

<b>Subject:</b>	<b>Policy Number</b>	<b>Effective Date</b>	<b>Number of Pages</b>
<b>HARASSMENT, DISCRIMINATION AND RETALIATION PROHIBITION AND PREVENTION POLICY</b>	<b>700-03</b>	<b>07/26/2016</b>	<b>Page 1 of 8</b>

## 1. Purpose

The purpose of this Policy is to prohibit and prevent discrimination, harassment, and retaliation in the City of Santa Rosa (“City”) workplace and to set forth procedures for reporting, investigating and resolving complaints of the same. This policy is not intended to create a right of action or entitlement to damages or an expansion of legal rights or remedies provided by either state or federal law.

## 2. Definitions

- A. Protected Person(s): includes City employees, City 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 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, medical condition, genetic characteristics or information, military and veteran status, and physical or mental disability, and any other classification protected by law.
- C. Discrimination: means to treat a Protected Person less favorably because the Protected Person is in a Protected Classification.
- D. Harassment: includes, but is not limited to, the following types of conduct:
  - 1. Speech, such as epithets, derogatory comments or slurs, 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 acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement; pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
  - 3. Visual acts, such as derogatory posters, cartoons, emails, pictures, or drawings.

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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, 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, Supervisors and Lead Workers (as appropriate) shall:

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- 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 or disciplinary action 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.
- 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.

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- 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 pertaining to the allegations underlying the investigation posed during an 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 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 not explicitly or specifically directed at a particular person.
- E. 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).

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## 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 Procedures

- A. Informal Complaint Procedure: Protected Persons are encouraged to tell the offending person that the offensive behavior is unwelcome, offensive or inappropriate. If the offended person is reluctant to make such a statement to the offending person and/or the offending conduct continue, the offended person should inform a supervisor, manager, or Human Resources of the incident or incidents. Supervisors and managers shall immediately advise and consult with Human Resources when an informal complaint has been received. If the complainant is not satisfied with the resolution of the matter, then a formal written complaint 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. Formal Complaint Procedure: Formal complaint procedures are set forth below:
1. Formal written complaints of Harassment, Discrimination or Retaliation may be filed by or on behalf of 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. Notwithstanding anything in this Policy to the contrary, if the formal complaint is against the Director, it shall be filed with the Deputy City Manager who shall determine the scope of the investigation.
  3. If the formal complaint is against a department head or the Deputy City Manager, the Director shall determine the scope of the investigation.
  4. If the formal complaint is against the City Manager, the Director shall determine the scope of the investigation in consultation with the City Attorney and outside counsel. Any 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. If the City Manager determines an investigation is warranted, the City Manager shall refer the matter to an outside investigator.
- 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 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 privacy rights,

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discipline will not be communicated to the complainant or other Protected Persons.

4. 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**

The findings of the investigation may be appealed by the complainant, the Protected Person, or the offending person(s) to the City Manager, or where the complaint is against the City Manager or the City Attorney, to the City Council. Any such appeals shall be filed in writing with Human Resources within ten (10) working days from receipt of the findings. 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 of appeal to City contractors or applicants for City employment.

## **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**

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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.

### **11. Discipline and Sanction**

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.eeoc.gov](http://www.eeoc.gov) and [www.dfeh.ca.gov](http://www.dfeh.ca.gov).

Modified by Resolution No: 26192  
 Modified by Resolution No: 20685  
 Adopted by Resolution No: 20424

Dated: February 15, 2005  
 Dated: February 18, 1992  
 Dated: July 2, 1991