




REPORT TO CITY COUNCIL

DATE: AUGUST 9, 2017

TO: MAYOR AND HONORABLE MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: NATHAN HAMBURGER, ASSISTANT CITY MANAGER 
CELESTE BIRD, ADMINISTRATIVE ANALYST 

SUBJECT: REQUEST TO ADOPT RESOLUTION NO. 17-1855; TO REPLACE THE CURRENT NON-DISCRIMINATION POLICY WITH A HARASSMENT, DISCRIMINATION, AND RETALIATION POLICY

Consistent with recent legislation, employers are required to develop and disseminate a written workplace harassment policy that lists all current protected categories and specifies that unlawful conduct by employees and third parties is prohibited. The policy must also include a complaint procedure which provides for confidentiality to the extent possible, a timely response, and impartial and timely investigations by qualified personnel. The policy cannot require the employee to make a report to his or her direct supervisor; rather, they must be able to communicate with another designated employee representative (such as the Assistant City Manager, or an approved designee). The policy must also instruct supervisors and/or employees to report any complaints of misconduct to a designated company representative so that the employer can try to resolve the claim internally and in a timely manner. The regulations also mandate that the policy be disseminated to employees, utilizing one or more of the following methods: (1) printing and providing a copy to all employees with an acknowledgement form; (2) sending the policy via email with an acknowledgement form; (3) posting current versions of the policy on an employer intranet with a tracking system, ensuring all employees have read and acknowledged receipt; (4) discussing policies upon hire, or during orientation; and/or (5) any other way that ensures employees receive and understand the policies (2 C.C.R. section 11023(d)).

City staff has revised and updated the existing non-discrimination policy to include recent legislation and new regulations. The updated policy will be a stand-alone policy, making it simple to disseminate to local agency officials, full-time and part-time employees, and volunteers.

In addition, new legislation guiding the written policy, in September 2016, AB 1661 was signed into law, requiring compensated local agency officials, including elected officials and commissioners, to receive workplace harassment prevention training every two years. The California Joint Powers Insurance Authority (CJPIA) is offering a new classroom-training course titled "Workplace Harassment Training for Local Agency

Officials". City staff will be contacting members of the City Council and Planning Commission between now and the end of the year with more information regarding this training. Currently all full-time employees attend Workplace Harassment Training every two years, and with the adoption of this policy, part-time employees will now be required to participate in Workplace Harassment Training.

The proposed policy will be added to the City's Employee Handbook, separate and apart from the Personnel Rules.

The City Attorney's Office has reviewed the proposed Harassment, Discrimination, and Retaliation Policy and has guided staff in its preparation.

RECOMMENDATION

It is recommended the City Council approve Resolution No. 17-1855; adopting a Harassment, Discrimination, and Retaliation Policy

Attachments: (A) Resolution No. 17-1855,
(B) Harassment, Discrimination, and Retaliation Policy

RESOLUTION NO. 17-1855

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, ADOPTING A HARASSMENT, DISCRIMINATION, AND RETALIATION POLICY TO REPLACE THE CURRENT NON-DISCRIMINATION POLICY

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS HEREBY FINDS, RESOLVES, AND ORDERS AS FOLLOWS:

SECTION 1. In order to remain compliant with new legislation and regulations, the City has revised and updated the current Non-Discrimination Policy. The new policy is a stand-alone policy entitled "Harassment, Discrimination, and Retaliation Policy".

SECTION 2. The Harassment, Discrimination, and Retaliation Policy lists all current protected categories; establishes procedures and protocol for reporting, and investigating workplace harassment claims.

SECTION 3. The new regulations mandate and identify the proper means by which the policy should be disseminated to employees, local agency officials, and volunteers.

SECTION 4. Workplace Harassment Training is required for all full-time employees and local agency officials, including commissioners, and although not required, will be provided to part-time employees.

SECTION 5. The Harassment, Discrimination, and Retaliation Policy is hereby adopted into the City of Agoura Hills Employee Handbook and will replace the current Non-Discrimination Policy.

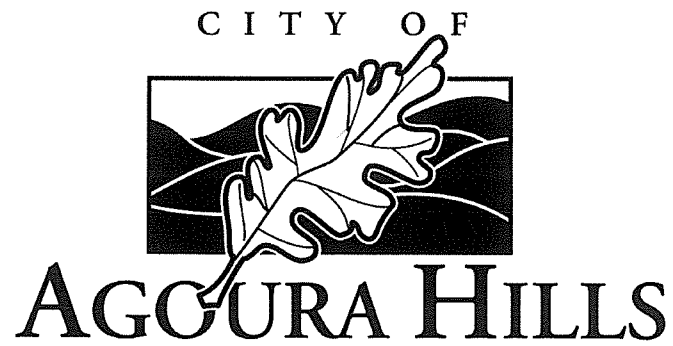
PASSED, APPROVED, AND ADOPTED this 9th day of August 2017, by the following vote to wit:

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

Denis Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk



**HARASSMENT,
DISCRIMINATION, AND
RETALIATION
POLICY**

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HARASSMENT, DISCRIMINATION, AND RETALIATION POLICY

I. PURPOSE

The City of Agoura Hills (“City”) is committed to providing a work environment that is free from discrimination. In keeping with this commitment, the City maintains a strict policy prohibiting discrimination, harassment (including sexual harassment), and retaliation.

The purpose of this Policy is to define and forbid discriminatory, harassing, or retaliatory conduct, to prohibit the condoning or perpetuating of such conduct, and to provide an efficient means for reporting and resolving complaints of discrimination, harassment, or retaliation against any individual who reports discrimination, harassment, or retaliation or who participates in an investigation of such reports.

State and/or federal law expressly prohibit discrimination and/or harassment of employees or applicants based upon race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, medical conditions related to pregnancy, childbirth, breastfeeding, military and veteran status, sexual orientation, marital status, sex (including gender identity, gender expression), genetic information or age (40 years or older).

Discrimination, harassment, and retaliation are misconducts that can decrease work productivity, decrease morale and cause emotional and physical damage. Incidents of discrimination, harassment, and/or retaliation can result in serious economic implications such as high turnover, ineffective use of time during working hours, costly salaries paid for nonproductive work hours, and employee absences due to hearings and meetings related to discrimination, harassment, and/or retaliation complaints.

II. POLICY

The City’s policy strictly prohibits unlawful discrimination or harassment on the basis of race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, medical conditions related to pregnancy, childbirth, breastfeeding, military and veteran status, sexual orientation, marital status, sex (including gender identity, gender expression), genetic information, age (40 years or older) or any other category protected by law. The City considers

discrimination, harassment, or retaliation to be a serious offense and is firmly committed to the philosophy that every employee has the right to work in an environment free from discriminatory intimidation, ridicule, and insult, and to be treated with courtesy, dignity, and respect. Employees are expected to adhere to a standard of conduct that is respectful to all persons within the work environment.

The City maintains and follows a strict policy prohibiting unlawful discrimination, harassment, or retaliation, in any form, including verbal, physical, and visual harassment, coercion, or reprisal. This policy applies to all employees, vendors, and visitors. The City does not tolerate sexual or other harassment of employees at the work place or in any work-related situation by anyone. If, after a prompt and thorough investigation, an employee has been determined to have engaged in discrimination, harassment, or retaliation, that employee will be disciplined, up to and including discharge.

III. DEFINITIONS

- A. **Discrimination:** Discrimination is action or conduct by which an employee is treated differently or less favorably than other similarly situated employees for the reason that he or she is a member of a legally protected category such as race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, medical conditions related to pregnancy, childbirth, breastfeeding, military and veteran status, sexual orientation, marital status, sex (including gender identity, gender expression), genetic information, age (40 years or older), or any other category protected by law.
- B. **Harassment:** Unlawful harassment is verbal or physical conduct based on an employee's membership in a protected category such as race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, medical conditions related to pregnancy, childbirth, breastfeeding, military and veteran status, sexual orientation, marital status, sex (including gender identity, gender expression), genetic information, age (40 years or older) or any other category protected by law, that is sufficiently severe or pervasive to affect an employee's work performance negatively or alter the conditions of employment and create an intimidating, hostile or otherwise offensive working environment. Unlawful harassment can occur between employees and co-workers, supervisors, managers, and third parties. It can occur between parties of the same or opposite sex and regardless of sexual identity.
- C. **Sexual Harassment:** Sexual harassment is action that constitutes an unwelcome sexual advance or request for sexual favors, or any verbal or physical conduct of a sexual nature that is:

1. Related to or conditional to the receipt of employee benefits, including, but not limited to, hiring and advancement.
2. Related to or forms the basis for employment decisions affecting the employee.
3. Sufficiently severe or pervasive so as to affect an employee's work performance negatively or alter the conditions of employment and create an intimidating, hostile, or offensive working environment.

Examples of conduct that can constitute unlawful harassment or sexual harassment include, but are not limited to, the following:

- a. Verbal Harassment: Epithets, derogatory comments or slurs, graphic commentaries about an individual's body or other suggestive comments made on the basis of a legally protected category, such as race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, childbirth or related medical conditions, veteran status, sexual orientation, marital status, sex (including gender identity), sexual orientation, or age over 40 years
- b. Physical Harassment: Assault, impeding or blocking movement, interference with normal work movement, massages, sitting on laps, or unwanted touching of any type based upon a legally protected category, such as race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, medical conditions related to pregnancy, childbirth, breastfeeding, military and veteran status, sexual orientation, marital status, sex (including gender identity, gender expression), genetic information, age (40 years or older), or any other category protected by law.
- c. Visual Forms of Harassment: Leering, making derogatory gestures, derogatory posters, notices, bulletins, cartoons, drawings, e-mails, faxes or other depictions based on a legally protected category, such as race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, medical conditions related to pregnancy, military and veteran status, sexual orientation, marital status, sex (including gender identity, gender expression), genetic information age (40 years or older), or any other category protected by law.

d. Sexual Conduct: Unwelcome sexual advances, requests for sexual favors, propositions, and other verbal or physical conduct of a sexual nature which is made a condition of an employment benefit or unreasonably interferes with an individual's work performance and creates an offensive work environment.

D. Retaliation: Taking adverse action against an employee because of (1) the employee's opposition to a practice the employee believes to constitute employment discrimination, harassment, or retaliation or (2) because of the employee's participation in an employment discrimination, harassment, or retaliation investigation, proceeding, or hearing.

Examples of protected conduct (1 & 2) and adverse actions that can constitute unlawful retaliation (3) when based on protected conduct include, but are not limited to, the following:

1. Protected opposition to perceived discrimination, harassment, or retaliation such as threatening to file a complaint with any federal or state agency, or court, or complaining or protesting about alleged discrimination, harassment, or retaliation to a supervisor, manager, co-worker, or other official. Protected opposition also includes a complaint or protest made on behalf of another employee or made by the employee's representative. Opposition not made in good faith, disrupts the workplace or constitutes an unlawful activity, or includes badgering or threatening of employees or supervisors is not protected.
2. Protected participation such as filing a charge, testifying, assisting, or participating in an investigation, proceeding, hearing or litigation under federal or state statutes or at other hearings regarding protected employee rights. It also includes making a complaint and participating in an investigation under this policy.
3. Adverse actions such as disciplinary actions, negative performance evaluations, undesirable transfer, undesirable assignments, negative comments, unwarranted criticism, actions that harm the employee outside the workplace, undesirable change in benefits, undesirable change in work schedule, unwarranted exclusion from meetings or events, or undesirable change in work duties or any action that is taken because of the employee's opposition to harassment or discrimination, or because of the employee's participation in an employment discrimination or harassment investigation, proceeding, or hearing:

Contact your supervisor, the Assistant City Manager, the City Manager or other supervisory employee if you have questions

regarding these definitions or you are uncertain what constitutes discrimination, harassment, sexual harassment, retaliation, or prohibited conduct under the City Policy.

- E. Supervisor: an employee with the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or has the responsibility to direct them, or to adjust their grievances, or to effectively recommend that action, if, in connection with the foregoing, the exercise of that authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

IV. REPORTING DISCRIMINATION, HARASSMENT, OR RETALIATION

The City encourages reporting of all perceived incidents of discrimination, harassment, or retaliation.

If you believe comments, gestures or actions of a co-worker, supervisor, vendor or visitor to be discriminatory, harassing, retaliatory, or offensive, you should immediately communicate to that person that such behavior is unwelcome. However, failure to do so does not prevent you from filing a complaint nor does it in any way exonerate the discriminating, harassing, or retaliating party.

City management is readily available and receptive to complaints of discrimination, sexual or other harassment, or retaliation. If you feel you are being discriminated against or harassed by, or retaliated against by another employee, a vendor, a visitor, or other individual, you should immediately report the facts of the incident and the names of the individuals involved to your immediate supervisor, or to another supervisor. If you do not feel that the matter can be discussed with your immediate supervisor or another supervisor, you should contact the Assistant City Manager and arrange for a meeting to discuss your complaint. If you do not feel that the matter can be discussed with the Assistant City Manager, you should contact the City Manager and arrange for a meeting to discuss your complaint. Employees are never required to report harassment to a party they believe to be involved in the harassment and can always make the report to another supervisor or manager.

It is recommended, but not required, that complaints be made as soon as possible or no later than fifteen (15) working days after the incident. A written and signed statement of the complaint should be submitted to your supervisor, the Assistant City Manager or the City Manager within 10 days of the initial report. Employees in need of assistance in filing the complaint will be provided such. While a written statement provides the most reliable basis for conducting an investigation, all complaints will be investigated, including those that made orally.

Complaints should include the following information:

- A. The employee's name, department, and position title.
- B. The name of the person or persons committing the discrimination, harassment, or retaliation, including their titles if known.
- C. The specific nature of the discrimination, harassment, or retaliation, how long it has gone on, and any employment action such as demotion, failure to promote, dismissal, refusal to hire, or transfer taken against the victim as a result of the discrimination, harassment, or retaliation, or any other threats made against the victim as a result of the discrimination, harassment, or retaliation.
- D. All complaints of discrimination, harassment, or retaliation reported to the City will be investigated immediately, thoroughly, objectively, completely and as confidentially as possible. The City will make every attempt to interview all individuals with information relative to the complaint in the investigation.
- E. Any investigation related to a complaint under this policy will be conducted with as much confidentiality as possible and with respect for the rights of all individuals involved. Information related to the investigation will be provided on a "need to know" basis.
- F. The purpose of this provision is to protect the confidentiality of the employee who files a complaint, to encourage the reporting of any incidents of discrimination, harassment, and/or retaliation, and to protect the reputation of any employee wrongfully charged with discrimination, harassment, and/or retaliation.
- G. The confidential nature of the complaint and the investigation is vital in protecting the privacy rights of all parties involved. It is a violation of this policy for the complaining party, the accused party, and all persons interviewed as witnesses during the investigation to discuss any investigation with other employees or to conduct your own investigation at any time. If you have information to assist the City, you are to contact the person conducting the investigation. Failure to follow this policy may subject you to discipline. However, this limitation does not prevent an employee from conferring with a designated representative or from engaging in exercising protected legal rights, such as first amendment rights or the right to engage in concerted activity. If you have questions on these issues, please contact the Assistant City Manager or City Manager.
- H. The City will make its determination and communicate that determination to the complaining employee and to the accused party. You are not entitled to copies of any notes or other written materials regarding the investigation, as we consider these confidential documents. If it is determined that the accused party has violated City policies, appropriate corrective action will

be taken in accordance with established City disciplinary procedures, up to and including termination. As part of the City's attempt to remedy the complaining employee's concerns, the complaining employee will be informed of remedial measures and disciplinary actions imposed against the violator. As noted above, if discrimination, harassment or retaliation are established, disciplinary action, up to and including termination will be taken. In addition, remedial action will also be implemented in appropriate circumstances and interim measures may be implemented, as warranted.

- I. Employees who believe they have been discriminated, harassed, or retaliated against may, within one year of the conduct, also file a complaint of discrimination with the California Department of Fair Employment and Housing ("DFEH"), or to the federal Equal Employment Opportunity Commission ("EEOC"). The DFEH and/or the EEOC may also investigate and process the complaint. Violators are subject to penalties and remedial measures that may include sanctions, fines, injunctions, reinstatement, back pay and damages. Current contact information for the DFEH and EEOC is available on employee bulletin boards.
- J. While the City vigorously defends its employees' right to work in an environment free of discrimination, harassment, or retaliation, it also recognizes that false accusations of discrimination, harassment, or retaliation can have serious consequences. Any employee who is found, through the City's investigation, to have deliberately and falsely accused another person of discrimination, harassment, or retaliation will be subject to appropriate disciplinary action, up to and including discharge.
- K. Witnesses to the discrimination, harassment, or retaliation.
- L. Whether the victim has previously reported such discrimination, harassment, or retaliation, and, if so, when and to whom.

Your notification to the City is essential. You will not be penalized for good faith reporting of discrimination, sexual or other harassment, or retaliation problems. It is unlawful for an employer to retaliate against employees who oppose practices prohibited by state and federal law, file complaints, or otherwise participate in an investigation, proceeding, or hearing conducted by the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission. Similarly, the City will not tolerate employees who interfere with internal investigations and complaint procedures.

Employees are reminded that the City protects employees from sexual or other harassment by non-employees such as vendors or visitors. Any employee who is the victim of harassment by a non-employee or observes this conduct toward another City employee should report such harassment to his or her immediate supervisor and appropriate action will be taken.

Employees who observe or are advised about the sexual or other harassment of another employee are encouraged to follow these reporting procedures. A supervisor will be subject to discipline for failing to report offensive conduct that potentially constitutes discrimination, harassment, or retaliation if the supervisor knew or should have known of the offensive conduct in the normal course and scope of their supervisory duties. Supervisors must promptly report potential discrimination, harassment, or retaliation to the Assistant City Manager, or to the City Manager. A Supervisor or Manager who receives a complaint of discrimination, harassment, or retaliation shall promptly report the complaint to the Assistant City Manager. If the Assistant City Manager is unavailable or alleged to be involved, the report shall promptly be made to the City Manager. The Assistant City Manager or City Manager, as applicable, shall be responsible for assuring that a timely and proper investigation is completed.

The City cannot resolve discrimination, harassment, or retaliation problem unless it knows about it. Therefore, it is your responsibility to bring those kinds of problems to the attention of the City so that necessary steps can be taken to correct the problem, and we encourage you to do so.

V. ANONYMOUS COMPLAINTS

Knowing the identity of a complainant can be important to asking follow-up questions and getting details that are crucial to a fair and complete investigation. For this reason, the City encourages complainants to reveal their identity. However, any employee who wishes to make a complaint of discrimination, harassment, or retaliation, but is uncomfortable disclosing his or her identity, may do so by following the above complaint procedure and filing the complaint anonymously with the Assistant City Manager, or City Manager.

Employees should know, however, that anonymity in the complaint procedure may compromise the City's ability to complete a thorough investigation or to adequately address concerns raised.

VI. THE CITY 'S RESPONSE TO COMPLAINTS OF DISCRIMINATION, HARASSMENT, OR RETALIATION

The City trusts that employees will act responsibly to establish a pleasant working environment free of discrimination, harassment, or retaliation. The City encourages you to raise questions regarding discrimination, harassment, or retaliation with your immediate supervisor, your department head, the Assistant City Manager or the City Manager.

VII. TRAINING

In accordance with AB 1825, the City requires supervisory employees be trained on preventing sexual harassment in the workplace every two years. In addition, all persons appointed or promoted to supervisory positions shall be trained within six months of the appointment or promotion, if the supervisory employee is a new hire

or was promoted from a non-supervisory position. Supervisory training shall last for a minimum of two hours.

The City shall also require that non-supervisory employees be trained on preventing sexual harassment in the workplace every four years.

In addition, all employees shall be given a copy of this policy as part of their initial orientation with the City, and shall be given a copy in conjunction with any training they attend.

VIII. REFERENCES

California Department of Fair Employment & Housing (DFEH); Equal Employment Opportunity Commission (EEOC)

Fair Employment and Housing Act (FEHA), Title VII of the Civil Rights Act of 1964, Americans with Disabilities Act (ADA), Age Discrimination in Employment Act (ADEA)

APPENDIX A

**EMPLOYEE ACKNOWLEDGMENT OF RECEIPT OF
POLICY AGAINST DISCRIMINATION, HARASSMENT,
AND RETALIATION POLICY**

This will acknowledge that I have received my copy of the City Policy Against Discrimination, Harassment, and Retaliation ("Policy") and that I have read the Policy and understand my rights and obligations under the Policy.

I understand that this Policy represents only current policies, procedures, rights and obligations and does not create a contract of employment. Regardless of what the Policy states or provides, the City retains the right to add, change or delete provisions of the Policy and all other working terms and conditions without obtaining another person's consent or agreement.

My signature below further signifies that I have read this Policy and that I accept and will abide by all of its provisions. I understand that if I have questions or need clarification regarding this policy I may contact my supervisor or the Assistant City Manager, or City Manager.

PRINT FULL NAME _____

SIGNED _____

DATE _____

[RETAIN IN EMPLOYEE PERSONNEL FILE]