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**COUNCIL POLICY**

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<b><u>ANTI-HARASSMENT AND DISCRIMINATION AND RETALIATION PROHIBITION AND PREVENTION POLICY</u></b>	700-03	02/15/05	<del>1 of 4</del> <u>Page 1 of 12</u>

**A. PURPOSE:**

This policy is adopted for the 1. Purpose

The purpose of ~~providing a harassment free work environment for all City employees, harassment, and for retaliation in the City of Santa Rosa ("City") workplace and to set forth procedures for reporting, investigating and resolving disputes between City employees arising out of harassment in the work place. complaints of the same.~~ this Policy is to prohibit and prevent discrimination and for retaliation in the City of Santa Rosa ("City") workplace and to set forth procedures for reporting, investigating and resolving disputes between City employees arising out of harassment in the work place. This policy is not intended to create a right of action or entitlement to damages or ~~any~~ an expansion of legal rights or remedies ~~now~~ provided by either state or federal law.

**B. POLICY:**

~~The~~ 2. Definitions

A. Protected Person(s): ~~includes~~ City is committed to providing a work environment that is free of harassment and discrimination. In keeping with this commitment, the employees, City maintains a strict policy prohibiting all forms of unlawful harassment or discrimination, volunteers, unpaid City interns, City Council members, appointed City board, commission and committee members, City contractors, and applicants for City employment.

B. Protected Classification: ~~includes~~ race, religion, color, sex (including sexual harassment and harassment based on race; color; religion; gender, gender identity, gender expression, transgender, pregnancy, childbirth, or a condition related to pregnancy or childbirth, and breastfeeding), sexual orientation (including heterosexuality, homosexuality, and bisexuality), national origin; ancestry, citizenship status, marital status, age; gender; sexual orientation; gender identity, , medical condition, genetic characteristics or expression; information, military and veteran status, and physical or mental disability—of, and any other characteristic classification protected by state or federal law. Any person who commits such a violation may be subject to personal liability as well as discipline by the City.

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~~This policy applies to all employees and agents, including supervisors and non-supervisory employees. This policy prohibits such discrimination or harassment of employees by vendors, independent contractors, and others doing business with the City.~~

~~1. Discrimination:~~

~~C. It is the City's policy to employ, retain, promote, terminate, and otherwise means to treat all employees and job applicants on the basis of merit, qualifications and competence. This policy shall be applied without regard to any qualified individual's race; color; religion; national origin; age; gender; sexual orientation; gender identity, characteristics or expression; disability or any other characteristic protected by state or federal law. This policy against discrimination applies to all phases of the employment relationship, including recruitment, testing, hiring, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, benefits and selection for training. a Protected Person less favorably because the Protected Person is in a Protected Classification.~~

~~2. Harassment:~~

~~D. This policy prohibits unlawful harassment in any form based on race; color; religion; national origin; age; gender; sexual orientation; gender identity, characteristics or expression; disability or any other characteristic protected by state or federal law, including includes, but is not limited to any of the following: types of conduct:~~

~~1. Verbal Conduct Speech, such as epithets, derogatory ~~jokes or comments, or slurs or unwanted sexual advances, invitations or comments, and propositioning; inappropriate comments on appearance, including dress or physical features or dress consistent with gender identification, or race-oriented stories and jokes.~~~~

~~2. Physical Conduct acts, such as assault, impeding or blocking normal movement or, offensive touching, or any physical interference with normal~~

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work or movement; pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.

~~with work activities.~~

Visual **Conduct** acts, such as derogatory ~~or sexually oriented~~ posters, cartoons,

3. emails, pictures, or drawings ~~or gestures.~~

~~Use of Computers, including the Internet and the e-mail system, to transmit, communicate or receive email or other information that is sexually suggestive, pornographic or derogatory.~~

~~Threats and Demands to submit to sexual requests in order to keep your job or avoid some other loss, and offers of job benefits in return for sexual favors.~~

**3. Retaliation:**

~~No employee shall be retaliated against for filing a valid complaint, for assisting in an investigation of such complaints, bringing inappropriate conduct to the City's attention, for preventing unlawful practices, or for participating in an investigation, proceeding, or hearing conducted by the Department of Fair Employment and Housing, the Fair Employment and Housing Commission, or the Equal Employment Opportunity Commission.~~

~~Any retaliation shall be immediately reported as set forth below.~~

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.

\*Harassment does not include reasonable management actions taken to supervise and direct the performance of work, by setting reasonable goals and standards,

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monitoring and assessing work performance, and by taking appropriate remedial actions where warranted.

E. Retaliation: means discipline, demotion, discharge, or other discriminatory action against a Protected Person because the Protected Person has opposed any conduct prohibited by this Policy, by State Law or Federal law, or because the Protected Person has filed a complaint, testified, or assisted in investigation of a complaint alleging a violation of this Policy, State Law or Federal law.

F. Director: means the Director of Human Resources.

G. State Law: includes State of California statutory and common law.

### 3. Policy

It is the policy of the City of Santa Rosa to:

A. Protect and safeguard the right and opportunity of all Protected Persons to seek, obtain, and hold employment with the City without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status;

B. Prohibit Discrimination, Harassment, and Retaliation in the workplace; and

C. Protect Protected Persons who oppose or report Discrimination, Harassment, or Retaliation in the workplace.

### 4. Responsibilities

Managers, ~~C.~~ **REPORTS OF VIOLATION OF POLICY:**

~~Any employee who believes he or she has been harassed or discriminated against by a co-worker, supervisor or agent of the City of Santa Rosa should promptly report the facts of the incident or incidents and the names of the individuals involved to his or her supervisor, or in the alternative, to the Human Resources Department. It is the responsibility of each employee to immediately report any violation or suspected violation of this policy to one or more of the individuals identified above.~~

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Supervisors ~~should immediately report any incidents of harassment or discrimination to the Human Resources Department. The Human Resources Department will review all such claims and~~ and Lead Workers (as appropriate) shall:

- A. Inform employees, interns, and volunteers of this Policy.
- B. Model appropriate behavior.
- C. Take all steps necessary to prevent Harassment, Discrimination, and Retaliation from occurring.
- D. Receive complaints in a fair and serious manner, and document steps taken to resolve complaints.
- E. Monitor the work environment and take immediate appropriate action to stop potential Policy violations, such as removing inappropriate pictures or correcting inappropriate language.
- F. Follow up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
- G. Inform Protected Persons who complain of Harassment or Discrimination of the option to contact the EEOC or DFEH regarding alleged Policy violations.
- H. Assist, advise and consult with City employees and the Director regarding this Policy and complaint procedures.
- I. Assist in the investigation of complaints and, if a complaint is substantiated, recommend appropriate corrective ~~action, including~~ or disciplinary action ~~when~~ in accordance with City Personnel Rules.
- J. Implement appropriate disciplinary and remedial actions.
- K. Report potential violations of this Policy of which he or she becomes aware to Human Resources or the department head, regardless of whether a complaint has been made.

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L. Participate in periodic training and schedule subordinate City employees for training.

City employees, City Council members, and appointed City board, commission and committee members shall:

A. Treat other City employees, City volunteers, unpaid City interns, applicants for City employment, City Council members, boards, commission and committee members, and City contractors with respect and consideration.

B. Model appropriate behavior.

C. Participate in mandatory periodic training, where appropriate or required.

D. Tell the offending person that the offensive behavior is unwelcome, offensive or inappropriate, if possible.

E. Fully cooperate with the City's investigators by responding fully and truthfully to all questions posed during an investigation pertaining to the allegations underlying the investigation.

F. Report, in accordance with Section 5, any act he or she believes, in good faith, constitutes Harassment, Discrimination, or Retaliation as defined in this Policy.

**5. Guidelines for Identifying Harassment**

To help clarify what constitutes Harassment in violation of this Policy, the following guidelines are provided:

A. Harassment includes any conduct which would be "unwelcome" to a person of the recipient's same Protected Classification and which is taken because of the recipient's Protected Classification.

B. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized.

C. 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

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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.

D. Even visual, verbal, or physical conduct between two employees who appear to welcome the conduct can constitute harassment of another person who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is warranted. Employees should feel free to report valid claims without fear of retaliation of any kind not explicitly or specifically directed at a particular person.

E. 4. Conduct can constitute harassment in violation of this Policy even if the person 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 a person of the recipient's same Protected Classification would find it offensive (e.g., gifts, over attention, endearing nicknames).

### 6. Reports of Policy Violations

A. Supervisors and Officials. Managers, Supervisors, and Lead Workers. City Council members and appointed City board, commission and committee members shall immediately report any incident of Discrimination, Harassment or Retaliation against any Protected Person to the Human Resources Department. Human Resources shall promptly review all such incidents and take appropriate action.

B. Protected Persons. Any City employee, City volunteer, unpaid City intern, City Council member, appointed City board, commission and committee member, applicant for City employment, or City contractor who believes that he or she has been subjected to Discrimination, Harassment or Retaliation should promptly report the incident(s) to a supervisor, or alternatively, Human Resources.

### 7. Complaint ~~Procedure~~:Procedures

~~a. A. Informal Complaint Procedure.~~

Prompt, appropriate, direct action must be taken to stop incidents of harassment or discrimination. An employee is: Protected Persons are encouraged to tell the



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offending ~~individual~~person that the offensive behavior is unwelcome, offensive or inappropriate. If the offended ~~employee~~person is reluctant to make such a statement to the offending ~~individual~~person and/or the offending conduct ~~continues~~continue, the offended ~~employee shall~~person should inform a supervisor, manager, or ~~the~~ Human Resources ~~Department~~ of the incident or incidents. ~~Supervisors and managers~~ shall immediately advise and consult with Human Resources ~~Department~~ when an informal complaint has been received. If the ~~offended individual or alleged offending individual~~complainant is not satisfied with the resolution of the matter, then a formal written complaint ~~must be filed by one of them~~may be filed by the complainant. Nothing in this section shall be construed as a requirement to make an informal complaint before filing a formal written complaint as set forth below.

~~b.~~B. Formal Complaint Procedure: Formal complaint procedures are set forth below:

~~Employees who file a formal~~Formal written ~~complaint shall follow the formal complaint procedure set out below:~~

~~(i) A formal written complaint shall~~complaints of Harassment, Discrimination or Retaliation may be filed ~~with the Director of Human Resources who shall then contact the appropriate department head. The department head and the Director~~by or on behalf of Human Resources ~~shall then determine the scope of the investigation. Any corrective action taken shall be determined by the appropriate department head in consultation with the Director of Human Resources.~~

1. ~~(i)~~any Protected Person. A formal written complaint shall be a signed account of what occurred, including a description of the incident(s) and the names of all persons who were present. The formal complaint shall be filed promptly but in no event later than one (1) year after the alleged incident.~~(s).~~ Such complaints shall be filed with the Director of Human Resources (Director) who shall then, where appropriate, contact the respective department director. The department director and the Director shall then determine the scope of the investigation. Any corrective action taken shall be determined by the department director in consultation with the Director.



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2. ~~(iii) If~~ Notwithstanding anything in this Policy to the contrary, if the formal complaint is against the Director ~~of Human Resources, then,~~ it shall be filed with at the Deputy City Manager who shall ~~then~~ determine the scope of the investigation.

3. ~~(iv) If~~ the formal complaint is against a department head, ~~then the Director of Human Resources and~~ or the Deputy City Manager, the Director shall determine the scope of the investigation.

~~(v) When~~ If the formal complaint is against the City Manager, the Director of Human Resources ~~and the department head (or in those cases where by necessity, the Deputy City Manager) have completed the investigation, they~~ shall inform the offended individual and offending individual of determine the ~~conclusion reached as a result~~ scope of the investigation.

4. ~~(vi) in consultation with the City Attorney and outside counsel.~~ Any ~~disciplinary action taken as a result of the~~ investigation shall thereafter be conducted by outside counsel.

5. If the formal complaint is against the City Attorney, the Director shall determine the scope of the investigation in consultation with outside counsel who shall conduct any required investigation.

6. If the formal complaint is against a City Council member or appointed City board, commission or committee member, the Director shall refer the complaint to the City Manager for further action.

C. Upon receiving a formal written complaint of Harassment, Discrimination or Retaliation from or on behalf of a Protected Person, the Director, or where the Director is the subject of the complaint, the Deputy City Manager, shall:

1. Authorize and supervise an investigation of the complaint and/or investigate the complaint. The investigation will include interviews with: (1) the

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complainant; (2) the accused person(s); 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 violates this Policy, 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 this Policy was violated to appropriate parties, including the complainant, the offending person(s), the supervisor, and the department head. If discipline is imposed it shall be in accordance with Personnel Rule 7. ~~Due to the privacy rights of the offending employee, the offended individual shall, discipline will not be advised of the specific discipline imposed.~~ communicated to the complainant or other Protected Persons.
  4. ~~2.~~ If conduct in violation of this Policy occurred, take or recommend to the appropriate parties prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
  5. Take reasonable steps to protect the complainant and other Protected Person(s) from Harassment, Discrimination, or Retaliation.
- D. The City takes a proactive approach to potential Policy violations and will conduct an investigation if Harassment, Discrimination, or Retaliation may be occurring, regardless of whether it receives a complaint of a Policy violation.
- E. Impartiality. The complainant and the accused are entitled to an investigation conducted by an impartial investigator. Therefore, if the person(s) charged with overseeing or investigating a complaint have an actual or potential conflict of interest with respect to the complaint, the person(s) shall recuse themselves from the investigation except as a witness or complainant.
- 8. Right of Appeal:**

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The findings of the investigation may be appealed ~~to the~~ by the complainant, the Protected Person, or the offending person(s) to the City Manager ~~by the offended individual by requesting a hearing before, or where the complaint is against the City Manager. A request for~~ or the City Attorney, to the City Council. Any such ~~hearing~~ appeals shall be ~~made~~ filed in writing ~~to the Department of~~ with Human Resources within ten (10) working days from ~~the date of the~~ receipt of the ~~decision.~~

~~The offending individual may appeal the findings to the City Manager in instances where he/she does not have.~~ Appeals shall be heard within a reasonable time following the filing of the appeal. Appeals by a City Council member, or an appointed City board, commission or committee member, shall be governed by the Code of Conduct for Council Members and Board and Commission Members. Notwithstanding the foregoing, nothing in this section shall be construed to afford a right to file a grievance under the Personnel Rules; otherwise, the offending individual shall file a grievance of appeal to City contractors or applicants for City employment.

~~If you have any questions concerning this policy, please feel free to contact the Human Resources Department.~~ 9. 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. 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.

#### 10. Dissemination of the Policy

All City employees, interns, and volunteers shall receive a copy of this Policy from Human Resources upon hire or retention. All City Council members, and appointed City board, commission and committee members shall receive a copy of this Policy from Human Resources prior to assuming office or membership. Please contact the Human Resources Department regarding any questions concerning this Policy.

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#### 11. Discipline and Sanction

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City employees who violate this Policy are subject to appropriate discipline, including the termination of City employment. City volunteers and unpaid City interns who violate this policy are subject to sanction, including the termination of volunteership and internship. City Council members, appointed board, commission and committee members who violate this Policy are subject to the sanctions set forth in the “Code of Conduct for Council Members and Board and Commission Members,” as deemed appropriate by the City Council, or as provided by State Law, the City Code or Policy.

**12. Right to File EEOC and DFEH Complaints**

Protected Persons may have the right to file complaints of harassment, discrimination or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These agencies offer a complaint process and legal remedies. Contact information for these agencies is available at posted notices on City bulletin boards and at [www.eoc.gov](http://www.eoc.gov) and [www.dfeh.ca.gov](http://www.dfeh.ca.gov).

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