



HUMAN RESOURCES MEMORANDUM

DATE: August 20, 2019
TO: Martin Bernal, City Manager
FROM: Lisa Murphy, Director of Human Resources
SUBJECT: City Council Investigation of Violation of City Policies Results and Recommendations.

The investigation report at issue addresses complaints by five (5) separate complainants against Councilmember Glover and/or Councilmember Krohn between February 12, 2019 and May 2019.

During a City Council meeting on February 12, 2019, Mayor Watkins described in a statement how community members informed her of their perceptions that both Councilmember Glover and Councilmember Krohn were intentionally bullying her because she is a woman. Because Mayor's statement involved allegations of potential gender discrimination and harassment, California law required that the City conduct an investigation to determine if the allegations were substantiated. In addition, the City was required to conduct an investigation under Administrative Procedure Order Section II, #1A Discrimination/Harassment/Retaliation Policy Implementation and Complaint Procedure (Policy #1), which provides "that any person who witnesses or experiences discrimination must report it immediately in order to facilitate early, effective, efficient, and impartial investigation and intervention by the City." Accordingly, the City initiated the investigation process.

On February 13, 2019, the City received a formal complaint by City Employee #1 alleging that Councilmember Krohn engaged in conduct that violated the City's Administrative Procedure Order Section II #1B, Respectful Workplace Conduct policy (Policy #2) and Policy #1 at the City Council meeting on February 12, 2019.

On February 22, 2019, Councilmember Meyers submitted a complaint to the City stating that Councilmember Glover engaged in conduct that violated Policy #2 on two separate occasions. In addition, in April of 2019, Councilmember Meyers informed the investigator she believed Councilmember Glover treated men and women differently, in violation of Policy #1.

Subsequent to the February complaints, two other City employees also reported allegations that, if substantiated, would constitute violations of Policies #1 and #2 by both Councilmember Krohn and Councilmember Glover. Employee #2 complained to the City in late March about disrespectful conduct by Councilmember Krohn on three separate instances which s/he believed violated Policy #2. Employee #4 reported in May of 2019 that Councilmember Glover violated Policy #2 between 2017 and specifically on May 3, 2019.

Because there were allegations made by and against Councilmembers and to ensure a fair and impartial investigation in accordance with Policy #1 and Council Policy 25.2 “Discrimination, Harassment, Retaliation, And Respectful Workplace Conduct Policy” (Policy #3), the City retained the services of Joe Rose of the Rose Law, APC in March 2019 to conduct an independent investigation into the initial complaints. The scope of Mr. Rose’s investigation subsequently expanded to include the complaints by Employee #2 and Employee #4 in May 2019. Mr. Rose had not previously work for the City before this investigation nor did he have a prior relationship with any of the complainants or subjects in the investigation. The investigation was completed in July 2019.

The Process: In accordance with Policies #1, #2, and #3, the Human Resources Director determined that an independent investigation was necessary to resolve the issues of the complainants. Upon conclusion of the investigation, a report was issued with Mr. Rose’s findings on each complaint (Investigation Report). The Investigation Report was provided to the Human Resources Director who is required to make a determination on whether there is sufficient evidence to substantiate a violation of City’s Policies #1, #2 and/or #3. In addition, the policies allow the Human Resources Director to make recommendations on disciplinary action or any other remedial actions if there are violations of the policies.

If an allegation is substantiated against a City employee, the Human Resources Director will recommend an appropriate form of disciplinary action. In this case, however, any sustained violation of the policy would be against an elected official (i.e. Councilmembers Glover and/or Krohn). As such, the City’s management team does not have any legal authority to impose any form of discipline for a violation of a City policy.

During the investigation, complainants were informed that their testimony would be kept confidential. The City received multiple requests under the Public Records Act for the complaints and the Investigation Report from various media outlets. The City’s special legal counsel on labor and employment matters advised the City that the Public Records Act required the City to release the Investigation Report and some of the associated documents because the public’s right to know how its elected officials are performing their duties and how the City responds to allegations of misconduct by them outweigh any privacy rights of any individual who participated in the investigation. However, the City has taken steps to protect the confidentiality of the names of the complainants who are City employees and of citizen witnesses by redacting identifying information to the extent possible from the Investigation Report.

The Investigation Report: The Investigator was provided access to all information he requested and permitted to interview all witnesses that he deemed appropriate. The investigation was conducted from March to late July 2019. The results of the investigation as determined by Mr. Rose are as follows:

Councilmember Glover:

- One complaint of a violation of the Administrative Procedure Order Section II #1B, Respectful Workplace Conduct Policy was substantiated.
- Three complaints of Administrative Procedure Order Section II #1B, Respectful Workplace Conduct Policy were not substantiated.

- Three complaints of a violation of City Council Policy 25.2 Discrimination, Harassment, Retaliation, and Respectful Workplace Conduct Policy were not substantiated.

Councilmember Krohn:

- One complaint of a violation of the Administrative Procedure Order Section II #1B, Respectful Workplace Conduct Policy was substantiated.
- Two complaints of Administrative Procedure Order Section II #1B, Respectful Workplace Conduct Policy were not substantiated.
- Three complaints of a violation of City Council Policy 25.2 Discrimination, Harassment, Retaliation, and Respectful Workplace Conduct Policy were not substantiated.

As the Human Resources Director, it was my role to review the investigation report and relevant City policies and then make a determination if there is sufficient evidence to substantiate a violation of the City's Policies #1, #2 and #3. After conducting my review of the investigation report and discussing the Investigators findings with the complainants and subjects of the investigation, I affirmed the findings of the Investigator.

Investigation Recommendations:

In addition, I concur with the following recommendations set forth in the Investigation Report:

1. Councilmembers should receive training on Policies #1, #2, #3 and City Charter section 809.
2. Councilmembers should participate in professional mediation and conflict resolution.
3. City Staff should review its post-election onboarding process for new City Councilmembers.
4. Councilmembers should avoid making public accusations of misconduct or bad faith against one another and against staff without first attempting to address concerns with the person.
5. Utilizing photographs of employees in presentations by Councilmembers should be coordinated through the City Manager's office.

Additional Recommendations:

As elected officials Councilmembers must hold yourselves to a higher standard. Councilmembers occupy positions of authority over employees, real or perceived, which creates an imbalance of power and should never be used to undermine an employee's ability to do their job.

Opinions on policy matters may differ, and political discourse is important to our democracy. Question, and if appropriate, criticism of ideas, policies, programs or outcomes are acceptable. However, this should not be done in a manner that questions the competency and perceived motive of the individuals involved. Mocking, belittling, speaking as if interrogating an employee while at the dais, implying staff is hiding or providing false information or is deliberately undermining Councilmembers is not acceptable. While those types of behaviors may not violate the City's policies, they create an environment which is not collaborative, is unproductive, demoralizing and ultimately may lead to staffs' departures.

“Governance of a City relies on the cooperative efforts of elected officials, who set policy, and the City Manager and staff, who implement and administer the Council’s policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community.” League of California Cities

Although several allegations against the subjects of the investigation were not substantiated, I encourage **all** Councilmembers as the elected leaders of the City to conduct themselves with the highest form of civility when dealing with City employees and the public. When Councilmembers do not conduct themselves in this manner, it can contribute to low employee morale and impact an employee’s ability to be creative and productive. It also detracts from the City’s mission as a whole and the mission of each Councilmember who seeks to passionately represent their constituents. I also encourage each Councilmember to embrace the recommendations and not allow these events to hinder their passionate representation of the citizens of Santa Cruz.

In addition to the recommendations provided by the Investigator, I recommend the Council form a subcommittee of two members to develop a code of ethics policy for the members of the City Council.

Fiscal Impact:

The cost to date for the investigation and legal counsel is \$18,219. Funds are available in the Human Resources Department budget. There will also be costs associated with obtaining the services of a mediator, to be determined at a later time.

Attachments:

- Policy #1: Administrative Procedure Order Section II, #1A
Discrimination/Harassment/Retaliation Policy Implementation and Complaint Procedure
- Policy #2: Administrative Procedure Order Section II #1B, Respectful Workplace Conduct Policy
- Policy #3: Council Policy 25.2 Discrimination, Harassment, Retaliation, and Respectful Workplace Conduct Policy

TO: Department Heads

SUBJECT: DISCRIMINATION/HARASSMENT/RETALIATION POLICY
IMPLEMENTATION AND COMPLAINT PROCEDURE

PURPOSE

The purpose of this document is to confirm the City's commitment to prohibit and prevent unlawful discrimination, harassment, and retaliation in employment, and provide a City complainant an investigation procedure to resolve complaints of alleged discrimination, harassment, or retaliation in violation of the law or City Council Policy 25.2 (*Discrimination, Harassment, and Respectful Workplace Conduct Policy*).

POLICY

It is the policy of the City of Santa Cruz to maintain and promote a working environment free from discrimination, harassment, and retaliation, and to provide all current and prospective employees, contractors, interns, and volunteers with equal opportunity in employment regardless of race, religious creed (including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, disability (mental and physical), medical condition, sex, gender (including gender identity and gender expression), physical characteristics, marital status, age, sexual orientation, genetic information (including family health history and genetic test results), organizational affiliation, and military and veteran status (later referred to collectively as "Protected Categories") or any other consideration made unlawful by local, State, or Federal law.

This policy is promulgated in recognition of the fact that conduct of the type prohibited by this policy, if allowed to exist, not only violates Federal, State, and municipal law, but also serves to undermine employee integrity, create low employee morale, reduce employee productivity, and cause skilled and valuable workers to leave their City employment. All of this, in turn, is detrimental to the general health and welfare of the community, which depends upon a highly motivated and skilled body of City employees to deliver essential municipal services.

The City Council acknowledges and understands that in order to implement a policy of this type, it is essential that all persons who witness or experience discrimination, harassment, or retaliation report it immediately in order to facilitate early, effective, efficient, and impartial investigation and intervention by the City. Accordingly, any retaliation against a person for filing a complaint, reporting discrimination, harassment, or retaliation which he or she has witnessed, or assisting in an investigation is strictly prohibited. Employees found to have participated in retaliatory action in contravention of this policy shall be subject to disciplinary action up to and including termination.

In implementing the policy, the rights of free speech and association shall be accommodated in a manner consistent with applicable Federal and State law and in a manner consistent with the intent of the policy.

DISSEMINATION OF POLICY AND TRAINING

All employees, supervisors, and managers shall receive a copy of this Administrative Procedure Order and City Council Policy 25.2 and shall also attend sexual harassment and cultural diversity training according to the following schedule:

- 1) All New Employees – Harassment/Discrimination/Retaliation Prevention Training, and Cultural Diversity Training, within the first year of hire.
- 2) Supervisors – Cultural Diversity Training within the first year of hire, Harassment/Discrimination/Retaliation Prevention Training within six months of gaining supervisory responsibilities, and refresher training no less frequently than every two years.

Posters explaining local, State, and Federal non-discrimination laws will be prominently displayed in the Human Resources Department.

REASONABLE ACCOMMODATION FOR DISABILITY (in accordance with Title II of the *Americans with Disabilities Act of 1990, and as amended by the ADA Amendments Act of 2008*)

Disability is defined as: a) a physical or mental impairment that substantially limits one or more major life activities, b) having a documented record of such an impairment, or c) being regarded as having such an impairment.

Accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. It means modifications or adjustments to: a) a job application process to enable an individual with a disability to be considered for the position, b) the work environment in which a position is performed so that a person with a disability can perform the essential functions of the position, and c) enable individuals with disabilities to enjoy equal benefits and privileges of employment as employees without disabilities enjoy.

I. Inclusions

Accommodation includes making existing facilities and equipment used by employees readily accessible to and usable by individuals with disabilities. Accommodation applies to: a) all employment decisions and to the job application process, b) all services and programs provided in connection with employment, c) non-work facilities provided in connection with employment, and d) known disabilities only.

II. Exclusions

Accommodation is not required if: a) it eliminates essential functions of a position from the person's job, or b) adjustments or modifications requested are primarily for the benefit of the person with a disability. The law does not require an accommodation that imposes an "undue

hardship” on the operation of the City. Undue hardship means significant difficulty or expense incurred in the provision of accommodation relative to the operation of the City’s program and includes, but is not limited to, financial difficulty. Undue hardship refers to any accommodation that would be unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of the City. Whether a particular accommodation will impose an undue hardship is determined on a case-by-case basis. The following factors will be considered in determining whether an accommodation would create undue hardship: a) the nature and cost of the accommodation, b) the financial resources of the City, c) the number of employees, and d) the type of operations of the City, including the composition and functions of its workforce.

III. Determining the Appropriate Accommodation

Where a particular accommodation would result in an undue hardship, the City must determine if another accommodation is available that would not result in an undue hardship. If a qualified individual with a disability requests the provision of a reasonable accommodation, the City shall engage in an informal, interactive process with the person with a disability which identifies the precise limitations resulting from the disability and potential accommodations that could overcome those limitations. The accommodation process shall generally involve five (5) steps.

- First, the City shall analyze the particular job at issue and determine its purpose and essential functions.
- Second, the City shall consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual’s disability.
- Third, the City shall consult with the individual with a disability and, if desired by the agency, the appropriate rehabilitation or ergonomics consultant to identify potential accommodations and the necessary modifications.
- Fourth, the City shall assess the effectiveness of each potential accommodation with regard to enabling the individual to perform the essential functions of the position.
- Finally, the City shall consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the agency.

DISCRIMINATION, HARASSMENT, AND RETALIATION COMPLAINT PROCEDURE

This complaint procedure is available to City of Santa Cruz employees and individuals who believe that they have been subjected to discrimination, harassment, and/or retaliation in relation to employment with the City of Santa Cruz.

Complainants, and employees alleged to have engaged in discrimination, harassment, or retaliation, may choose to be represented at any or all steps in the complaint process.

I. Filing a Complaint

Complaints may be submitted to an employee’s immediate supervisor, any supervisor or manager within or outside the department, the department head, or Human Resources Department within one (1) year of the date the alleged action occurred. Any City of Santa

Cruz supervisor, manager, or department head who receives a discrimination or harassment complaint shall notify the Human Resources Department immediately upon receipt of the complaint. Complaints may be presented orally or in writing.

Written complaints should include the following information:

- The name, address, and telephone number of the complainant.
- The basis for the alleged discrimination or harassment (protected category and/or retaliation).
- The specific discriminatory practice(s) or incident(s) that have occurred.
- The names of any persons thought to be responsible for the discrimination/harassment.
- The remedy the complainant is seeking as a result of the complaint.
- The name, address, and telephone number of the complainant's representative, if any.

If complainants wish to file the complaint in person and receive assistance, they may contact the Human Resources Department to schedule an appointment with a staff investigator.

II. **Investigation and Resolution**

After reviewing the complaint, the Human Resources Director shall determine if an investigation is necessary to resolve the issues of the complaint and, if so, authorize and supervise the investigation of the complaint by a qualified person. The complainant will be contacted by the investigator upon the investigator's receipt of the complaint and will be kept apprised of the status of the investigation. The investigation will be documented and tracked for reasonable progress and appropriate due process. Every effort will be made to conclude the investigation within one hundred and twenty (120) calendar days of receipt of the complaint.

The Human Resources Director will not proceed with the investigation of a complaint if the complaint contains no assertion that the alleged acts occurred based on one or more of the protected categories or if a nexus cannot be established between the alleged act(s) and discrimination based on any of the protected categories.

When the investigation is completed, the Human Resources Director will determine if there is sufficient evidence to substantiate a violation of the City's Discrimination, Harassment, and Retaliation Policy and if remedial action is necessary to resolve the issues of the complaint. The complainant, alleged perpetrator/harasser, and department head(s) will be notified of the Human Resources Director's determination. If discipline is imposed, the discipline will not be communicated to the complainant.

If it would present a conflict (or the appearance of such) for the review and investigation of a complaint to be conducted by the Human Resources Department, the City Manager will be responsible for this process.

III. City Manager Review

Complainants who are not satisfied with the Human Resources Director's determination may request a review by the City Manager (or his/her representative), in writing, within ten (10) workdays following receipt of the Human Resources Director's determination. The City Manager (or his/her representative) shall review the complainant's written appeal and the investigative findings and shall render a written decision within thirty (30) workdays following the review.

IV. Additional Remedies

Current City employees covered by a memorandum of understanding that includes arbitration as the final step in the grievance process may request that the matter be taken to arbitration in accordance with the specific procedures contained in the applicable memorandum of understanding.

In addition, all complainants may file complaints of discrimination, harassment, or retaliation with the State of California Department of Fair Employment and Housing and the Federal Equal Employment Opportunity Commission, whether or not complainants choose to use the City of Santa Cruz' complaint procedure. Time limits for filing complaints with State and Federal compliance agencies vary, and those agencies should be contacted directly for specific information. The addresses and telephone numbers (as of the revision date of this procedure) are:

California Department of Fair Employment and Housing
Bay Area Regional Office
39141 Civic Center Drive, Suite 250
Fremont, CA 94538
Phone: (800) 884-1684
For Persons with a Hearing Impairment: (800) 884-1684 or TTY at (800) 700-2320
E-mail: contact.center@dfeh.ca.gov

United States Equal Employment Opportunity Commission
San Jose Local Office
96 North Third Street, Suite 250
San Jose, CA 95112
Phone: (800) 669-4000
Fax: (408) 291-4539
TTY: (800) 669-6820
ASL Video Phone: (844) 234-5122

TO: Department Heads

SUBJECT: RESPECTFUL WORKPLACE CONDUCT

PURPOSE

The City of Santa Cruz is committed to maintaining and promoting a respectful work environment. Council Policy 25.2 (*Discrimination and Harassment Policy*), Administrative Procedure Order II-1A (*Discrimination/Harassment Policy Implementation and Complaint Procedure*), and this Administrative Procedure Order establish behavioral and workplace standards to support a culture of collaboration, inclusion, and productivity.

POLICY

It is the intent of the City of Santa Cruz that all employees, volunteers, Councilmembers, Commissioners, customers, contractors, and visitors to the City's worksites or places where City work is conducted enjoy a positive, respectful, and productive work environment free from behavior, actions, or language constituting a violation of this Respectful Workplace Conduct Policy. Such conduct may include, but is not limited to, the following as perceived by a reasonable person: repeated infliction of verbal, written, or social media abuse such as the use of derogatory remarks, epithets, or insults; physical conduct that is threatening, intimidating, bullying, or humiliating; or the sabotage or undermining of a person's work performance. Incorporated by reference in this policy is the amendment to §12950.1 of the California Government Code created by Assembly Bill 2053 (effective January 1, 2015) adding to the supervisory training requirement the subject matter "prevention of abusive conduct."

Employees found to have participated in actions constituting a violation of this policy shall be subject to disciplinary action up to and including termination. Volunteers found to have participated in actions constituting a violation of this policy may be subject to termination of their volunteer relationship with the City. If a complaint involves the conduct of a contractor, Human Resources will inform the contractor of the behavior and request prompt, appropriate action. The City reserves the right to prohibit a contractor's individual employee(s) from entering City-owned property/premises. Councilmembers, Commissioners, customers, and visitors who engage in conduct in violation of this policy are subject to action on the part of the City intended to stop the conduct and protect others. Executives, managers, and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action when such conduct is observed or reported may be subject to disciplinary action up to and including termination. In implementing the policy, the rights of free speech and association shall be accommodated in a manner consistent with applicable Federal and State law and in a manner consistent with the intent of the policy.

All employees shall receive a copy of this policy when they receive Council Policy 25.2 (*Discrimination and Harassment Policy*) and Administrative Procedure Order II-1A (*Discrimination/Harassment Policy Implementation and Complaint Procedure*).

I. **Definition**

Disrespectful Conduct: Any one or all of the following as perceived by a reasonable person:

- 1) Use of language that is intended to be, or perceived by a reasonable person to be, demeaning, berating, humiliating, threatening, bullying, offensive, insulting, slanderous, or malicious rumor-spreading;
- 2) Conduct that a reasonable person would find disruptive, abusive, threatening, intimidating, aggressive, or insubordinate; and/or
- 3) Acts to undermine or interfere with an employee's work performance.

A single act shall not constitute disrespectful conduct unless especially severe and egregious.

II. **Responsibilities**

- a. **Employees, Volunteers, Councilmembers, Commissioners, Customers, Contractors, and Visitors:** All persons are required to behave respectfully and to refrain from disrespectful behaviors, and are expected to:
 - Recognize when they or others are being subjected to disrespectful conduct and not condone or ignore it;
 - Bring the situation to the attention of a supervisor or the next person in the chain of command, department director, or Human Resources Department, or where physical safety is concerned, contact emergency services (9-1-1);
 - Understand that someone's intent does not excuse otherwise disrespectful conduct and/or relieve them from being held accountable for their actions; and
 - Address, if possible, inappropriate behavior directly with the person engaging in such conduct in a professional and nonconfrontational manner.
- b. **Executives, Managers, and Supervisors:** Executives, managers, and supervisors are responsible for demonstrating respectful personal behavior towards all coworkers and visitors, as well as to set an example of respectful behavior as a model for City employees, volunteers, and visitors. In addition to this responsibility and the expectations listed above, executives, managers, and supervisors are expected to:
 - Maintain a level of awareness with their staff sufficient to know if disrespectful behavior is occurring; and
 - Maintain a level of open communication with their staff that encourages them to report instances of disrespectful behavior that have occurred;

- Encourage the reporting of instances of disrespectful behavior by making this policy known to all employees;
- Promptly address all observed disrespectful behavior;
- Take reports and complaints of disrespectful behavior seriously and, if deemed appropriate following consultation with their immediate supervisor, attempt to independently confirm whether or not the reported behavior occurred or is occurring, without divulging the identity of the reporting party; and
- Promptly report complaints to a supervisor, the department director, and Human Resources Department.

III. **Retaliation**

The City maintains a strict stance of no tolerance for retaliation against anyone for bringing a complaint or participating in an investigation. Under no circumstances will anyone be disciplined, demoted, or otherwise retaliated against for reporting, disclosing, or bringing a Respectful Workplace Conduct complaint to the attention of the City. Employees found to have participated in retaliatory action in contravention of this policy shall, therefore, be subject to disciplinary action up to and including termination.

- a. Anyone who believes they have been retaliated against because they filed a complaint, participated in an investigation, or reported observing a violation of the Respectful Workplace Conduct Policy should report this behavior to their supervisor, department director, or Human Resources Department.
- b. Complaints of retaliation will be investigated promptly.

PROCEDURE

I. **Filing a Respectful Workplace Conduct Complaint**

Any person who observes or perceives they have been subjected to conduct by another person believed to be a violation of this policy may initiate the complaint process by notifying their immediate supervisor, department director, or Human Resources Department.

- a. Complaints may be submitted to an employee's immediate supervisor, any supervisor or manager within or outside the department, the department director, or Human Resources Department within thirty (30) days of the date the alleged action occurred. Any City of Santa Cruz supervisor, manager, or department director who receives a complaint shall notify an appropriate supervisor/manager/director and Human Resources upon receipt of the complaint.
- b. If a complainant wishes to file the complaint in person and receive assistance, they may contact the Human Resources Department to schedule an appointment.
- c. Written complaints should include the following information (it is recommended but not required to use the "Respectful Workplace Conduct Complaint Form");

- The name, address, and telephone number of the complainant.
- The specific disrespectful practice(s) or incident(s) that have occurred, including retaliation.
- The names of any persons thought to be responsible for the disrespectful behavior.
- The remedy the complainant is seeking as a result of the complaint.
- The name, address, and telephone number of the complainant's representative, if any.

II. **Investigation**

After reviewing the information contained in the complaint, the staff member who received the complaint within the department of the complainant will, in consultation with his or her immediate supervisor, determine if the complaint can be resolved within the department or if there is sufficient complexity to warrant a formal investigation. If so determined, the department director will be consulted and the Human Resources Department will coordinate and conduct (or delegate responsibility for coordinating and conducting) an investigation. The investigation will proceed within the following guidelines:

- a. Steps will be taken to ensure employees are protected from further violations.
- b. Complaints will be dealt with in a discreet and confidential manner, to the extent possible.
- c. All parties are expected to cooperate with the investigation and are required to keep information regarding the investigation confidential. Failure to cooperate or maintain confidentiality could result in disciplinary action up to and including termination.
- d. Employees who are the subject of an investigation into actions constituting a possible violation of this policy may request to have representation. The right to representation may be required for members of the Police and Fire bargaining units.
- e. The complainant, the employee subject to the investigation, and all witnesses will be informed that retaliating against a person for making a complaint and/or participating in an investigation will not be tolerated and could result in disciplinary action up to and including termination.

III. **Resolution of the Complaint**

If a complaint is substantiated, the employee subject to the investigation will be notified of the appropriate disciplinary action that will be taken.

- a. The complainant will be notified if any part of a complaint is substantiated and if action has been taken. The complainant will not be told the details of the action, including discipline.

- b. Both the complainant and the employee subject to the investigation will be notified if a complaint is not substantiated.

IV. **Withdrawal of Complaint**

The complaint or any part of the complaint may be withdrawn at any time by the complainant; however, the request for such withdrawal must be in writing and state the reasons for the request. The Human Resources Department will review the request for withdrawal in order to determine whether or not it was the result of restraint, interference, coercion, discrimination, retaliation, or reprisal. An investigation may still proceed if a complaint is withdrawn.

V. **Records**

All records of complaints and investigations, whether substantiated, unsubstantiated, or withdrawn, will be maintained in confidence by the Human Resources Department.

Only documentation of disciplinary action imposed as a result of a sustained complaint is maintained in the employee's personnel file.

DEFINITIONS OF TERMINOLOGY

Abusive Conduct: Conduct of an employer or employee in the workplace or on social media, undertaken with malice that a reasonable person would find hostile or offensive and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of written or verbal abuse, including the use of social media, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Aggressive: Demonstrating unduly forceful behavior.

Bullying: Conduct, either direct or indirect, that harms one or more individuals, not limited to behaviors that cause physical harm. Bullying may be verbal (including oral and written language as well as the use of social media) or nonverbal, may involve a real or perceived imbalance of power, and often includes behaviors described above as *Abusive Conduct*.

Derogatory: Behavior that is disparaging or belittling in attitude that aims to detract or diminish.

Disrespectful Conduct:

- 1) Use of language that is intended to be, or would be perceived by a reasonable person to be, demeaning, berating, humiliating, threatening, rude, bullying, offensive, insulting, slanderous, or malicious rumor-spreading;
- 2) Conduct that a reasonable person would find disruptive, abusive, threatening, intimidating, aggressive, or insubordinate; and
- 3) Acts to undermine or interfere with an employee's work performance.

A single act shall not constitute disrespectful conduct, unless especially severe and egregious.

Epithet: A word or phrase meant to characterize a person or thing, particularly in a negative or derogatory manner.

Humiliate: To disgrace, belittle, or make another appear foolish.

Insolent: Speaking or behaving in a way that is disrespectful or insulting.

Insult: To use offensive or disrespectful epithets towards others.

Intimidate: To behave in a manner that would cause a reasonable person to fear physical or emotional damage or harm.

Malice: A willful and conscious disregard of the feelings, rights, or safety of others.

Respectful Conduct: Behavior that expresses consideration of others' identities, viewpoints, and beliefs; restraint from behaviors that would be considered disrespectful conduct.

Retaliation: Verbal, nonverbal, or physical conduct or actions including the use of social media intended to injure or harm someone as a response to an action taken or perceived to have been taken; revenge.

Sabotage: The deliberate undermining of a person's work performance.

Threatening: Acting in a deliberately frightening quality or manner.

EXAMPLES OF BEHAVIORS

I. Examples of Respectful Behavior:

Every person is expected to abide by these values and standards of respectful interpersonal behavior, communication, and professionalism:

- We respect and value the contributions of all members of our community;
- We listen first and take responsibility for all our behaviors, including all verbal and nonverbal actions;
- We treat coworkers and others with respect, civility, and courtesy;
- We work honestly, effectively, and collegially;
- We respond promptly, courteously, and appropriately to requests for assistance or information;
- We use conflict management skills, together with respectful and courteous verbal communication, to effectively manage disagreements;
- We encourage and support all coworkers and others in developing their individual conflict management skills and talents;

- We have an open and cooperative approach in dealings with employees, recognizing and embracing individual differences;
- We recognize that differing social and cultural standards may mean that behavior that is acceptable to some may be perceived as unacceptable or unreasonable to others;
- We abide by all applicable rules, regulations, and policies and address any dissatisfaction with, or violation of, policies and procedures through appropriate channels;
- We demonstrate commitment to a culture where all coworkers cooperate and collaborate in using best practices to achieve positive work-related outcomes; and
- We are responsible stewards of resources and human assets to achieve excellence and innovation in the service to our community.

II. **Examples of Disrespectful Behavior**

Every person is expected to refrain from exhibiting disrespectful behavior. Examples of disrespectful behavior can include, but are not limited to, the following:

- Use of threatening or abusive language, or language that is intended to be, or is perceived by others to be, demeaning, berating, humiliating, or offensive;
- Intentionally ignoring someone, picking on an individual or group, or bullying;
- Making threats of violence, retribution, or financial harm; shouting or engaging in other speech, conduct, or behaviors that are reasonably perceived by others to represent intimidation;
- Using racial or ethnic slurs; demonstrating racial, gender, sexual orientation, or cultural bias (see also 1) City Council of Santa Cruz Policy 25.2 (*Discrimination and Harassment Policy*), and 2) Administrative Procedure Order II-1A, (*Discrimination/Harassment Policy Implementation and Complaint Procedure*));
- Making or telling jokes that are intended to be or that are reasonably perceived by others to be derogatory, crude, or offensive; teasing, name-calling, insulting, ridiculing, or making someone the brunt of pranks or practical jokes;
- Using sarcasm or cynicism directed as a personal attack on others;
- Spreading malicious rumors or gossip;
- Throwing instruments, tools, office equipment, or other items as an expression of anger, criticism, or threat, or in an otherwise disrespectful or abusive manner;
- Making comments or engaging in behavior that is untruthful or directed as a dishonest personal attack on the professional or personal conduct of others;
- Retaliation;
- Sabotage; and
- Insubordination: Not submitting to authority; being disobedient to proper direction from an organizational superior, including, but not limited to, refusal to do an assigned job, refusal to render assistance, refusal to work overtime when mandatory, insolent response to a work order, or unreasonable delay in carrying out an assignment.



RESPECTFUL WORKPLACE CONDUCT COMPLAINT FORM

SECTION I. Complainant Information (Person filing this complaint)

Name: _____

Address: _____

Phone: _____

Position: _____

Supervisor: _____

SECTION II. Respondent Information (Person this complaint is being filed against)

Name: _____

Job Title: _____

Department: _____

SECTION III. Description of Complaint

Date and Time of Incident: _____

Location of Incident: _____

1. Please provide a description of the incident(s) constituting the alleged violation. Include the person(s) involved, and the name(s), and contact information of any person(s) who may have knowledge of the incident(s). (Attach additional sheets if necessary.)

2. What is the remedy being sought for this complaint?

SECTION IV. Confidentiality

To the extent possible, it is the intention of the City to protect the confidentiality of any person who contacts the City for the purpose of seeking information, assistance, or counseling regarding this Policy. Information given to the City in the course of an internal investigation is not confidential; however, except as required by Public Records laws or the requirements of a thorough investigation, the City will release information only on a “need-to-know” basis. If you have questions about personal safety or personal privacy, you should discuss these questions with the Human Resources Department, your union representative, or your own attorney prior to providing information.

I have read and understand the City’s Respectful Workplace Conduct Policy and declare that the information contained herein is true and correct.

Signature of Complainant

Date

Internal Use Only:

Complaint Received by: _____

Signature: _____

Date Received: _____

POLICY TITLE DISCRIMINATION, HARASSMENT, RETALIATION, AND
RESPECTFUL WORKPLACE CONDUCT POLICY

POLICY STATEMENT

It is the policy of the City of Santa Cruz to maintain and promote a working environment free from abusive conduct, discrimination, harassment, and retaliation; and to provide all current and prospective employees, Councilmembers, contractors, unpaid interns, and volunteers with equal opportunity in employment regardless of race, religious creed (including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, disability (mental and physical), medical condition, sex, gender (including gender identity and gender expression), physical characteristics, marital status, age, sexual orientation, genetic information (including family health history and genetic test results), organizational affiliation, and military and veteran status (all of which are later referred to as “Protected Categories”), or any other consideration made unlawful by local, State or Federal law.

This policy pertains to all aspects of employment with the City or the application for employment with the City including, but not limited to, recruitment, selection, placement, assignment, compensation, benefits, training, transfer, promotion, evaluation, discipline, and termination.

This policy prohibits unlawful harassment, discrimination, and retaliation by supervisors, managers, co-workers, and third parties such as vendors or customers.

Definitions:

Discrimination as used in this policy is defined as the treatment or consideration of, or making a distinction in favor of or against, an employee on the basis of any of the above-listed protected categories including, but not limited to, any of the following forms:

- a) basing an employment decision on a job applicant’s or an employee’s protected status;
- b) treating an applicant or employee differently with regard to any aspect of employment because of their protected status;
- c) offering an employment benefit in exchange for sexual favors;
- d) threatening negative consequences if an employee declines a sexual advance;
- e) engaging in harassment, as more specifically defined below; and
- f) taking adverse employment action (i.e., demotion, transfer, discipline, or termination) against an employee based on the employee opposing discrimination in the workplace; assisting, supporting, or associating with a member of a protected category who complains about discrimination, or assisting in an investigation of discrimination.

Harassment as used in this policy is defined as the persistent disturbance or irritation of an employee on the basis of any of the above-listed protected categories including, but not limited to, any of the following forms:

- a) verbal harassment such as epithets, derogatory comments, or slurs, including on social media;
- b) physical acts such as assault or impeding or blocking movement;
- c) visual insults such as derogatory posters, drawings, or photographs;

- d) unwanted sexual advances, requests for sexual favors, and other acts of a sexual nature; and
- e) sending sexually-related emails or text messages.

Abusive Conduct as used in this policy is defined as conduct in the workplace or on social media, undertaken with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests; it may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Employee as used in this policy is defined as an individual performing business activities under direct supervision of another City employee and includes full-time, part-time, and temporary employees, contractors, unpaid interns, and volunteers.

Equal Employment Opportunity Committee (EEOC) as used in this policy is an advisory body to the City Council consisting of nine (9) members, including representatives from the community appointed by the City Council, employees appointed by the City Manager, and employees appointed by various labor groups.

Responsibilities:

1. The City of Santa Cruz shall take reasonable steps to prevent abusive conduct, discrimination, harassment, and retaliation from occurring in the workplace environment, including the following:
 - a) affirmatively raising the subjects of abusive conduct, discrimination, harassment and retaliation;
 - b) expressing strong disapproval;
 - c) maintaining and developing appropriate sanctions;
 - d) informing employees of their right to raise and how to raise the issues of abusive conduct, discrimination, harassment, and retaliation under City policy and/or the law; and
 - e) maintaining and developing methods to sensitize all concerned.

Such behavior shall not be tolerated, condoned, or trivialized. The City is committed to take action against any person violating this policy which will end the prohibited conduct. City employees who violate this policy shall be subjected to appropriate discipline, including possible dismissal, upon consideration of the findings and recommendations of the City Manager or their representative.

2. The City Manager shall fully accept and support the City's commitment to prevent abusive conduct, discrimination, harassment, and retaliation as a means to assure full equal employment opportunity for all prospective and current employees, contractors, unpaid interns, and volunteers including the following:
 - a) defining and assigning specific responsibilities throughout the organization for the development, implementation, and monitoring of this policy;
 - b) appointing one (1) department head and three (3) employee representatives to the EEOC;
 - c) ensuring all department heads support this policy;
 - d) reviewing the recommendations of the Human Resources Director on the resolution of complaints appealed under the Administrative Procedure Order (APO) Discrimination/Harassment/Retaliation Policy Implementation and Complaint Procedure, and making final decisions in each such complaint; and
 - e) ensuring that an EEO Report is completed and submitted annually to the City Council.

3. The Human Resources Department (HR) Director shall be responsible for:
 - a) ensuring that this policy, including its definition of abusive conduct, discrimination, harassment, and retaliation and the complaint procedures are disseminated to all employees;
 - b) providing guidance, training sessions, and assistance to department heads, managers, supervisors, and employees within their areas of responsibility;
 - c) investigating, resolving, and making findings and recommendations on complaints that are reported according to established informal and formal grievance procedures as set forth in the Discrimination/Harassment/Retaliation Policy Implementation and Complaint Procedure APO and the Respectful Workplace Conduct APO;
 - d) coordinating the annual EEO report, to include data on the make-up of the City workforce and the representation of protected classes, and distributing the report to the City Council, City staff, the public, and Federal and state agencies as requested or required;
 - e) regularly reviewing and revising personnel policies, procedures, and practices to eliminate non-job-related criteria, minimize the opportunity for discrimination and harassment, and ensure compliance with all legal requirements for equal employment opportunity;
 - f) designing, implementing, and monitoring a recruitment program to draw all qualified applicants; and
 - g) designating an EEO Coordinator, who will assist the HR Director with EEO-related activities and staff the EEOC.

4. Department Heads, Managers, and Supervisors shall all be responsible for:
 - a) giving their full support to this policy through active cooperation, leadership, and personal example;
 - b) informing employees in their respective departments or areas of responsibility of their rights and responsibilities regarding abusive conduct, discrimination, harassment, and retaliation under this policy;
 - c) ensuring that their employees have equal access to training and promotional opportunities;
 - d) acting to prevent abusive conduct, discrimination, harassment and retaliation from occurring; and
 - e) cooperating with the HR Director in resolving complaints involving employees in their respective departments.

5. Employees of the City shall be responsible for lending their personal support and cooperation in maintaining equal employment opportunities in the City. Employees shall cooperate fully with all investigations of abusive conduct, discrimination, harassment, and retaliation and implementation of remedial measures and shall not retaliate against complainants or witnesses.

6. The EEOC shall act in an advisory capacity to the City Council in all matters pertaining to EEO and be responsible for serving as a communication channel between City employees, the community, the City Manager, and the EEO Coordinator on any EEO activities and concerns.

Additional Applications and Considerations:

- Complaints may be filed by any individual (or a representative of their choice, on their behalf) who feels a violation of this policy has occurred. The procedures for resolving complaints alleging violation of this policy are set forth in APO Discrimination/Harassment/Retaliation Policy Implementation and Complaint Procedure and APO Respectful Workplace Conduct.

- Contracts with the City of Santa Cruz which contain an equal employment opportunity/non-discrimination clause shall also include language which requires those contractors to be responsible for ensuring that effective policies and procedures concerning the prevention of abusive conduct, discrimination, harassment, and retaliation exist in their companies.
- Councilmembers, contractors, unpaid interns, volunteers, customers and visitors shall not be subjected to, or cause, a violation of this policy.
- All Memoranda of Understanding entered into by the City and any employee organization shall contain an appropriate non-discrimination/harassment clause.
- In applying this policy, the rights of free speech and association shall be accommodated consistently with the intent of this policy. Nothing in these regulations may be construed as limiting the City's right to take reasonable disciplinary measures which do not discriminate on a basis identified in this policy.
- Discrimination/harassment/retaliation prevention (including prevention of abusive conduct), and cultural diversity awareness training, is mandatory for all City employees and City Councilmembers.
- All City employment announcements, brochures, procedures, advertisements, and application forms will state that the City is an Equal Opportunity Employer. The Human Resources Department will also inform all outreach recruitment and referral sources of the City's Discrimination and Harassment Policy and request that sources actively recruit and refer qualified applicants from all sectors of the community.
- In support of recruitment and retention efforts, City management shall consider the viability of participating in or developing supportive programs in such areas as: job-related skill training and education, job development, career counseling, transportation, day care, and health care.
- Where groups of employees are featured in the City's publications and communications (i.e., text and photographs), insofar as possible, the materials should illustrate that the City's workforce is as diverse as the populace it serves.

AUTHORIZATION: Council Policy Manual Update of November 17, 1998

HISTORY:

Revision by Resolution No. NS-28,533 July 24, 2012

Revision by Resolution No. NS-28,823 September 9, 2014

Revision by Resolution No. NS-29,220 April 4, 2017