



**To:** Mayor and City Council  
**From:** Michael Chandler, Assistant to the City Manager  
**Subject:** Policy against Harassment, Discrimination and Retaliation  
**Date:** November 9, 2016

---

### **Recommendation**

Resolution rescinding and replacing the City's Policy against Discrimination and Harassment in the Workplace with the Policy against Harassment, Discrimination, and Retaliation.

### **Background**

The City initiated a major project late in 2015 to review its administrative and personnel policies and review, update and/or replace those found to be outdated. Thus far, two significant administrative policy updates have been completed, the "Damage to or Loss of City Property Policy" and the "Safety Recognition Program Policy." In conjunction with the review of personnel policies, the City enlisted the contract services of personnel law specialists *Liebert, Cassidy and Whitmore*. Expenses of up to \$11,500 related to the contract are being reimbursed by the City's insurance risk pool, the Municipal Pooling Authority of Northern California.

Among the initial policies to be reviewed was the City's "Policy against Discrimination and Harassment in the Workplace," adopted by the City Council in December 2000 via Resolution No. 145-00 (which also adopted the City's "Policy against Violence in the Workplace"). A copy of the original resolution and policy is attached as Exhibit A. Other personnel policies included in this initial review were the City's "FMLA/CFRA Policy," "Health Insurance Portability and Accountability Act (HIPAA) Privacy Policy" and "Dependent Verification Policy."

Numerous changes to State (i.e. Fair Employment and Housing Administration) and Federal (Title VII) law over the past 15 years have necessitated a major update to and replacement of the City's existing Discrimination/Harassment Policy. These changes (among others) are reflected in the new policy and achieve the following:

- 1) expand the list of protected classifications and covered individuals;
- 2) provide and define a more comprehensive set of key terms (including types of harassment and bullying behavior);
- 3) provide procedures for investigating and resolving complaints;
- 4) specifically outline the responsibilities of managers/supervisors and employees; and
- 5) set forth training requirements for supervisors (i.e. AB 1825)

Additionally, the new policy cleans up any outdated references from 2000 which are no longer valid (e.g. the Collective Risk Management Team). A complete copy of the new policy entitled, "Policy against Harassment, Discrimination, and Retaliation" is attached as Exhibit B. For ease of reference, a chart entitled "Changes to Harassment/Discrimination/Retaliation Policy" has been created to compare the 2016 policy to the 2000 policy and is attached as Exhibit C.

The Martinez Police Department has an existing "Harassment Policy #314" currently in place. City staff worked with the Chief of Police and Liebert-Cassidy-Whitmore to examine how that and the proposed new Policy against Harassment, Discrimination and Retaliation policies could co-exist. As a result, a cross-reference has been added within procedure #2 of the "Complaint Procedures" section of the new policy regarding investigations by or against Police personnel. Police Department Policy #314 will be amended after this City update is adopted by Council to match most of the new terms and provisions.

The new policy was provided to all three bargaining groups on October 21, 2016, with a two-week request for comments or to meet and confer. None of the groups provided comments or requested a meeting.

### **Fiscal Impact**

No fiscal impact.

### **Attachments**

- 1 Resolution
- 2 Exhibit A – Reso No. 145-00 and Policy against Discrimination and Harassment in the Workplace (December 2000)
- 3 Exhibit B – Policy against Harassment, Discrimination, and Retaliation (New, November 2016)
- 4 Exhibit C – Changes to Harassment/Discrimination/Retaliation Policy Chart

**APPROVED BY:**



Brad Kilger, City Manager

**RESOLUTION NO. -16**

**RESCINDING AND REPLACING THE CITY'S POLICY AGAINST DISCRIMINATION AND HARASSMENT IN THE WORKPLACE WITH THE POLICY AGAINST HARASSMENT, DISCRIMINATION AND RETALIATION**

**WHEREAS**, the City of Martinez adopted by Resolution No. 145-00 on December 6, 2000, a Policy against Discrimination and Harassment in the Workplace ("Discrimination/Harassment Policy"); and

**WHEREAS**, a goal of Resolution No. 145-00 was to reinforce that the City will not condone or tolerate discrimination or harassment of any employee, or behavior that creates a hostile or abusive work environment, and that the City will enforce State and Federal laws prohibiting discrimination and harassment on the basis of an individual's characteristics; and

**WHEREAS**, the City is committed to a proactive approach to prohibit and prevent discrimination, harassment, and retaliation in employment; and

**WHEREAS**, the City seeks to provide an environment free of discrimination, harassment, and retaliation; and

**WHEREAS**, numerous changes to both State and Federal law have necessitated a comprehensive revision and replacement of the Discrimination/Harassment Policy with a policy that matches the requisite list of protected classifications and covered individuals, provides a more comprehensive set of terms and definitions, provides specific procedures for investigating and resolving complaints, delineates the responsibilities of managers/supervisors and employees, and sets forth training requirements for supervisors; and

**WHEREAS**, the recommended Policy against Harassment, Discrimination, and Retaliation constitutes an effective replacement to the Discrimination/Harassment Policy.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of Martinez hereby rescinds Policy 201, the "City of Martinez Policy against Discrimination and Harassment in the Workplace" as approved on December 6, 2000, by Resolution No. 145-00, and adopts the Policy against Harassment, Discrimination, and Retaliation as set forth in Exhibit B, attached hereto.

\* \* \* \* \*

**I HEREBY CERTIFY** the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 16<sup>th</sup> day of November, 2016, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, City Clerk  
CITY OF MARTINEZ

EXHIBIT A

RESOLUTION NO. 145-00

ADOPTION OF A POLICY AGAINST DISCRIMINATION AND HARASSMENT IN THE  
WORKPLACE AND A POLICY AGAINST VIOLENCE IN THE WORKPLACE

WHEREAS, the City of Martinez will not condone or tolerate discrimination or harassment of any employee, or behavior that creates a hostile or abusive work environment; and

WHEREAS, the City of Martinez will enforce State and Federal laws that prohibit discrimination and harassment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age over 40, or sexual orientation, including the perception that a person has any of those characteristics or that the person is associated with a person who has, or is perceived to have any of those characteristics; and

WHEREAS, the City of Martinez will not tolerate violence or threats of violence, including intimidation, harassment, and coercion; and

WHEREAS, the prohibition against discrimination, harassment and violence in the workplace applies to all persons involved in City operations, including but not limited to City personnel, contract workers, temporary employees, and anyone else on City property or conducting City business off City property.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Martinez hereby adopts a Policy Against Discrimination and Harassment in the Workplace and a Policy Against Violence in the Workplace.

\* \* \* \* \*

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 6th day of December, 2000 by the following vote:

AYES: Councilmembers Lewis, Schroder, Woodburn, Vice Mayor Ross and Mayor Menesini

NOES: None

ABSENT: None

  
RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ



# City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

## **CITY OF MARTINEZ POLICY AGAINST DISCRIMINATION AND HARASSMENT IN THE WORKPLACE**

### **PURPOSE**

The purpose of this administrative policy and procedure is to establish a policy that prohibits discrimination and harassment in the workplace, and to set forth procedures for preventing, reporting, and responding to incidents of discrimination or harassment. In addition, the City is complying with the California Fair Employment and Housing Act and Title VII of the Civil Rights Act of 1964, as amended.

### **POLICY**

The City of Martinez shall not condone or tolerate discrimination or harassment of any employee, or behavior that creates a hostile or abusive work environment. In addition, the City will enforce State and Federal laws that prohibit discrimination and harassment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age over 40, or sexual orientation, including the perception that a person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics. Disciplinary action up to and including termination will result for behavior that constitutes discrimination or harassment.

This prohibition against discrimination and harassment in the workplace applies to all persons involved in City operations, including but not limited to City personnel, contract workers, temporary employees, and anyone else on City property or conducting City business off City property.

Employees who feel they are victims of discrimination or harassment are strongly encouraged to report any incident of such to their supervisor, any department head, the Collective Risk Management (CRM) Team, or anonymously through the Employee Protection Line which is monitored by an independent third party. Employees may also elect to file a complaint with the Equal Employment Opportunity Commission or the Fair Employment and Housing Commission.

The City will protect the privacy of parties involved in a complaint made pursuant to this policy, except as is necessary to conduct an investigation and/or impose discipline. No one acting in good faith, who initiates a complaint or reports an incident under this policy will be subject to retaliation. Any retaliation for such good faith reporting will not be tolerated, and a person engaged in any retaliatory behavior may be subject to disciplinary action, up to and including termination.

## DEFINITIONS

<u>Term</u>	<u>Definition</u>
Collective Risk Management (CRM) Team	This is the team of City management employees that is responsible for managing workplace risk and wrongdoing when discovered, and that may be called upon to investigate allegations of conduct prohibited by this policy. The CRM Team is a requirement for the City to participate in the Employment Risk Management Authority (ERMA), a statewide joint powers authority that provides coverage and loss prevention services to reduce employment practices liability. The City Attorney and Police Department will provide advice and expertise as needed.
Discrimination	<p>Discrimination includes but is not limited to:</p> <ol style="list-style-type: none"><li>(1) any behavior or practice which treats a person differently because of that person's protected characteristic;</li><li>(2) systematic exclusion of a person because of that person's protected characteristic;</li><li>(3) ignoring, failing to take seriously, or blaming a person who reports or complains of conduct prohibited by this policy, or suggesting that he or she is "thin skinned," "too sensitive," or that he or she does not have a sense of humor; and</li><li>(4) continuing behavior directed at a person's protected characteristic.</li></ol>

Title

Definition

Harassment

Harassment includes but is not limited to:

- (1) verbal harassment, for example, epithets, jokes, derogatory comments, or slurs on the basis of a protected characteristic;
- (2) physical harassment, for example, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of a protected characteristic;
- (3) visual forms of harassment, for example, posters, notices, cartoons, and bulletins that denigrate or show hostility or aversion toward an individual or group because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age over 40, or sexual orientation, or a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have any of those characteristics; and
- (4) sexual harassment, unwelcome verbal or physical conduct of a sexual nature, offensive graphics, or other harassment based on a person's gender.

Protected  
Characteristic

Characteristics protected by State and Federal laws and this policy are those on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age over 40, or sexual orientation, including the perception that a person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

## PROCEDURES

Responsible  
Party

Action

Employee

Any employee who feels that he or she has been the victim of discrimination or harassment is strongly encouraged to use this process to resolve his or her complaint. The process may include informing the harasser that you find a particular behavior or attitude offensive or unwelcome, and/or informing your supervisor, any department head, or the CRM Team of the problem. The CRM Team can be notified by contacting the Administrative Services Director at 372-3577 or the Personnel Technician at 372-3522.

If you are uncomfortable filing the complaint internally, any employee may file a complaint at any time, 24 hours a day, 7 days a week, through the Employee Protection Line at (800) 576-5262 (organization code 10064), or elect to file a complaint through the Equal Employment Opportunity Commission at (510) 637-3230 or the Fair Employment and Housing Commission (800) 884-1684.

Manager/  
Supervisor

Managers/supervisors shall promptly address any complaint, investigate the allegations, review factual information collected to determine whether the alleged conduct constitutes discrimination or harassment, and take corrective action as appropriate. Managers/supervisors also shall make every effort to protect the privacy of parties involved in a complaint made pursuant to this policy except as is necessary to conduct an investigation and/or impose discipline.

Administrative Policy: **201**

Effective Date: \_\_\_\_\_

Revised: \_\_\_\_\_

Policy Against Harassment, Discrimination, and Retaliation

Purpose

The purpose of this Policy is to continue to establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in employment; to define those terms; and to establish a procedure for investigating and resolving internal complaints. The City encourages all covered individuals to report, as soon as possible, any conduct that is believed to violate this Policy. However, the City takes a proactive approach to potential violations of this Policy and will address all complaints of potential violations, whether or not a formal complaint is filed. The City seeks to provide an environment free of discrimination, harassment and retaliation.

Policy

The City has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of law to violate this Policy. Instead, a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. If you are in doubt as to whether any particular conduct may violate this policy, do not engage in the conduct, but rather seek guidance from a supervisor or the Personnel Officer.

This Policy prohibits harassment or discrimination on the basis of any of the following protected classifications: an individual's race, religion, color, sex (including gender, gender identity, gender expression, pregnancy, medical conditions related to pregnancy or childbirth, breastfeeding or medical conditions relating to breastfeeding), national origin, ancestry, citizenship status, physical or mental disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status or any other protected classification.

This policy protects employees, applicants, employee volunteers, paid or unpaid interns, elected or appointed officials or officers. Harassment may be by a supervisor, management employee, elected or appointed official, officer, co-worker, volunteer, paid or unpaid intern, member of the public, or contractor.

This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

Disciplinary action or other appropriate sanction, up to and including termination, will be instituted for violation of this Policy.

It is also the Policy of the City to provide a procedure for investigating alleged harassment, discrimination and retaliation in violation of this Policy. Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

Although workplace civility is essential to an efficient and healthful working environment, the City recognizes that a variety of good faith employment actions may nonetheless be viewed negatively by the employee who is subject to the action. This Policy cannot and does not prohibit or impede supervisors from engaging in the taking of good faith employment actions, including, but not limited to, counseling, conducting evaluations, issuing discipline, and directing the work of employees, such as assigning tasks.

### Definitions

1. **Protected Classification:** This Policy prohibits harassment or discrimination because of an individual's protected classification. "Protected Classification" includes race, religion, color, sex (including gender, gender identity, gender expression, pregnancy, medical conditions related to pregnancy or childbirth, breastfeeding or medical conditions relating to breastfeeding), national origin, ancestry, citizenship status, physical or mental disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status or any other legally protected classification, as required by applicable state and federal laws.
2. **Policy Coverage:** This Policy prohibits the employer, elected or appointed officials, officers, employees, volunteers, paid or unpaid interns, members of the public, or contractors from harassing or discriminating against applicants, officers, officials, employees, volunteers, paid or unpaid interns, or contractors because: 1) an individual is a member of a protected classification; 2) there exists a perception that an individual is a member of a protected classification; or 3) the individual associates with a person who is or is perceived to be a member of a protected classification.
3. **Discrimination:** This Policy prohibits treating an individual differently because of the individual's protected classification as defined in this Policy.
4. **Harassment:** Harassment means unsolicited or unwelcome words or conduct that is subjectively and objectively offensive to another person. Harassment includes, but is not limited to, the following types of behavior undertaken because of a person's protected classification:

## Exhibit B

- a. Verbal harassment, such as epithets (nicknames and slang terms), derogatory or suggestive comments, propositioning, jokes or slurs, including graphic verbal commentaries about an individual's body or that identify a person on the basis of his or her protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, stories that tend to disparage those of a protected classification, or race-oriented stories and jokes.
- b. Physical acts, such as assault, impeding or blocking movement, leering, offensive touching (including pinching, grabbing, patting), making explicit or implied job threats or promises in return for submission to physical acts or any physical interference with normal work or movement.
- c. Visual acts, such as derogatory posters, cartoons, notices, bulletins, emails, pictures, or drawings.
- d. Unwanted sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, where submission is either explicitly or implicitly made a term or condition of employment (including advancement or receipt of other job related benefits), where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.

Harassment need not be explicit or specifically directed at the victim and can occur between people who share the same protected classification(s).

5. **Retaliation:** Retaliation is the disparate treatment of an employee in the form of an adverse employment action, as defined, on the basis that the employee engaged in protected activity, as defined.
6. **Bullying** is behavior that harms, intimidates, offends, degrades, or humiliates an employee and usually involves repeated abusive conduct creating a continued pattern of behavior. As opposed to illegal harassment or discrimination, bullying and abusive conduct does not need to be motivated by animus toward a protected class.

Abusive conduct means conduct in the workplace that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct 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 gratuitous sabotage or undermining of a person's work performance.

## Exhibit B

Generally accepted supervisory and motivational practices by a supervisor or manager seeking to maintain effective and safe operations as well as obtain the best performance from employees is acceptable so long as he/she is respectful and professional, and does not violate established City policy.

7. Protected Activity: Protected activity includes, but is not limited to:
  - a. Opposing harassment, discrimination, or retaliation.
  - b. Refusing to obey an order reasonably believed to be discriminatory.
  - c. Filing a complaint with a federal or state enforcement or administrative agency.
  - d. Testifying as a party, witness, or accused regarding alleged conduct prohibited by this Policy.
  - e. Associating with another employee who is engaged in any protected activity.
  - f. Making or filing an internal complaint with the City regarding alleged conduct prohibited by this Policy.
  - g. Providing informal notice to the City regarding alleged conduct prohibited by this Policy.
  - h. Requesting a reasonable accommodation based on religion or disability.
8. Adverse Action: These include, but are not limited to,
  - a. Express or implied threats of intimidation.
  - b. Refusal to hire or rehire an individual because of protected activity.
  - c. Denial of promotion.
  - d. Disciplinary action.
  - e. Extension of probation.
  - f. Denial of overtime.

### Guidelines for Identifying Harassment

To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:

## Exhibit B

- a. Harassment includes any conduct which would be "unwelcome" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification.
- b. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized.
- c. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
- d. Even visual, verbal, or physical conduct between two employees who appear to welcome the conduct can constitute harassment of a third party, including an applicant, officer, official, employee, volunteer, paid or unpaid intern, or contractor who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
- e. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).

### Complaint Procedures

1. An employee, job applicant, elected or appointed official, officer, volunteer, paid or unpaid intern or contractor who believes he or she has suffered discrimination on the basis of a protected classification, or any employee, officer, official, volunteer, paid or unpaid intern or contractor who believes he/she has been harassed on the basis of a protected classification or who believes he/she has suffered from adverse retaliatory conduct due to protected activity or believes he/she has been the victim of bullying may make a complaint verbally or in writing with any of the following: (Note: There is no need to follow the chain of command.)
  - a. Immediate supervisor;
  - b. Any supervisor or manager within or outside of the department;
  - c. Department head;

Exhibit B

- d. Personnel Officer; or
  - e. 24-hour Employee Reporting Line (1-877-651-3924, give Entity Organization Code 10064.)
2. Any supervisor or department head who receives a harassment complaint should notify the Personnel Officer immediately, but in no case later than one business day. Generally, complaints received by or against the Martinez Police Department shall be investigated in accordance with Martinez Police Department Policy #314.
  3. Upon receiving notification of a complaint, the Personnel Officer shall:
    - a. Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will include interviews with 1) the complainant, 2) the accused harasser, and 3) other persons who may have relevant knowledge concerning the allegations in the complaint.
    - b. Review the factual information gathered through the investigation to determine whether any conduct took place that violates this policy, giving consideration to all factual information and the totality of the circumstances, including the nature of the conduct and the context in which the alleged incidents occurred.
    - c. Report a summary of the determination as to whether harassment, discrimination, bullying, or retaliation occurred to appropriate persons, including the complainant, the alleged harasser, the supervisor, Human Resources and the department head. If discipline is proposed, the level of proposed discipline will not be communicated to the complainant.
    - d. If conduct in violation of this Policy occurred, take or recommend to the appointing City authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
    - e. Take reasonable steps to protect the complainant from further harassment, discrimination, or retaliation.
    - f. Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
  4. The City takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.
  5. Option to Report to Outside Administrative Agencies: An individual 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 administrative agencies offer legal remedies and a complaint process. The nearest offices are listed in the government section of the telephone book or employees can check the posters that are located on employer bulletin boards for office locations and telephone numbers.

### Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent possible. The employer will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

### Responsibilities

Managers and Supervisors are responsible for:

1. Informing employees of this Policy.
2. Modeling appropriate behavior.
3. Taking all steps necessary to prevent harassment, discrimination, or retaliation from occurring.
4. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
5. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
6. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
7. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
8. Assisting, advising, or consulting with employees and the Personnel Officer regarding this Policy and Complaint Procedure.
9. Assisting in the investigation of complaints if requested involving employee(s) in their departments and, if confirmed that conduct has occurred which violates this Policy,

## Exhibit B

recommending appropriate corrective or disciplinary action in accordance with employer Personnel Rules, up to and including discharge.

10. Implementing appropriate disciplinary and remedial actions.
11. Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the Personnel Officer or the department head.
12. Participating in periodic training and scheduling employees for training.

Each employee or contractor is responsible for:

1. Treating all employees and contractors with respect and consideration.
2. Modeling appropriate behavior.
3. Participating in periodic training.
4. Fully cooperating with the employer's investigations by responding fully and truthfully to all questions posed during the investigation.
5. Maintaining the confidentiality of any investigation that the employer conducts by not disclosing the substance of any investigatory interview, except as directed by the department head or Personnel Officer.
6. Reporting any act he or she believes in good faith constitutes harassment, discrimination, retaliation or bullying as defined in this Policy, to his or her immediate supervisor, or department head, or Personnel Officer.

### Dissemination of Policy

All employees shall receive a copy of this Policy when they are hired. The Policy may be updated from time to time and redistributed.

### Training

In accordance with Government Code 12950.1., all supervisors and managers will receive harassment, discrimination, bullying, and retaliation prevention training every two years. Newly appointed supervisors must receive this training within six months of appointment.

**City of Martinez  
Changes to Harassment/Discrimination/Retaliation Policy**

	<b>2016 Revisions</b>	<b>2000 Policy</b>
1.	<p><b><u>Purpose</u></b> Purpose section states that the Policy is intended to:</p> <ul style="list-style-type: none"> <li>• Prohibit and prevent retaliation, in addition to discrimination and harassment;</li> <li>• Encourage covered individuals to report conduct believed to violate the Policy as soon as possible;</li> <li>• Define the terms harassment, discrimination, and retaliation;</li> <li>• Establish a procedure for investigating and resolving complaints; and</li> <li>• Establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation.</li> </ul> <p>These revisions were made to comply with the Fair Employment and Housing Act, which requires employers to “take all reasonable steps to prevent” harassment, discrimination, and retaliation. (Gov. Code § 12940(j)(1) and (k).) Defining terms, providing a procedure for investigating and resolving complaints, and encouraging employees to promptly report perceived violations of the Policy all work toward such compliance. Further, they meet the Fair Employment and Housing Act’s (“FEHA”) requirements for employer policies. (Gov. Code § 12950(b).)</p>	<p><b><u>Purpose</u></b> The previous Policy contained a similar statement of purpose. However, it failed to address retaliation. It also omitted the following purpose of defining harassment, discrimination, and retaliation. The new statement of Purpose is clearer and includes each of the obligations of the City under state (FEHA) and federal (Title VII) law.</p>
2.	<p><b><u>Policy</u></b> The Policy section has been revised as follows:</p> <ul style="list-style-type: none"> <li>• The revised Policy section adds that the City has “zero tolerance” for conduct that violates this Policy. This means that even when conduct does not rise to the level of a violation of state (FEHA) or federal (Title VII) law, the City may deem conduct to be a violation. Violations subject employees to discipline. The provision further notifies employees to seek guidance from a supervisor or the Personnel Officer if they are unclear whether certain conduct violates the Policy.</li> <li>• The Policy section updates the list of classifications protected under state (FEHA) and federal (Title VII) law.</li> <li>• This provision clarifies that volunteers, unpaid interns, and elected or appointed officials or officers are protected by the Policy. This is required by state law (FEHA) (volunteers and unpaid interns were added to FEHA protections pursuant to revisions to the FEHA, effective January 1, 2015). This provision also states the persons against whom employees are</li> </ul>	<p><b><u>Policy</u></b> The previous Policy did not contain a zero tolerance policy. As a result, only that conduct which rose to the level of legal harassment would be subject to the Policy. As a result, the new Policy is more protective of employees. The previous Policy also was changed because it:</p> <ul style="list-style-type: none"> <li>• Contained an outdated list of protected classifications;</li> <li>• Did not address the types of individuals who are covered by the law, including elected and appointed officials, unpaid interns, and volunteers;</li> <li>• Contained a reference to the CRM Team and the Employee Protection Line, neither of which is currently available (note: the Employee Protection Line has been replaced with the Employee Reporting Line, which is addressed in the Complaint Procedures section of the new Policy);</li> <li>• Failed to list the terms and conditions of employment to which the Policy applies.</li> <li>• Failed to note that good faith employment actions do not violate the Policy.</li> </ul>

Exhibit C

	<p>protected if they engage in harassment, discrimination, or retaliation, which also includes elected or appointed officials, unpaid interns, and volunteers.</p> <ul style="list-style-type: none"> <li>• The Policy no longer references the Collective Risk Management Team (“CRM Team”) or the Employee Protection Line (note: the Employee Protection Line has been replaced with the Employee Reporting Line, which is addressed in the Complaint Procedures section of the new Policy).</li> <li>• The Policy now lists the terms and conditions of employment to which the Policy applies.</li> <li>• This provision provides that good faith employment actions which are not carried out on a discriminatory, retaliatory or harassing basis are not considered violations of the Policy, even if viewed negatively by the employee.</li> </ul>	
<p>3.</p>	<p><b><u>Definitions</u></b>          The definitions were updated or added to conform to the current provisions of state (FEHA) and federal (Title VII) law.</p> <p>The new Policy updated definitions as follows:</p> <ul style="list-style-type: none"> <li>• The definition of a protected classification was updated to comply with current law; and</li> <li>• The definition of harassment was updated, including adding examples and a reference to quid pro quo harassment. The definition was also updated to state that it need not be specifically directed at the victim and can occur between people who share the same protected classification. (See Gov. Code § 12950(b).)</li> </ul> <p>The new Policy added the following definitions:</p> <ul style="list-style-type: none"> <li>• Policy coverage, including adding those new types of employees covered by law (elected or appointed officials, unpaid interns, volunteers);</li> <li>• Retaliation, based on state (FEHA) and federal (Title VII) law;</li> <li>• Bullying and abusive conduct (note: abusive conduct and bullying are not prohibited by law. However, they are included because supervisors must be trained regarding abusive conduct and bullying during their annual harassment, discrimination, and retaliation training per Government Code section 12950.1(b));</li> </ul>	<p><b><u>Definitions</u></b></p> <ul style="list-style-type: none"> <li>• The previous Policy contained a definition of CRM Team. That has been removed, as the CRM Team is no longer utilized.</li> <li>• The previous Policy contained definitions of only CRM, Protected Characteristic, Harassment, and Discrimination.</li> </ul>

Exhibit C

	<ul style="list-style-type: none"> <li>• Protected activity; and</li> <li>• Adverse action.</li> </ul> <p>The new and updated definitions provide additional protection for employees, by demonstrating the types of conduct that is prohibited and violate the Policy.</p>	
<p>4.</p>	<p><b><u>Guidelines for Identifying Harassment</u></b>          We have included several guidelines for identifying harassment that can help both employees and management determine when there has been a violation of the Policy. These guidelines set forth best practices for agencies to help employees and managers be able to identify harassment, even in situations that may have grey areas, and each best practice is compliant with law.</p>	<p><b><u>Guidelines for Identifying Harassment</u></b>          While the previous Policy defined harassment, it did not contain these specific guidelines for identifying harassment.</p>
<p>5.</p>	<p><b><u>Complaint Procedures</u></b>          The complaint investigation procedures have been updated and expanded to comply with the obligation of the City to take all reasonable steps to prevent harassment, discrimination, and retaliation (Gov. Code § 12940(j)(1) and (k)) and the City’s obligation to maintain a procedure for investigation and resolution of complaints (Gov. Code § 12950) as follows:</p> <ul style="list-style-type: none"> <li>• Includes reference to all covered employees, including elected or appointed officials, unpaid interns, and volunteers;</li> <li>• Provides a list of persons to whom employees may make complaints, including that employees may make complaints of violations of the Policy to the 24-hour Employee Reporting Line (the new Policy provides the telephone number for the reporting line and the organization code necessary to utilize the system);</li> <li>• Provides that employees may make a complaint either verbally or in writing, and that they need not follow the chain of command;</li> <li>• Provides that any supervisor or department head who receives the complaint must notify the Personnel Officer immediately, but in no case more than one business day.</li> <li>• Provides a detailed and specific process for investigation of complaints, including preparation a written report of findings by the investigator.</li> <li>• Requires that the City take reasonable steps to protect the complainant from harassment, discrimination, or retaliation and to protect the complainant for retaliation for bringing forth a complaint. (See Gov. Code § 12950(b)(7).)</li> <li>• Provides that the City takes a proactive approach to addressing</li> </ul>	<p><b><u>Complaint Procedures</u></b>          The previous Policy provided for employees to make complaints to the CRM Team, or via the Employee Protection Line. These are either no longer operable (i.e. CRM) or called by the previous name (i.e. the Employee Protection Line has been replaced with the Employee Reporting Line), so the reference to them was either removed or changed accordingly.</p> <p>The previous Policy also contained a brief description of the complaint procedure, but it was not detailed, and did not provide all of the steps in the new Policy.</p> <p>With regard to employee complaints made to the 24-hour Employee Reporting Line, the previous policy provided that employees could report to a similar 24-hour Employee Protection Line. The City changed providers for this service, and the new Policy updates the information necessary for employees to report to the new Employee Reporting Line.</p>

Exhibit C

	<p>and/or preventing harassment, discrimination, and retaliation. If managers become aware of harassment, discrimination, or retaliation, they must take action even if they do not receive a complaint.</p> <ul style="list-style-type: none"> <li>As required by law, provides an employee’s option to have the complaint addressed by the appropriate administrative agencies – Equal Employment Opportunity Commission (EEOC) and Department of Fair Employment and Housing (DFEH), and provides contact information for those agencies. (Gov. Code § 12950(b)(5) and (6).)</li> </ul>	
6.	<p><b><u>Confidentiality</u></b> This provision addresses the City’s goal to provide confidentiality as much as possible, but also makes clear that complete confidentiality is not possible due to the City’s requirement to investigate, address and, if necessary, remedy harassment, discrimination, or retaliation. The Policy also states that the investigation report will not be disclosed, unless necessary.</p>	<p><b><u>Confidentiality</u></b> The previous Policy stated that “The City will protect the privacy of all parties involved in a complaint made pursuant to this policy, except as is necessary to conduct an investigation and/or impose discipline.” It also stated, “Managers/supervisors also shall make every effort to protect the privacy of parties involved in a complaint made pursuant to this policy except as is necessary to conduct an investigation and/or impose discipline.” This is not substantially different from the requirements of the new Policy, but the new Policy is clearer. The new Policy also addresses the confidentiality of the investigation report, and the previous Policy did not.</p>
7.	<p><b><u>Responsibilities of Managers/Supervisors and Employees</u></b> This provision specifically provides for the responsibilities of two groups: (1) managers and supervisors; and (2) employees. This includes obligations related to prohibited acts, reporting of incidents, and training. As with other provisions, this ensures that the City is taking all reasonable steps to prevent harassment, discrimination, and retaliation. (Gov. Code § 12940(j)(1) and (k).)</p>	<p><b><u>Responsibilities of Managers/Supervisors and Employees</u></b> Other than responsibilities related to processing complaints, and employees’ general obligation to refrain from conduct which violates the Policy, the previous Policy did not contain a list of these responsibilities.</p>
8.	<p><b><u>Dissemination of Policy</u></b> This provision requires that the City provide a copy of the Policy to new employees when hired. Further, the Policy will be redistributed when it is updated. State law requires dissemination of the Policy (Gov. Code § 12950(b); 2 Cal. Code Regs. § 11023(c)(11) and (d).)</p>	<p><b><u>Dissemination of Policy</u></b> The previous Policy contained no reference to dissemination of the policy.</p>
9.	<p><b><u>Training</u></b> This provision sets forth the City’s requirements to train supervisors regarding harassment, discrimination, retaliation, and bullying, as required by Government Code section 12950.1 (AB 1825).</p>	<p><b><u>Training</u></b> The previous Policy contained no provision regarding training.</p>