
	ADMINISTRATIVE REGULATIONS	NUMBER: 2.12	PAGE 1 of 7
		REVISION: 2	SUPERSEDES: 4/1/1999
SUBJECT: POLICY AGAINST HARASSMENT, DISCRIMINATION, AND RETALIATION, AND IMPLEMENTING PROCEDURES		APPROVED BY: FRED DIAZ  City Manager	EFFECTIVE DATE: March 4, 2009

I. OVERVIEW AND PURPOSE

The purpose of this regulation is to set forth the City's policy against harassment, discrimination and retaliation, as defined below, and to provide procedures for reporting, investigating and responding to potential violations. The regulation also provides for continuing training of employees regarding the City's policy. This Policy governs procedures related to inappropriate behavior based upon protected classifications. Each employee is owed dignity and respect; the City will not tolerate work place bullying or harassment under any circumstances. Inappropriate behavior which does not fall within the scope of this Policy should be referred to the employee's supervisor through the regular disciplinary process.

II. POLICY

The City of Fremont is committed to providing an environment for employees that promotes dignity and respect and is free from discrimination and harassment. The City maintains a strict policy prohibiting all forms of harassment and discrimination based upon protected classifications as defined below. In addition, the City prohibits retaliation against those who complain of such harassment or discrimination.

III. DEFINITIONS

- A. Protected Classifications.** This Policy prohibits harassment and discrimination because of an individual's actual or perceived protected classification, which includes sex, race, religious creed, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual orientation, gender identity, age.
- B. City Employee** means all classified and unclassified employees, temporary, part-time employees, contract workers, supervisors, managers, department heads, volunteers, and appointed and elected officials.
- C. Complaint** means a complaint of harassment, discrimination, retaliation, or sexual harassment in violation of this Policy. Complaints include circumstances when a city employee hears about, learns of, discovers or otherwise becomes aware of prohibited conduct.
- D. Discrimination** is any action that unlawfully or unjustly results in inappropriate treatment of persons or groups based on their actual or perceived protected classification. Discrimination can exist in the form of disparaging terms or personal conduct.
- E. Disparaging Terms** means words or terms that are used to degrade or infer a negative characteristic pertaining to a person's actual or perceived protected

classification.

F. Harassment means persistent, unwelcome, annoying, disturbing or tormenting conduct of a verbal or physical nature based on a person's actual or perceived protected classification when the conduct has the purpose, result, or effect of substantially interfering with an individual's work performance, or creating an intimidating, hostile, or offensive working environment. Depending upon the circumstances, a single act of harassment, as defined below, can violate this Policy:

1. Verbal Harassment includes epithets, jokes, comments or slurs that identify a person on the basis of his/her protected classification, intimate or other nicknames, comments on appearance – including dress or physical features – or stories that are disparaging to those within a protected classification.
2. Visual Harassment includes gestures, posters, notices, bulletins, cartoons, pictures or drawings that tend to disparage those within a protected classification.
3. Physical Harassment includes assault, impeding or blocking movement, physically interfering with normal work or movement, pinching, grabbing, patting, propositioning, leering, making express or implied job threats or promises in return for submission of physical acts, mimicking, stalking or taunting.
4. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. Sexual harassment includes same-sex conduct regardless of whether the conduct is based on gender orientation.

G. Retaliation means any adverse conduct taken because an individual has reported harassment or discrimination or has participated in the investigation of a harassment or discrimination complaint. Adverse conduct means taking sides because an individual has reported harassment or discrimination, spreading rumors about a complainant, ostracizing an individual who reports harassment or discrimination or threatening to prevent an individual from reporting harassment or discrimination. The following individuals are protected from retaliation: those who make good faith reports that harassment or discrimination occurred, those who refuse to follow an order reasonably believed to be discriminatory, those who are accused of harassment or discrimination, and those who associate with an individual who is involved in reporting harassment or discrimination or participating in the harassment or discrimination complaint procedure.

IV. COMPLAINT PROCEDURES

Any individual who feels he/she has been discriminated, harassed or retaliated against in violation of this Policy should report the conduct immediately so that the

complaint can be resolved quickly and fairly. The procedure includes the following:

- A. Reporting to the Offending Individual:** The City of Fremont encourages any individual who feels that he or she has been harassed or discriminated against in violation of this Policy to let the offending person know immediately and firmly that the conduct at issue is unwelcome, offensive, in poor taste, and/or inappropriate and must stop.
- B. Reporting to Management/Supervisors:** If the offensive behavior continues, or if the employee is unable or unwilling to confront the harasser directly, the employee shall promptly notify his or her immediate supervisor. If the employee does not feel comfortable reporting the information to their immediate supervisor, he/she should promptly notify the next in the chain of command. In addition, employees may report complaints directly to the Human Resources Department without first making a report to his/her supervisor or department management staff. When a complaint is reported to the Human Resources Department, the respective department head will be notified as appropriate. This duty to report offensive behavior includes victimized employees and employees who witnessed the offensive conduct. The individual should provide all details of the incident or incidents, names of individuals involved, and the names of any witnesses. This report can be made orally or in writing.
- C. Confidentiality:** The City of Fremont recognizes that confidentiality is important to all parties involved in a harassment/discrimination investigation. 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.
- D. Duty of Employees to Maintain Confidentiality:** An individual who is involved in an investigation is prohibited from discussing the investigation except as otherwise directed by the person conducting the investigation. Any individual who discusses the content of an investigation may be subject to disciplinary action.

V. RESPONSE TO COMPLAINT

- A. Interim Relief:** Any supervisor, manager, or department head who receives a complaint or learns of a potential violation of this Policy is obligated, as a condition of employment, to pursue such complaints, and if necessary, take action, in consultation with the Human Resources Department and City Attorney, to defuse volatile circumstances.
- B. Initial Assessment/Investigation:** The supervisor or manager must insure that their department head is informed about all complaints within twenty-four (24) hours of receipt of the complaint. The department head shall in turn immediately notify the Human Resources Director that an initial assessment is being conducted. Once the Human Resources Director is notified, the Department Head or designee shall act to complete an initial assessment of all complaints within five (5) calendar days. The department head or designee shall

initially determine whether the complaint falls within the scope of this Policy. If at any point during the initial assessment the department head or designee is unclear about the procedure, he or she should contact the Human Resources Department for guidance and/or assistance. In cases involving the Police or Fire Departments, any procedures required by the Police Officer's Bill of Rights or Firefighter's Bill of Rights must also be followed.

1. When a supervisor, manager, or department head learns of a possible incident between an employee and another person, or if a complaint is reported to them, the matter shall be documented and an initial assessment shall be conducted to determine if further investigative action is warranted. The initial assessment may consist of in person interviews with the complainant, the alleged offender, the person believed to have been offended, and any possible key witnesses of the offense(s). The person conducting the initial assessment shall document all activities related to the initial assessment and shall preserve all related materials.
2. Once the initial assessment is complete, the supervisor, manager, or department head shall notify the Human Resources Director who, in coordination with the City Attorney's Office, will review the determination made during the initial assessment and either confirm or reject that determination. If it is determined that the complaint **does not** fall within the scope of this Policy, the supervisor, manager, or department head shall notify the complainant of the determination. Notification shall be documented in writing. All documents generated as a result of an initial assessment and/or investigation shall be sent to the Human Resources Director for retention. Documents shall not be included in an employee's personnel file unless he/she was disciplined for inappropriate behavior.
3. If it is confirmed that a complaint does fall within the scope of this Policy, the Human Resources Director or designee shall collect all documentation that the department head or designee gathered during the initial assessment and present that information to the City Manager's Office within (5) business days of the completion of the initial assessment. The City Manager's Office will then identify an appropriate investigator for the matter within (5) business days of being presented with the initial assessment.
4. Once the investigation is complete, the department head, along with the City Manager, the City Attorney, and the Human Resources Director, or designees, shall review the findings with the investigator within (10) business days following the investigator's report.
5. Based on the findings, the department head, City Manager, City Attorney, and the Human Resources Director, or designees shall

determine the appropriate response and level of discipline if applicable. Normal disciplinary procedures shall be followed.

6. The process will be complete once all relevant parties (the accused and those believed to have been discriminated against or harassed) have been notified in writing. However, the notification will not identify the disciplinary action taken against anyone, if applicable, other than the individual(s) being disciplined.

- C. Investigation into Unreported/Anonymous Potential Violations:** The City of Fremont takes a proactive approach to its policy against harassment, discrimination, and retaliation and will conduct an initial assessment if the City becomes aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation. In addition, anonymous complaints received by or learned of by a supervisor, manager, or department head will be investigated to the degree possible.
- D. Referral for Criminal Prosecution:** If it is determined that any violence, assault, or criminal conduct may be involved, the matter shall be immediately referred to the Fremont Police Department for investigation.
- E. Right to Representation:** Any employee contacted in the course of an initial assessment or full investigation pursuant to this Policy may be accompanied by one personal representative. A Personal Representative means a union representative, attorney, or other person who may attend any meeting with a manager, supervisor, department head, or fact finding investigator. No personal representative may disrupt any meeting. An employee may consult with his/her personal representative during the meeting. Arrangements for a personal representative shall not extend beyond twenty-four (24) hours following the initial contact by the supervisor, manager, or department head.
- F. Remedial and Disciplinary Action:** Any employee determined to be responsible for violating the Policy will be subject to appropriate disciplinary action, up to and including termination. Disciplinary action may also be taken against any supervisor, manager, or department head who condones or ignores potential violations of this Policy or otherwise fails to take appropriate action to enforce this Policy. Any elected or appointed official or contractor found to be responsible for violating this Policy will be subject to appropriate sanctions as well.
- G. Option to Report to Outside Administrative Agencies:** Any offended party has the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These governmental agencies offer legal remedies and a complaint process.

VI. APPEALS

Employees accused of harassment, discrimination or retaliation and subjected to

discipline as a result of the findings of any investigation may utilize the remedies provided in the applicable Memorandum of Understanding.

VII. RESPONSIBILITIES

A. Individual Employees are required to:

1. Behave consistently with the Policy described herein;
2. Report, in good faith, any act they believe constitutes harassment, discrimination, or retaliation as defined herein, to his or her immediate supervisor, manager, or department head;
3. Maintain confidentiality in any investigation that the City conducts, except as directed by the person conducting the investigation; and
4. Cooperate fully with the City's investigation into alleged violations of this Policy by responding fully and truthfully to all questions posed during the investigation.
5. Acknowledge receipt and understanding of this Policy annually.

B. Supervisors, Managers, and Department Heads (including Councilmembers) must, in addition to the responsibilities listed above for individual employees, help prevent harassment, discrimination, and retaliation in their departments or areas of responsibility and are required to:

1. Be knowledgeable about this Policy and model behavior that respects all individuals in the workplace and complies with the principles and spirit of this Policy;
2. Inform and communicate this Policy to employees, answer any questions and provide guidance to employees regarding appropriate behavior in the workplace;
3. Be proactive in monitoring the work environment and take immediate appropriate action to stop potential violations, such as removing inappropriate pictures and correcting inappropriate language;
4. Take all reasonable measures to prevent any person from retaliating against any person who reports a complaint or participates in the investigation of any complaint under this Policy; and
5. Compile data consistent with Section VIII of this Policy.

C. Independent Contractors This Policy also prohibits harassment, discrimination and retaliation against City employees by independent contractors, non-City employees and vendors, and vice-versa. Any City employee who becomes aware of or believes a violation of this Policy is occurring which involves an

independent contractor, non-City employee or vendor shall immediately contact the Human Resources Director or designee to report the concern.

D. The Human Resources Department is required to:

1. Communicate this Policy and procedure through internal and external postings on official bulletin boards, in employee orientation, in training, and through other employment documents;
2. Provide guidance and training to supervisors, managers, and department heads regarding their responsibilities as outlined in this Administrative Regulation; and
3. Provide a copy of this Policy and procedure to each employee annually via each department head.
4. Ensure that each employee shall sign an acknowledgment of Policy receipt.
5. Administer a program to assure that all persons are aware of this Policy and the procedures to report prohibited behavior by City of Fremont employees.

E. The City Attorney's Office is required to review and advise the City on the appropriate processes and procedures concerning this Policy.

VIII. DATA COLLECTION

Each department head shall be responsible for compiling and retaining on an annual basis all activity and dispositions pursuant to this Policy. Each department head shall compile data in the following four categories: 1. Total number of initial assessments, 2. Documented incidents, 3. Administrative investigations, and 4. Criminal referrals. The compiled data, in the form of a summary report, should be sent to the Human Resources Department by March 31 of each calendar year.

IX. TRAINING

The City shall train all employees, supervisors, managers, and department heads in the use of this Policy in accordance with State and local laws.