

Office of the City Manager

March 16, 2015

To: Honorable Mayor and Councilmembers

From: Christine Daniel, City Manager 

Subject: Revised Equal Employment Opportunity and Harassment Prevention Policies

The purpose of this memorandum is to inform you that I have approved revisions to the City's Equal Employment Opportunity Policy and Harassment Prevention Policy. The City Council approved Item 29 on the December 16, 2014 Consent Calendar as a referral to create a gender identity non-discrimination employment policy.

The attached policies have been updated by staff in the Human Resources Department and City Attorney's Office, which now specifically prohibit discrimination and harassment based on gender identity and gender expression. I am proud of the City's commitment to equal employment opportunities and our zero tolerance of employment harassment and discrimination. Diversity is a deep and abiding cultural and organizational value, and we are committed to preserving and enhancing it.

Please contact Dennis Feggans, Equal Employment Opportunity and Diversity Officer at 981-6811 if you have any questions.

#### Attachments

cc: Dee Williams-Ridley, Deputy City Manager  
Ann-Marie Hogan, City Auditor  
Dave Abel, Acting Director of Human Resources  
Mark Numainville, City Clerk  
Matthai Chakko, Public Information Officer

**CITY OF BERKELEY  
EQUAL EMPLOYMENT OPPORTUNITY POLICY**

It is the policy of the City of Berkeley that all personnel employment actions such as recruitment, hiring, placements, transfers, promotions, compensation, benefits, layoffs, returns from layoffs, family care leave, terminations, training, social and recreational programs shall be administered regardless of race, color, national origin, ancestry, religion, age, physical or mental disability or medical condition, sex, gender, gender identity, gender expression, sexual orientation, genetic information, marital status, pregnancy, political affiliation, denial of medical or family care leave, or veterans' status. No City employee or applicant for employment shall be subjected to unlawful discrimination because of their membership in or their association with any of the above listed statutory protected bases.

The City of Berkeley is committed to the concept of equal employment opportunity as a necessary element of basic merit system principles. All persons shall be afforded equal access to positions in the public service limited only by their ability to do the job. Additionally, employment efforts will focus on establishing and maintaining a diverse work force reflective of the relevant labor market areas.

Each City employee must realize that policies to remove inequities cannot be merely passive. All employees are charged with the responsibility of furthering EEO to remove conditions which could result in employment discrimination. In any instance in which an employee believes the intent or principles of the law have been violated, that employee is encouraged to consult with the City's Equal Employment Opportunity & Diversity Officer with the assurance that no reprisals (retaliation) or otherwise adverse action will be taken against the employee. All allegations of discrimination and reprisal will be taken seriously and promptly investigated. Appropriate remedial actions will be taken with respect to any substantiated allegations.

The City is committed to a results oriented management program aimed at achieving equal employment opportunity in all occupational levels of the City service, and shall apply good faith efforts to seek out, employ, train and promote underutilized women and minority group members within and entering the City's workforce. Assessment of EEO efforts and cultural diversity issues will be incorporated into the management program.

Dennis Feggans is the designated Equal Employment Opportunity & Diversity Officer and is vested with responsibility and authority for the implementation and enforcement of this policy with Department Heads sharing the responsibility.



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Christine Daniel, City Manager

February 10, 2015

# **CITY OF BERKELEY**

## **HARASSMENT PREVENTION POLICY**

### **CITY POLICY**

It is the policy of the City of Berkeley that harassment on the basis of race, color, national origin, ancestry, religion, age, physical or mental disability or medical condition, sex, gender, gender identity, gender expression, sexual orientation, genetic information, marital status, pregnancy, political affiliation, denial of medical or family care leave, as well as sexual harassment based on gender will not be condoned or tolerated. All employees are guaranteed the right to a work place free of hostility and intimidation based on any of the above-referenced protected classifications. The City will neither tolerate nor condone harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business, service, or professional relationship. Retaliation against an employee who complains or reports any act of harassment in violation of this policy is prohibited. The City is committed to ensuring and providing a work place free of harassment. The City will take disciplinary action, up to and including termination, against an employee who violates this policy.

### **LEGAL DEFINITION OF SEXUAL HARASSMENT**

Sexual harassment as defined by law is any unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:

- submission to such conduct is made a term or condition of employment; or
- submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or
- 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 because of the persistent, severe or pervasive nature of the conduct.

### **CONDUCT PROHIBITED UNDER THE CITY'S POLICY**

In order to ensure that such offensive conduct does not rise to the level of conduct which is illegal, the City has a zero tolerance policy toward a single instance of any such conduct which either by itself or when repeated would constitute sexual harassment. Specifically, the City will not tolerate employees engaging in any of the conduct listed below:

- Unwanted sexual advances.
- Offering employment benefits in exchange for sexual favors.
- Making or threatening retaliation after a negative response to sexual advances.

## **CITY OF BERKELEY HARASSMENT PREVENTION POLICY**

- Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- Verbal conduct such as making or using derogatory comments, epithets, slurs, sexually explicit jokes, derogatory or suggestive comments about a person's body or dress.
- Written communications of a sexual nature distributed in hard copy or via a computer network.
- Unwelcome verbal sexual advances or propositions.
- 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.
- Physical conduct such as touching, assaulting, impeding or blocking movements.
- Retaliation for making harassment reports or threatening to report harassment.

**An employee engaging in such prohibited conduct shall be subject to appropriate disciplinary action, up to and including termination of employment, regardless of whether the employee engages in the prohibited conduct only once. In addition, any employee who engages in any inappropriate conduct based on or directed at a person's gender will be subject to appropriate disciplinary action, up to and including termination of employment.**

Sexual harassment can occur between employees of the same sex. The City's policy prohibits males from sexually harassing females or other males, and females from sexually harassing males or other females.

### **FRIENDLY INTERACTION OR SEXUAL HARASSMENT**

There is a clear line in most cases between mutual attraction and a consensual exchange and unwelcome behavior or pressure for an intimate relationship. A friendly interaction between two persons who are receptive to one another is not considered unwelcome or harassment. Employees are free to form social relationships of their own choosing. However, when one worker is pursuing or forcing a relationship upon another who does not like or want it, regardless of friendly intentions, the behavior is unwelcome sexual behavior. An employee confronted with these actions by a co-worker should inform the harasser that such behavior is offensive and tell the harasser to stop. You should assume that sexual comments are unwelcome unless you have clear unequivocal indications to the contrary. In other words, another person does not have to tell you to stop for your conduct to be harassment and unwelcome.

Certainly if you are advised by a co-worker that your behavior is offensive, you must immediately stop the behavior, regardless of whether you agree with the person's perception of your intentions.

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### **OTHER TYPES OF HARASSMENT PROHIBITED BY THE CITY'S POLICY**

The City's policy also prohibits harassment on the basis of race, color, national origin, ancestry, religion, age, physical or mental disability or medical condition, genetic information, gender, gender identity, gender expression, marital status, pregnancy, denial of medical or family care leave, or any other characteristic protected by applicable law. The City will not tolerate an employee engaging in any of the conduct listed below.

- Verbal conduct such as threats, epithets, derogatory comments or slurs.
- Visual conduct such as derogatory posters, photographs, cartoons, drawings or gestures.
- Written communications containing statements which may be offensive to individuals in a particular protected group, such as racial or ethnic stereotypes or caricatures.
- Physical conduct such as assault, unwanted touching or blocking normal movement.
- Retaliation for making or threatening to make harassment reports to the City, or for participating in an investigation into harassment allegations.

**An employee engaging in conduct prohibited by this policy shall be subject to appropriate disciplinary action, up to and including termination of employment, regardless of whether the employee engages in the prohibited conduct only once. Any employee engaging in inappropriate conduct of a harassing nature on the basis of race, color, national origin, sexual orientation, gender, gender identity, gender expression, disability, age or other characteristics prohibited under federal and state anti-discrimination statutes, shall be subject to appropriate disciplinary action, up to and including termination of employment.**

### **EMPLOYEES' RESPONSIBILITIES WHEN SUBJECTED TO HARASSMENT**

Any employee who believes he or she has been subjected to harassment prohibited by this policy should immediately tell the harasser to stop his/her unwanted behavior and immediately report that behavior to his or her supervisor or to the City's Equal Employment Opportunity & Diversity (EEO) Officer. An employee is not required to complain first to his or her supervisor if that supervisor is the individual engaging in the unwanted behavior. Employees may report any incidents directly to the EEO Officer, who is located in the Human Resources Department and can be reached at 981-6811.

### **SUPERVISORS' RESPONSIBILITIES**

Supervisors are responsible for enforcing the City's harassment prevention policy. Supervisors must ensure that all employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members. Supervisors should be cognizant of employees' behavior and shall not permit any employee under his/her authority to be subject to or engage in any conduct prohibited by the City's policy. Supervisors who receive complaints or who observe conduct prohibited by this policy shall inform the employee to cease the conduct immediately and advise the EEO Officer. The EEO Officer is available to provide guidance, training and assistance as required. The City will take disciplinary action, up to and

## **CITY OF BERKELEY HARASSMENT PREVENTION POLICY**

including termination, against any supervisor who fails in his/her responsibility to take immediate action in response to an employee's complaint of harassment or to stop harassing conduct committed in his/her presence or to stop harassing conduct about which the supervisor has knowledge.

The City does not consider conduct in violation of this policy to be within the course and scope of employment and does not sanction such conduct on the part of any employee, including supervisory and management employees.

### **ENFORCEMENT RESPONSIBILITIES**

The City's harassment policy will be enforced by the City Manager, all Department Heads, and the EEO Officer. The EEO Officer is responsible for investigating complaints. Each reported incident will be investigated promptly, impartially and in a confidential manner, accompanied by disciplinary action as appropriate. It is reiterated that the City will take disciplinary action, up to and including termination for any substantiated violations of this policy. Persons reporting false charges will be subject to appropriate disciplinary actions also.

### **OUTSIDE AGENCIES**


In addition to notifying the City about harassment or retaliation complaints, affected employees may also direct their complaints to the following external agencies:

Department of Fair Employment and Housing  
1515 Clay Street, Suite 701  
Oakland, CA 94612-2512  
(800) 884-1684  
Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

Equal Employment Opportunity Commission  
Oakland Local Office,  
Oakland Federal Building  
1301 Clay Street, Suite 1170, North Tower  
Oakland, CA 94612-5217  
(510) 637-3230 or (800) 669-4000

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.

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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Christine Daniel, City Manager

February 10, 2015