color, sex (including gender, gender identity, gender expression, and transgender), sexual orientation (including heterosexuality, homosexuality, and bisexuality), national origin, ancestry, citizenship status, marital status, pregnancy, age, medical condition, genetic characteristics or information, military and veteran status, physical or mental disability, or any other category protected by federal or State law. For purposes of this Policy, Protected Classification includes: 1) 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.
- B. **Policy Coverage:** This Policy applies to all elected or appointed officials, officers, employees, contractors, unpaid interns, or volunteers.
- C. **Discrimination:** Treating individuals differently because of the individual's protected classification as defined in this Policy.
- D. **Harassment:** Unwelcome verbal, visual, or physical conduct based on an employee's membership in a legally protected category that creates an intimidating, offensive, or hostile work environment or that interferes with work performance. Harassment includes, 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 that City's employees take. 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, or even members of the public:
- 1) 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, gender identification, or race-oriented stories and jokes.
 - 2) 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, propositioning, or making explicit or implied job threats or promises in return for submission to physical acts.

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3) Visual acts, such as leering, derogatory posters, cartoons, emails, pictures, or drawings related to a protected classification.

E. Sexual Harassment: Sexual advances, requests for sexual favors, or visual, verbal, or physical conduct of a sexual nature when: (1) submission to such conduct is made a term or condition of employment; or (2) submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment. This definition includes potential forms of offensive behavior. The following is a list of some examples:

1. Unwanted sexual advances.
2. Offering employment benefits in exchange for sexual favors.
3. Making or threatening reprisals after a negative response to sexual advances.
4. Visual conduct, such as leering, making sexual gestures, displaying of sexually explicit jokes, comments about an individual's body or dress.
5. Verbal sexual advances or propositions.
6. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes, or invitations.
7. Physical conduct, such as touching, assault, impeding, or blocking movements.
8. Retaliation for reporting harassment or threatening to report harassment.

Sexual harassment can occur between members of the same or opposite sex. Sexual harassment need not be motivated by sexual desire. Sexual harassment on the job is prohibited whether it involves co-worker harassment, harassment by a supervisor or manager, harassment by a subordinate, or harassment by third parties doing business with or for the City.

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- F. 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 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 may be reluctant to 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. 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, or physical conduct between two employees who appear to welcome the conduct can constitute harassment of a third party 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 an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).
- G. Retaliation: Any adverse conduct taken because of any report of harassment or discrimination, or because of participation 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. Individuals that are protected from retaliation include: those who make good faith reports of harassment or discrimination, and those who

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associate with an individual who is involved in reporting harassment or discrimination or who participates in the complaint or investigation process.

Complaint Procedure

- A. Anyone who believes he or she has suffered harassment, discrimination, or retaliation 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;
 - 4) Director of Human Resources; or
 - 5) City Manager
- B. Any supervisor, manager, or department head who receives a harassment, discrimination, or retaliation complaint should notify the Director of Human Resources immediately.
- C. Upon receiving notification of a harassment, discrimination, or retaliation complaint, the Director of Human Resources shall:
- 1) Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will include interviews with: 1) the complainant; 2) the accused party; and 3) other persons who have relevant knowledge concerning the allegations in 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 City Manager, the complainant, the accused party, the supervisor, and the department head. If discipline is imposed, the level of discipline will not be communicated to the complainant.

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- 4) If conduct in violation of this Policy occurred, take or recommend to the City Manager prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense, as well as in consideration of any prior offenses.
 - 5) Take reasonable steps to protect the complainant from further harassment or discrimination.
 - 6) Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
- D. The City 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.

ALL EMPLOYEES SHOULD NOTE THAT THE FAILURE TO USE THE CITY'S COMPLAINT PROCEDURE MAY HAVE AN ADVERSE EFFECT ON ANY CLAIM UNDER THIS POLICY WHEN SUCH CLAIMS ARE LITIGATED.

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

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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.

Responsibilities

Managers and Supervisors are responsible for:

1. Informing employees of this Policy.
2. Modeling appropriate behavior.
3. Taking all steps necessary 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 are no reprisals.
7. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
8. Assisting, advising, or consulting with employees and the Human Resources Director regarding this Policy and 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 employer Personnel Rules, up to and including discharge.
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 Department or the department head.
12. Participating in periodic training and scheduling employees for training.

Each elected or appointed official, officer, employee, contractor, unpaid Intern and volunteer is responsible for:

1. Treating others with respect and consideration.
2. Modeling appropriate behavior.
3. Participating in periodic training when provided.
4. Fully cooperating with the City's investigations by responding fully and truthfully to all questions posed during the investigation.

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5. Maintaining the confidentiality of any investigation that the City conducts by not disclosing the substance of any investigatory interview, except as directed by the department head or Human Resources Director.
6. Reporting any act he or she believes in good faith constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor, or department head, or Human Resources Director.
7. Employees have a duty to disclose any benefits received. Employees are hereby informed that no supervisor, manager, or officer of the City, or other person or entity doing business with the City, is authorized to expressly or impliedly condition the receipt or denial of any benefit, compensation, or other term or condition of employment on an employee's acquiescence to any sexual demand. To the contrary, all employees are instructed that they must refuse such demands and report them promptly either to a supervisor, manager, or department head. Any employee who is found to have accepted any benefit from the City because he/she submitted to an unreported sexual demand will be disciplined appropriately, including but not limited to, reimbursement for the value of any benefits received. Any employee making such a demand will be similarly disciplined.

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 redistributed.

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**Acknowledgment of Policy and Complaint Procedure Against Harassment,
Discrimination and Retaliation**

I have received the City of Rohnert Park Policy and Complaint Procedure Against Harassment, Discrimination and Retaliation. I have read the policy; I understand it and understand the rights and responsibilities I have under the policy. I accept responsibility for adhering to the policy. I understand that violations of the policy may result in disciplinary action as provided for in the City's Personnel Rules, up to and including termination.

Employee Full Name: _____

Employee Signature: _____

Date: _____