

City of Seaside

**Policy Against Harassment, Discrimination, and
Retaliation**

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PURPOSE

The City is committed to providing a work environment that is free from discrimination, harassment (including sexual harassment), and/or retaliation. In keeping with this commitment, the City maintains a strict policy prohibiting such conduct.

The purpose of this policy is to define and forbid discriminatory, harassing, and/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, and/or retaliation against any individual who reports discrimination, harassment, or retaliation, or who participates in an investigation of such reports.

This policy expressly prohibits discrimination and/or harassment of applicants, employees, volunteers, interns, contractors, vendors, or visitors based upon race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, childbirth or related medical conditions, veteran status, sexual orientation, gender identity or expression, genetic information, marital status, military or veteran status, sex, age over 40 years or any other basis protected by applicable federal, state, or local law, including association with individuals with these protected characteristics or perception that an individual has one or more of these protected characteristics.

Discrimination, harassment, and/or retaliation are misconduct 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.

I. POLICY

The City's policy strictly prohibits unlawful discrimination or harassment on the basis of an individual's legally protected characteristics, including association with individuals with these protected categories or perception that an individual has one or more of these protected characteristics.

The City considers discrimination, harassment, and/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 such treatment. Employees are expected to adhere to a standard of conduct that is respectful to all persons within the work environment and compliant with this policy and all applicable federal, state and local laws and regulations governing workplace conduct.

The City maintains and follows a strict policy prohibiting unlawful discrimination, harassment, and/or retaliation, in any form. The City does not tolerate sexual or other harassment of employees, volunteers, interns, contractors, vendors, or visitors at the work place or in any work-related situation by anyone. If, after a prompt and thorough investigation, an employee, volunteer, intern, or contractor has been determined to have engaged in discrimination, harassment, and/or retaliation, that employee will be disciplined, up to and including discharge.

II. DEFINITIONS

- a. **Legally protected category:** Race, religion, creed, color, national origin, ancestry, physical or mental disability, medical condition, pregnancy, childbirth or related medical conditions, veteran status, sexual orientation, gender identity or expression, genetic information, marital status, military or veteran status, sex, age over 40 years or any other basis protected by applicable federal, state, or local law, including association with individuals with these protected characteristics or perception that an individual has one or more of these protected characteristics.
- b. **Discrimination:** Discrimination is action or conduct by which an employee is treated differently or less favorably than other similarly situated employees for the sole reason that he or she is a member of a legally protected category, associates with individual(s) in a legally protected category, or is perceived as being in a legally protected category. For example, it would be discrimination for an individual to be denied employment or terminated from employment because that individual is 40 years of age or older.
- c. **Harassment:** Unlawful harassment is verbal, visual, or physical conduct based on an employee's membership or perceived membership in a protected category or association with an individual in a protected category 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.

Harassing conduct can take many forms and includes, but is not limited to, slurs, jokes, statements, gestures, pictures, or computer images regarding an employee's legally protected characteristic. Harassment on the job is prohibited whether it involves co-worker harassment, harassment by a supervisor or manager, or harassment by third parties doing business with or for the City.

- d. **Sexual harassment:** Sexual harassment is conduct that constitutes an unwelcome sexual advance, proposition, or request for sexual favors or dating, or any verbal, visual, or physical conduct of a sexual nature. Sexual harassment occurs where:
- i. Submission to such conduct is made a term or condition of employment or relates to the conditional receipt of employment benefits, such as hiring, compensation and advancement;
 - ii. Submission to or rejection of such conduct is used as basis for making employment decisions affecting the individual; or
 - iii. Such conduct is severe and pervasive to the extent that it has the purpose or effect of unreasonably interfering with an employee's work performance or creates an intimidating, hostile, or offensive working environment.

Sexual harassment can occur between members of the same or opposite sex. Sexual harassment need not be motivated by sexual desire. Sexual harassment on the job is prohibited whether it involves co-worker harassment, harassment by a supervisor or manager, harassment by a local City official, harassment by a subordinate, or harassment by third parties doing business with or for the City.

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

1. Verbal harassment: Verbal sexual advances or propositions, jokes, epithets, derogatory comments or slurs, graphic commentaries about an individual's body or other suggestive or offensive comments made on the basis of a legally protected category.
2. Physical harassment: Assault, unwanted touching, impeding or blocking movement, interference with normal work movement, massages, sitting on laps, or physical behavior of any type based upon a legally protected category.
3. Visual harassment: Leering, derogatory gestures, inappropriate or offensive posters, notices, bulletins, cartoons, drawings, e-mails, content displayed from a computer or cell phone, or other depictions related to a legally protected category.

4. Sexual conduct: Unwelcome sexual advances or propositions, requests for sexual favors, requests for dates, verbal abuse of a sexual nature, verbal commentary about an individual's body, dress or appearance, sexually explicit jokes, sexually degrading language, suggestive or obscene communications, and other verbal, visual or physical conduct of a sexual nature.
- e. **Retaliation:** Taking adverse employment action against an employee because of (1) the employee's good faith report of or opposition to a practice the employee believes to constitute employment discrimination, harassment, and/or retaliation or (2) because of the employee's participation in an employment discrimination, harassment, and/or retaliation investigation, proceeding, or hearing.

Examples of conduct that can constitute protected activity include, but are not limited to, the following:

- i. Protected good faith opposition to or reporting of perceived or actual discrimination, harassment, and/or retaliation, or refusing to tolerate or engage in prohibited conduct, or threatening to file a complaint with any federal, state, or administrative City or court. Protected opposition also includes a complaint or protest made on behalf of another employee or made by the employee's representative. Complaints or oppositions that are intentionally false and/or not made in good faith are not protected.
- ii. Protected participation such as filing a charge, testifying, assisting, or participating in an internal or administrative investigation, proceeding, or hearing, and/or litigation under federal or state statutes.

Examples of conduct that can constitute an adverse employment action include, but are not limited to, the following:

1. Adverse employment actions such as disciplinary actions, unwarranted negative performance evaluations, undesirable transfers, negative comments, unwarranted criticism, unwarranted exclusion from meetings or events, or undesirable change in work duties, unwarranted discipline, or any action that is taken because of the employee's complaint of or opposition to harassment or discrimination, or because of the employee's participation

in an employment discrimination or harassment investigation, proceeding, or hearing.

- f. **Supervisor:** An employee with the authority to direct employees, address or respond to grievances, hire, transfer, suspend, layoff, recall, promote, discharge, assign, regard, or discipline other employees, or make such recommendations, 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.
- g. **Local City official:** Any member of a local City legislative body and any elected local City official.

Contact your supervisor, the Human Resources Director, the City Manager or other supervisory employee if you have questions regarding these definitions, or if you are uncertain about what constitutes discrimination, harassment, sexual harassment, retaliation, or prohibited conduct under the City's policy.

III. REPORTING DISCRIMINATION, HARASSMENT, OR RETALIATION

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

If you believe the conduct or actions of a co-worker, volunteer, supervisor, local City official, contractor, vendor, or visitor to be discriminatory, harassing, retaliatory, or otherwise in violation of this policy, you are encouraged, but not required, to inform the person of the conduct that you find offensive, and request that the person cease this behavior. If you do not wish to confront the person, or if your attempts to do so have failed, you should file a complaint with the City. However, a decision not to confront the person does not prevent the employee from filing a complaint, nor does it in any way exonerate the accused person.

City management is readily available and receptive to complaints of discrimination, sexual or other harassment, and/or retaliation. If you feel you are being discriminated against or harassed by, or retaliated against by another employee, volunteer, vendor, visitor, local City official, 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 any other supervisor you feel comfortable speaking with. If you do not feel that the matter can be discussed with your immediate supervisor or another supervisor, you should contact the Human Resources Director and arrange for a meeting to discuss your complaint. If you do not feel that the matter can be discussed with the Human Resources Director, you should contact the City Manager and arrange for a meeting to discuss your complaint.

Complaints should be made as soon as possible following the incident, and 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. Witnesses to the discrimination, harassment, or retaliation.
- e. 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. The City cannot resolve discrimination, harassment, or retaliation problems unless it knows about them. 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.

You will not be retaliated against for good faith opposition to or reporting of discrimination, sexual or other harassment, or retaliation problems. It is unlawful for an employer to retaliate against employees who report or 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 or administrative investigations and/or complaint procedures.

Employees are reminded that the City protects employees from sexual or other harassment by non-employees, such as volunteers, interns, contractors, vendors, local City officials, 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, volunteer, or intern are encouraged to follow these reporting procedures.

All employees should note that the failure to use the City's complaint procedure may have an adverse effect on any legal claim under this policy if such claims are litigated.

IV. SUPERVISOR REPORTING OBLIGATIONS

Any supervisor who receives a complaint of discrimination, harassment, and/or retaliation; witnesses discrimination, harassment, and/or retaliation; or has any reason to believe that discrimination, harassment, and/or retaliation may have occurred in the workplace is required to report the conduct immediately to the Human Resources Director or to the City Manager.

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.

V. ANONYMOUS COMPLAINTS

The City discourages anonymous complaints. However, any employee who wishes to make a complaint of discrimination, harassment, and/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 Human Resources Director or City Manager.

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

Employees should also be aware that should the City learn of the identity of an anonymous complainant, the City cannot guarantee that his/her identity will remain confidential, if the City determines in its discretion that disclosure is necessary to complete the investigation.

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

a. Investigation of Complaints

All incidents of discrimination, harassment, and/or retaliation that are reported must be investigated by qualified personnel. The City will immediately undertake or direct an effective, thorough, impartial, and objective investigation of the discrimination, harassment, and/or retaliation allegations.

The investigation will include obtaining information from the person accused of harassment, discrimination, or retaliation and anyone who may have been a witness to the alleged misconduct.

If you have information to assist the City, you are to contact the Human Resources Director and/or City Manager. Failure to follow this policy may subject you to discipline.

Employees may be placed on administrative leave until the conclusion of the investigation.

The City will document each complaint and track each investigation to ensure reasonable progress, timely closure, and reasonable findings based on the evidence collected.

b. Confidentiality

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. The confidential nature of the complaint and the investigation is vital in protecting the privacy rights of all parties involved.

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. However, the City retains sole discretion to determine whether disclosure of information is necessary to complete the investigation.

All employees involved in the investigation of discrimination, harassment, and/or retaliation complaints as either investigator(s), complainant(s), witness(es), or accused(s) are required to keep all information related to the investigation confidential. Revealing such information is grounds for disciplinary action, except as expressly permitted by law, such as in discussion with a legal representative.

c. Cooperation with Investigation

All employees involved in a workplace investigation into alleged discrimination, harassment, and/or retaliation are required to fully and truthfully cooperate with the investigation. Failure to fully and truthfully

cooperate with the investigation is grounds for disciplinary action, up to and including termination.

It is important for the complaining party, the accused party, and all persons interviewed as witnesses during the investigation to understand that it is a violation of this policy to discuss any investigation with other employees, or to conduct separate investigations at any time. The City will not tolerate any employees who interfere with its own internal investigations or internal complaint procedures.

All employees are prohibited from engaging in retaliation as set forth in this policy.

d. City Determination and Corrective Action

The City will make its determination and communicate that determination to the complaining and accused parties. Parties 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 discharge. Further, as part of the City's attempt to remedy the complaining party's concerns, the City's notice to the complaining party will also advise generally that corrective action has been taken against the accused.

The information and definitions set forth in this policy are based on the legal definitions of discrimination, harassment, and/or retaliation. In light of the City's duty to prevent the unlawful conduct defined in this policy, and in light of the City's desire to have a respectful work environment, the City reserves the right to take appropriate corrective action when an employee engages in inappropriate conduct that does not fully rise to the legal standards set forth herein. For example, the City may take appropriate corrective action for inappropriate conduct, even if such conduct was not subjectively unwelcome or offensive, or if it does not meet the legal threshold of severe or pervasive.

e. Bad Faith and Intentionally False Complaints

While the City vigorously defends its employees' right to work in an environment free of discrimination, harassment, and/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, and/or retaliation will be subject to appropriate disciplinary action, up to and including discharge.

VII. ADDITIONAL ENFORCEMENT INFORMATION

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 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.

The City trusts that employees will act responsibly to establish a respectful 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 Human Resources Director or the City Manager.

VIII. TRAINING AND POLICY DISSEMINATION

In accordance with AB 1825 and AB 2053, the City requires supervisory employees be trained on preventing sexual harassment and abusive conduct 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.

In accordance with AB 1661, the City requires members of the local City legislative body and any elected local City official who earns any type of compensation, salary, or stipend be trained on preventing sexual harassment. The two-hour training must be completed within six months of taking office, and every two years thereafter. A local City official who serves more than one local City may satisfy the training requirements once every two years, without regard to the number of local agencies he or she serves.

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

In addition, all employees and local City officials 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.

APPENDIX A

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

This will acknowledge that I have received my copy of the City of Seaside’s Policy Against Harassment, Discrimination, and Retaliation (“Policy”) and that I have read the Policy, understand my rights and obligations under the Policy, and agree to be bound by it.

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 anyone’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.

PRINT FULL NAME _____

SIGNED _____

DATE _____

[RETAIN IN EMPLOYEE PERSONNEL OR OTHER APPROPRIATE FILE]