

# CITY OF BERKELEY HARASSMENT PREVENTION POLICY

## Introduction

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The City of Berkeley (City) prohibits harassment on the basis of real or perceived race, age (40 years and over), religion, color, national origin, citizenship, ancestry, physical disability, mental disability, medical condition (associated with cancer, a history of cancer, or genetic characteristics), HIV/AIDS status, genetic information, marital status, sexual orientation, sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity, gender expression, military and/or veteran status, protected medical leaves (requesting or approved for leave under the Family and Medical Leave Act or the California Family Rights Act), domestic violence status, political affiliation, and any other classifications protected by state or federal law.

All employees (as well as applicants, unpaid interns or volunteers, and persons providing services pursuant to a contract) are guaranteed the right to a work place free of hostility and intimidation based on any of the above-referenced protected classifications. This policy extends to all work-related conduct even when that conduct occurs away from the workplace including, but not limited to, work-related trips and social functions. The City will neither tolerate nor condone harassment of employees by managers, supervisors, co-workers, elected/appointed officials, or persons with whom the City has a business, service, or professional relationship.

The City prohibits discrimination based on the above-referenced protected categories and provides reasonable accommodations for qualified employees and applicants that require them (see the [City's Equal Employment Opportunity Policy](#)).

The City also prohibits retaliation, defined below, against an individual who reports, files a complaint of, or otherwise opposes conduct he or she reasonably believes to be unlawful harassment, discrimination, retaliation, or assists in the investigation of a complaint.

## Zero Tolerance

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The City has a policy of *zero tolerance* towards harassment. Any employee, supervisor, or agent found to have engaged in conduct in violation of this policy will be subject to appropriate disciplinary

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action, up to and including termination. An employee may be subject to discipline for engaging in harassing conduct that does not meet the definition of harassment under the law, but that, if repeated or allowed to continue, might meet that definition. The disciplinary action will be commensurate with the severity of the offense. If discipline is imposed, the level of discipline will not be communicated to the complainant absent extenuating circumstances or a legal obligation. Furthermore, the City will take all appropriate action to address violations of this policy by nonemployees.

**Harassment Prohibited**

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For purposes of this policy, Harassment is defined as the unwelcome visual, verbal, written or physical conduct engaged in on account of a person's actual or perceived membership in a protected classification, or due to his or her association with a person who has or is perceived as having any of those characteristics, 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:

- Physical conduct such as assault, unwanted touching or blocking normal movement;
- Verbal conduct such as threats, epithets, slurs, denigrating jokes, or negative stereotyping; threatening, intimidating or hostile acts. This may include inappropriate sex-oriented comments on appearance, dress or physical features, inappropriate comments of a sexual nature, propositioning, making race-oriented stories and jokes;
- Visual conduct such as written or graphic material that denigrates or shows hostility or aversion toward an individual or group that is placed on walls or elsewhere on the City's premises or circulated in the workplace, on City time or using City equipment by e-mail, text messages, social networking sites or other means;
- Any pervasive conduct in the workplace, with malice, that a reasonable person would find hostile, offensive, humiliating and unrelated to the City's legitimate business interests.

This list is illustrative only, and not exhaustive. No form of harassment will be tolerated.

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**Sexual Harassment Prohibited**

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The City is committed to providing a workplace free from all unlawful harassment of any kind, including sexual harassment. For purposes of this policy, Sexual Harassment is defined as any unsolicited and unwelcome sexual advance, request for sexual favors and other verbal or physical conduct of a sexual nature or directed at an individual because of his or her sex when:

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

Examples of behavior which may, in accord with State and federal laws, constitute sexual harassment, include, but are not limited to, the following:

- Acts from male to female, female to male and between individuals of the same sex which are sexual in nature and unwelcome;
- Requests for sexual favors or unwanted sexual advances;
- Offering employment benefits in exchange for sexual favors;
- Making or threatening reprisals after a negative response to sexual advances;
- Verbal harassment (e.g., graphic comments, derogatory comments, sexually suggestive or obscene jokes, telephone calls or messages);
- Physical harassment (e.g., assault, impeding or blocking movement, gestures, or any physical interference with normal work or movements); or
- Visual forms of harassment (e.g., leering, derogatory or sexually explicit emails, text messages, posters, letters, poems, graffiti, cartoons, computer screen savers, or drawings).

**Complaint Procedures**

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Any employee, applicant, elected/appointed official, contract worker, intern or volunteer, who believes he or she has been harassed or retaliated against in violation of this policy are encouraged to

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promptly report the incident and the individuals involved. The initial complaint may be made either verbally or in writing. Because complaints of harassment, discrimination, and retaliation are most effectively addressed at the earliest possible stage, the City of Berkeley encourages early reporting of concerns or complaints.

While there is no time limit for reporting, reports should be brought forward as soon as possible; an incident may be reported even if significant time has elapsed, but prompt reporting will better enable the City to respond, investigate if necessary, provide an appropriate remedy, and impose discipline if appropriate. Complainants may be encouraged to participate in an intake interview to afford the City an opportunity to further clarify the issues and allow the complainant an opportunity to present the complaint in more detail outside the presence of the subject of the investigation. Depending on the outcome of the initial intake interview, an investigation may include reviewing and obtaining copies of relevant documents, interviewing witnesses, and any other actions the City considers necessary in order to obtain relevant information.

To the extent possible, the City will endeavor to keep the reporting of the complainant's concerns confidential; however, complete confidentiality cannot be guaranteed when it interferes with the City's ability to fulfill its obligations under this policy. All employees are required to cooperate fully with any investigation, which may include providing documents or submitting to interviews. No person shall destroy evidence relevant to an investigation conducted pursuant to this policy. In order to protect the integrity of investigations conducted pursuant to this policy and the confidentiality of investigation witnesses and complainants, investigative reports shall not be released to complainants, investigation subjects, or witnesses absent extenuating circumstances or a legal obligation.

For information or to file a complaint, contact any of the following:

- The City's Human Resources Director, located at the Department of Human Resources, 2180 Milvia Street, 1<sup>st</sup> Floor, 510-981-6800;
- The City's Equal Employment Opportunity (EEO) Officer, located at the Department of Human Resources, 2180 Milvia Street, 1<sup>st</sup> Floor, 510-981-6811;
- The City's Employee Relations Manager, located at the Department of Human Resources, 2180 Milvia Street, 1<sup>st</sup> Floor, 510-981-6821;

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- For Berkeley Public Library employees, the Library’s Human Resources Analyst, located at the Berkeley Public Library, Administration - 2090 Kittredge St., 510-981-6105;
- The employee’s supervisor, or the next level above the supervisor in the same Department; or
- The City Manager, Deputy City Manager, Department Directors, Deputy Directors or other manager.

**Responding to a Complaint**

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The City’s harassment policy is enforced by the City Manager, all Department Heads, and supervisors. All complaints are responded to timely; investigated (if necessary) by qualified personnel in a timely and impartial manner; documented and tracked. The Human Resources Director or their designee will review the complaint and investigative report, and shall make a finding on the charge. The City will take appropriate remedial action, up to and including termination for any substantiated violations of this policy. Employees who are accused of harassment, discrimination, or retaliation and subjected to discipline as a result of the findings of any investigation may utilize the remedies provided in the applicable union agreement or employee manual.

**Supervisor Responsibilities**

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If a complaint is made to a supervisor, or if a supervisor observes, or becomes aware of potential harassment, discrimination, or retaliation, the supervisor must immediately report it to the City’s Equal Employment Opportunity (EEO) Officer or Human Resources personnel. The EEO Officer is available to provide guidance, training and assistance as required. Any supervisor who receives a complaint of harassment, discrimination, or retaliation and fails to report it may be subject to disciplinary action. No managers, supervisors, or elected/appointed officials may condition any employment decisions or benefits on an individual’s acquiescence to any conduct in violation of this policy. All supervisors and managers are required to maintain confidentiality to the extent possible in communicating or investigating any claim of alleged harassment, discrimination, or retaliation.

“Consensual romantic relationships” are any consensual sexual or romantic relationship with any City employee, supervisor, or agent who may supervise them, directly or indirectly, or who may influence

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the terms or conditions of their employment. Such relationships between supervisors and subordinate employees may raise issues because of the potential for favoritism, bias, or adverse impact on other employees in the workplace. The real or perceived power imbalance that may exist between a supervisor and a subordinate may raise further questions about mutual consent.

Therefore, no employee, supervisor, or agent may attempt to influence the City or any employee, supervisor, or agent to hire, promote, or change the terms or conditions of employment of any individual with whom that person has a consensual romantic relationship. Moreover, no employee, supervisor, or agent may delegate such authority to a subordinate to participate in such personnel decisions. Supervisors must promptly report to Human Resources personnel when they become aware that, directly or indirectly, they will be in a position to supervise, make, participate in making, or otherwise influence any decision involving a person with whom they have a consensual romantic relationship including but not limited to any employees or persons with whom the City has a business, service, or professional relationship. This rule is not to be construed nor is it intended to prohibit mutually welcome social relationships which are freely entered into between employees and which have no bearing on employment decisions or benefits.

**Mandatory Training Requirements**

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All employees are required to receive classroom or other effective interactive training and education regarding sexual harassment at least once every two years pursuant to California Government Code section 12950.1. Supervisors are required to receive at least two hours while non-supervisory staff are required to receive at least one hour of such training aimed at increasing their understanding of and preventing workplace sexual harassment (including harassment on the basis of sexual orientation, gender identity, and gender expression) and their role in creating an underlying culture of mutual respect in the workplace. All new employees are required to receive such training within six months of their assumption of their position. The training will be provided by trainers who have the ability through training and experience to train employees on unlawful discrimination, harassment, and retaliation in the workplace.

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**Retaliation Prohibited**

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Complainants and those who cooperate in an investigation must be protected from retaliation. Retaliation against an individual who reports, files a complaint, testifies, assists, or participates in any manner in an investigation of a harassment or discrimination complaint, or otherwise opposes conduct he or she reasonably believes to be unlawful harassment or discrimination, is prohibited. These protections apply regardless of the City's determination on the merits of the complaint.

For purposes of this policy, Retaliation refers to taking a materially adverse action against an employee on the above-listed grounds. A materially adverse action includes, but is not limited to, any action, decision, or conduct that affects the terms, conditions, or privileges of employment such as the denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and discharge. Adverse actions may also include threats, reprisals and adverse treatment that could dissuade or intimidate a reasonable person from raising a concern about a workplace condition or activity.

**Outside Agencies**

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The U.S. Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) also investigate and prosecute employment harassment, discrimination, and retaliation complaints. Employees who believe that they have been discriminated against, harassed, or retaliated against may file a complaint with either of these agencies using the following contact information:

- **EEOC:** (800) 669-4000 or TTY (800) 669-6820; or online at [www.eeoc.gov](http://www.eeoc.gov)
- **DFEH:** (800) 884-1684 or TTY (800) 700-2320; or online at [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

Remedies available through these agencies include hiring or reinstatement, back pay or promotion, fines or damages for emotional distress, and changes in the policies or practices of the employer. 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.

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If you have any questions or need information regarding your protections under pertinent laws regarding harassment or your rights regarding complaint filing with the above compliance agencies, you may contact the **City's EEO Officer for assistance at (510) 981-6811.**

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Dee Williams-Ridley, City Manager  
April 29, 2021