

Date: March 9, 2022

To: Honorable Members of the Ethics Commission

From: Julian Cernuda, Assistant to the City Manager

Subject: **Anti-Harassment and Anti-Discrimination Policies**

The following polices and regulation will be presented by Human Resources staff during the March 9, 2022 meeting:

- Policy 2.1 Discrimination Complaints (Attachment A)
- Policy 2.2 Unlawful Harassment Complaints (Attachment B)
- Administrative Regulation (AR) 8-10 Policy Regarding Sexual Harassment (Attachment C)

If you have any questions, please contact Julian Cernuda, Assistant to the City Manager, at (562) 570-6154 or via email at Julian.Cernuda@longbeach.gov.

ATTACHMENT

CC: APRIL WALKER, ADMINISTRATIVE DEPUTY CITY MANAGER
TAYLOR ANDERSON, DEPUTY CITY ATTORNEY
JONATHAN NAGAYAMA, CITY CLERK ANALYST



CITY OF LONG BEACH

PERSONNEL POLICIES + PROCEDURES

Policy 2.1

Discrimination Complaints

Effective Date:	June 19, 1992
Last Revision Date:	March 10, 2015

I. POLICY STATEMENT

It is the policy of the City of Long Beach to actively promote equal employment opportunity to all persons on all matters affecting City employment. The City of Long Beach is committed to a policy of non-discrimination in employment practices, and reaffirms its commitment that no person shall benefit or be discriminated against on the basis of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sexual orientation, genetic information, gender, gender expression, gender identity, military and veteran status or on any other basis inconsistent with Federal or State statutes, the City Charter, or City ordinances, resolutions, rules, or regulations.

II. GENERAL INFORMATION

The following procedure is intended to facilitate the timely resolution of complaints of unlawful discrimination. It is important that complainants be advised of their rights to file a complaint with an external regulatory agency. They should, however, be encouraged to first utilize the City's internal procedures to seek resolution.

III. PROCEDURES

There are several administrative processes available to City employees, unpaid interns, volunteers, job applicants, and third parties, for resolution of an informal or formal complaint. A complaint may be presented either to a departmental Equal Employment Opportunity Counselor, appropriate supervisor/manager, or the City's Equal Employment Opportunity Office.

An informal complaint differs from a formal complaint in that a complainant may seek assistance from the Department or the Equal Employment Opportunity Office in the Department of Human Resources. The investigation is limited and generally narrow in scope, and resolution is usually attempted through conciliation.

A complainant may elect to immediately file a formal complaint, which is only handled through Civil Service or the Equal Employment Opportunity Office, with the assistance of the department. A formal complaint generally requires a more extensive investigation and questioning of witnesses. Either the Civil Service Commission or the Equal Employment Opportunity Officer makes recommendations for resolution of a formal complaint.

A classified City employee or job applicant may choose to present a complaint to the Civil Service Commission. The commission may then elect to either investigate the complaint as it relates to the Civil Services Rules and Regulations or refer it to the City's Equal Employment Opportunity Office for investigation.

These processes are designed to administratively resolve complaints in a timely manner, and minimize the financial impact upon both the complainant and the City.

A. Informal Complaint

Each department head designates an Equal Employment Opportunity Counselor who acts as liaison between management and the department's employees. The Counselor serves as the primary contact person on equal employment issues, and assists employees in the resolution of problems and concerns related to equal employment opportunity matters.

1. Department Level

Whenever possible, complaints should be handled at the departmental level. Employees, unpaid interns and volunteers should be made aware of the name of the Equal Employment Opportunity Counselor within their Department. Any employee, unpaid intern or volunteer who feels she/he has been subjected to illegal discrimination should immediately advise either the Department's Equal Employment Opportunity Counselor or an appropriate supervisor/manager. Timeliness in handling a complaint indicates to the complainant's concerns are being taken seriously.

No complainant shall fear reprisal or retaliation because of reporting an alleged act of discrimination.

To the extent possible, it is important that strict confidentiality be maintained. Information pertaining to the complaint shall be maintained in a separate confidential file. Employees are allowed to use scheduled work hours in order to

meet with their Equal Employment Opportunity Counselor or appropriate supervisor/manager.

The City's Equal Employment Opportunity Officer should be advised of all complaints, whether or not assistance is required. The City's Equal Employment Opportunity Officer will notify the City Attorney's Office of all complaints.

After investigation, should the Equal Employment Opportunity Counselor or supervisor/manager conclude that an employee, unpaid intern or volunteer was subjected to discriminatory treatment or retaliation, she/he is to advise the Department Head and the City's Equal Employment Opportunity Officer of the proposed resolution to the situation. When finalized, the resolution is to be presented to the employee, unpaid intern or volunteer, in writing, and a copy shall also be forwarded to the City's Equal Employment Opportunity Officer.

2. Equal Employment Opportunity Officer

An employee, unpaid intern or volunteer may choose to discuss a complaint with the City's Equal Employment Opportunity Officer, rather than within his or her own Department. If so, she/he may obtain an appointment during scheduled work hours and, after advising his/her supervisor of the scheduled appointment, meet with the City's Equal Employment Opportunity Officer.

B. Formal Complaint

A formal complaint generally results from an inability to resolve a complaint at the informal level. A formal complaint may either be handled through the Equal Employment Opportunity Office or the Civil Service Commission, as it relates to the Civil Service Rules and Regulations.

A complainant may elect to pursue his/her complaint through the Equal Employment Opportunity Office without first pursuing an informal resolution. In this case, the Equal Employment Opportunity Officer/designee shall contact the City Attorney's Office prior to contacting the complainant to arrange an interview.

The Equal Employment Opportunity Officer acts as a neutral third party and is responsible for determining the facts. The City Attorney determines whether illegal discrimination occurred. The role of the Equal Employment Opportunity Officer is not to serve as an advocate of either the City or the complainant.

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In order to seek resolution, the Department and any relevant witnesses shall be contacted. Upon completion of the findings, the Equal Employment Opportunity Officer shall contact the Department, advising them of the findings and the recommended resolution of the complaint.

The Equal Employment Opportunity Office shall advise the complainant, in writing, of the findings and resolution. A copy of the resolution should be sent to the departmental Equal Employment Opportunity Counselor.

If dissatisfied with the results at the formal complaint stage, complainants are informed that they may file a complaint with the California Department of Fair Employment and Housing (DFEH), the U. S. Equal Employment Opportunity Commission (EEOC), or other appropriate agency.

C. Outside Regulatory Agencies

The City’s Equal Employment Opportunity Office is responsible for all responses to complaints from outside regulatory agencies. Should a Department receive a complaint directly, it is to immediately forward the complaint to the Equal Employment Opportunity Office.

Upon receipt of a complaint, the Equal Employment Opportunity Office will notify the City Attorney’s Office and contact the Department, providing both with a copy of the complaint. The Department will respond to the allegations contained in the complaint and return it, via the City Attorney’s Office, to the Equal Employment Opportunity Office within the time specified. The Equal Employment Opportunity Officer/designee will then prepare the City’s response.

In preparing the City’s response, it may be necessary to contact individuals directly involved in the complaint or individuals who may be able to provide additional information.

Once the response is complete, it will be sent to the City Attorney’s Office for review. When approval is obtained, the response is forwarded to the appropriate regulatory agency. A copy of the City’s response is sent to the Department for record keeping purposes.

IV. RELATED INFORMATION (IF APPLICABLE)

Personnel Policies & Procedures, Policy 2.2: Unlawful Harassment Complaints
Administrative Regulations, AR8-10: Policy Regarding Sexual Harassment

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V. REFERENCES

- A. Equal Employment Opportunity Program Plan: Section - Responsibility; Equal Employment Opportunity Office

 - B. Civil Service Rules and Regulations: Article I, Section 2 - Non-Discrimination
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CITY OF LONG BEACH

PERSONNEL POLICIES + PROCEDURES

Policy 2.2	Unlawful Harassment Complaints
	Effective Date: November 5, 1992 Last Revision Date: March 10, 2015

I. POLICY STATEMENT

It is the policy of the City of Long Beach to actively promote equal employment opportunity to all persons on all matters affecting City employment. The City of Long Beach reaffirms that no person shall be harassed on the basis of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sexual orientation, genetic information, gender, gender expression, gender identity, military and veteran status or on any other basis inconsistent with Federal or State statutes, the City Charter, or City ordinances, resolutions, rules or regulations.

II. DEFINITIONS

A. Unlawful Harassment

Harassment, which creates a hostile, intimidating, or offensive work environment, and occurs because of an employee's, unpaid intern's or volunteer's protected status (i.e. race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sexual orientation, genetic information, gender, gender expression, gender identity or military and veteran status), is unlawful.

B. Sexual Harassment

Sexual harassment is a form of sex discrimination. It is conduct of a sexual nature, which is "unwelcome", not asked for, and not returned.

Sexual harassment can consist of any form or combination of verbal, non- verbal, visual, or physical conduct. It need not be explicit, or even specifically directed at an individual. Such behavior includes, but is not limited to: sexually offensive comments, offers, slurs, innuendoes, leering, ogling, posters, cartoons, or drawings; physical contact such as touching, pinching, or brushing against another body; or demands for sexual favors.

Unwelcome sexual conduct which is sufficiently severe and pervasive as to create a hostile, intimidating, or offensive work environment, or when an employment decision

or selection into a training program leading to employment is based on whether an employee, unpaid intern or volunteer submitted or refused to submit to some form of sexual conduct, is considered sexual harassment.

The following are three criteria, which shall be utilized as guidelines for determining whether or not certain conduct constitutes unlawful sexual harassment:

- Submission to the conduct is made either as an explicit or implicit condition of employment; or,
- Submission to or rejection of such conduct is the basis for employment decisions affecting an individual, such as, continued employment or decisions affecting pay, benefits, and/or advancement opportunities, or other terms and conditions of employment; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

C. Retaliation

Retaliation against an individual for having initiated a complaint of harassment or discrimination is considered unlawful harassment. To discipline, transfer, shun, or deny a promotional opportunity, training, or assignment to an employee, unpaid intern or volunteer, after she/he has filed a complaint, may be viewed as retaliation.

III. COMPLAINT RESOLUTION PROCESS

The following procedures are intended to facilitate the timely resolution of complaints of unlawful harassment. They are designed to administratively resolve complaints in a timely manner, ensure that appropriate action is taken, and minimize the financial impact upon both the complainant and the City.

A City employee, unpaid intern, volunteer, job applicant, or third party, such as a member of the public, has several administrative processes available to her/him for resolution of a complaint. An individual may present a complaint to an appropriate supervisor/manager, a departmental Equal Employment Opportunity Counselor/designee, or the City's Equal Employment Opportunity Office in the Department of Human Resources.

Each Department head designates an Equal Employment Opportunity Counselor who acts as liaison between management and the department's employees. The counselor serves as the department's primary contact person on equal employment opportunity issues, and assists employees in the resolution of problems and concerns related to equal employment opportunity matters.

Upon request, employees shall be permitted to use scheduled work hours in order to meet with their Equal Employment Opportunity Counselor, appropriate supervisor/manager, or the City's Equal Employment Opportunity Office. No employee, unpaid intern or volunteer shall fear reprisal or retaliation because of reporting an alleged act of harassment.

It is important that complainants be advised of their rights to file a complaint with an external regulatory agency (see Section IV-C). They should, however, be encouraged to first utilize the City's internal procedures to seek resolution.

IV. PROCEDURES

Any employee, unpaid intern or volunteer, who believes she/he has experienced any type of unlawful harassment, should immediately notify the appropriate supervisor, manager, departmental Equal Employment Opportunity Counselor, or the City's Equal Employment Opportunity Office.

A. Departmental Investigation

1. Upon being made aware that an issue exists regarding harassment, a Department shall immediately contact the City's Equal Employment Opportunity Office for direction, prior to proceeding with any investigation, and before taking any action. The City's Equal Employment Opportunity Office will notify the City Attorney's Office. This will help verify that the policy is being correctly interpreted and the procedures are properly followed. It will also provide consistency in the City's response to allegations regarding unlawful harassment and ensure that immediate and appropriate action is taken.

In the event a complaint is filed with the Equal Employment Opportunity Commission (EEOC) or the Department of Fair Employment and Housing (DFEH), by following this procedure, the Equal Employment Opportunity Officer will be fully informed and in agreement with all prior actions taken.

2. With the concurrence of the Equal Employment Opportunity Office, a Department shall proceed with an investigation.

During this entire process, it is critical that, to the extent possible, strict confidentiality be maintained. Any individual contacted during an investigation is to be instructed to maintain confidentiality regarding all matters related to the complaint. All records pertaining to the complaint are strictly confidential, and are to be maintained apart from any personnel file.

As part of the investigation, the complainant must advise the Department what she/he would consider as a resolution of the complaint.

3. Upon completion of an investigation and prior to drawing any conclusion, a Department shall again contact the Equal Employment Opportunity Office. In cooperation with the Equal Employment Opportunity Office, the course of action will be determined, including any corrective action, if appropriate.
4. Upon completion of the corrective action, a Department shall notify the complainant, complete records, and report the actions taken to the Equal Employment Opportunity Office.

B. Equal Employment Opportunity Office Investigation

The Equal Employment Opportunity Office acts as a neutral third party in a complaint, and is responsible for investigating, examining the facts, and determining whether unlawful harassment occurred. The role of the Equal Employment Opportunity Office is not to serve as an advocate of either the City or the complainant, but to determine the truth of the matter and protect the City against liability.

1. An employee, unpaid intern, volunteer or job applicant always has the option of filing a complaint directly with the City's Equal Employment Opportunity Office.

An employee shall be allowed to use scheduled work hours for meeting with the Equal Employment Opportunity Officer/designee.

2. The Equal Employment Opportunity Office shall notify the City Attorney's Office of all complaints to ascertain if an investigation is warranted and/or approved. If approved, the City Attorney determines whether the Department, the Equal Employment Opportunity Office, or an outside consultant will conduct the investigation into the allegations.
3. The Equal Employment Opportunity Office shall contact and advise the Department Head that an employee/unpaid intern/ volunteer /applicant has filed

an unlawful harassment complaint. The Department Head is notified of the Attorney-directed course of action.

4. In order to seek resolution, any person(s) having knowledge of the incident(s) may be contacted directly by the Equal Employment Opportunity Officer/designee. When this occurs, and if necessary, the Equal Employment Opportunity Office will notify the appropriate Department Manager of the contact and the relevant information received from the employee/unpaid intern/volunteer /applicant (s).

Because an investigation may ultimately be conducted by an outside regulatory agency, it is imperative that the Equal Employment Opportunity Office receive all comments uncensored, and as stated by the employee/unpaid intern/volunteer/applicant (s). Under no circumstances will information be altered or withheld. This could impede the City's ability to properly respond to the charges and ultimately result in additional liability to the City.

5. Upon completion of the investigation, the Equal Employment Opportunity Office shall contact and advise the Department of the results and the appropriate corrective action that will be recommended to the City Manager/designee.

Following the completion of any corrective action, the Department is to advise the Equal Employment Opportunity Office of the actions taken. The Equal Employment Opportunity Office shall then inform the complainant of the resolution and closure of the complaint. The complainant shall also be advised of her/his right to file a complaint with an external regulatory agency.

C. Outside Regulatory Agencies

An individual may elect to file a complaint with an outside regulatory agency. The state agency is the California Department of Fair Employment and Housing (DFEH) and the federal agency is the U. S. Equal Employment Opportunity Commission (EEOC).

1. The City's Equal Employment Opportunity Office is responsible for handling and responding to all complaints filed with the outside regulatory agencies. Should a Department receive a complaint directly, it should immediately forward it to the Equal Employment Opportunity Office.

Once a complaint is received from an outside agency, communication with the individual/complainant ceases and all further communication takes place between the Equal Employment Opportunity Office and the regulatory agency. It is the

responsibility of the Equal Employment Opportunity Office, on behalf of the City, to prepare a response to the complaint.

2. Upon receipt of a complaint, the Equal Employment Opportunity Office provides notification to the City Attorney's Office and the Department Head, which includes a copy of the complaint. The Department assigns an individual to respond to the allegations contained in the complaint, provides any additional information that might assist in preparing the City's response, and returns it to the Equal Employment Opportunity Office within the time specified.
3. Upon receipt of the Department's response, the Equal Employment Opportunity Office prepares the City's response to the regulatory agency. As with internal investigations, individuals who may be able to provide additional information or clarification may be contacted directly, following notification of appropriate Department management.
4. Once the City's response is complete, it is sent to the City Attorney's Office for review. When concurrence is obtained, the response is forwarded to the appropriate regulatory agency and a copy of the City's response is sent to the Department for record keeping purposes.
5. Prior to the resolution of a complaint, agencies often contact the Equal Employment Opportunity Office and request additional information and/or meetings with specific individuals. This will be coordinated through the Equal Employment Opportunity Office. There should not be any contact between a Department and the regulatory agency, without the prior knowledge by the Equal Employment Opportunity Office and the Approval of the City Attorney's Office.

Should a Department or individual receive contact from an agency, attorney, or union representing a complainant, they are to refer them to the Equal Employment Opportunity Office.

V. RELATED INFORMATION

Personnel Policies & Procedures, Policy 2.1: Discrimination Complaints
Administrative Regulations, AR8-10: Policy Regarding Sexual Harassment

Effective Date: November 5, 1992

Last Revision Date: March 10, 2015

Page **7** of **7****VI. REFERENCES**

- A. Equal Employment Opportunity Program Plan: Section - Responsibility Equal Employment Opportunity Office
 - B. Civil Service Rules and Regulations: Article I, Section 2 - Non-Discrimination
 - C. Civil Rights Act of 1964, as amended
 - D. Fair Employment & Housing Act
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Administrative Regulations

Number AR8-10
Issue 2

Subject: Policy Regarding Sexual Harassment.

I. PURPOSE

The purpose of this regulation is to set forth City policy which defines and prohibits sexual harassment. In addition, it provides the steps necessary to take corrective action.

II. SCOPE

This regulation is applicable to all City departments and offices directly responsible to the City Manager. However, elected offices and semi-autonomous departments are urged to comply with the intent of this regulation which is relevant to all City operations.

III. DEFINITION

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Such behavior includes, but is not limited to, the following: sexually offensive comments, offers, slurs, posters, cartoons, or drawings; physical contact such as touching, pinching, or brushing against another's body; or demands for sexual favors.

The following are three criteria which shall be utilized as guidelines for determining whether or not certain conduct constitutes unlawful sexual harassment.

- Submission to the conduct is made either as an explicit or implicit condition of employment; or,
- Submission to or rejection of such conduct is the basis for employment decisions affecting the individual, such as, continued employment or decisions affecting pay, benefits, and/or advancement opportunities; or
- Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Retaliation is also illegal and shall not be tolerated. Retaliation occurs when adverse action is taken against the complaining party because of the sexual harassment charge.

IV POLICY

It is the policy of the City of Long Beach to provide a work environment free from all forms of illegal discrimination. In keeping with this policy, sexual harassment, which constitutes sex discrimination (under Section 703 of Title VII), will neither be condoned nor tolerated. All complaints will be promptly investigated and appropriate action taken. Employees who make complaints will not be harassed for filing a complaint.

V. PROCEDURE

Any employee who experiences sexual harassment should make it clear to the offending party that such behavior is offensive, unwelcomed, and contrary to City policy. Further, an employee should immediately report such conduct to his or her supervisor, a higher level supervisor, or a management person,

whichever is appropriate. The employee always has the right to report such conduct to the Affirmative Action Officer. If such conduct is reported to the Department, they will contact the Affirmative Action Office. Based on the severity of the incident(s), it will also be reported to the City Manager, or in the case of elected or independent offices, to other higher authority.

Any employee who believes she or he is a victim of sexual harassment by a co-worker, supervisor, City agent, or the public should promptly report the facts of the incident to an appropriate supervisor. To the extent possible the information will be held in confidence. No employee should fear reprisal or retaliation because of reporting to the proper authorities an allegation of sexual harassment.

Supervisors shall immediately report claims of sexual harassment to an appropriate management person. All claims of sexual harassment shall be immediately investigated, and prompt corrective action will be taken when warranted. Such action may include discipline up to and including termination of the offending employee or employees.

VI. NATURE OF INVESTIGATION

1. Investigation at the Department Level

To the extent possible, charges of sexual harassment should be handled at the department level using the same procedures as other disciplinary issues. However, all sexual harassment charges and subsequent investigations shall be immediately brought to the attention of the department head by the appropriate supervisor or manager. The Personnel Department shall be contacted to provide necessary assistance.

2. Investigations Conducted Outside the Department

In some cases, a department head may wish to have a sexual harassment charge investigated by an impartial party from outside the department. In these instances, the Director of Personnel should be contacted to determine how such investigations can be conducted. The Director of Personnel shall then recommend to the City Manager the appropriate form of investigation.

Since investigations of sexual harassment are often delicate, the Personnel Department will be available for advice and assistance at any time during the investigation.

VII. PROMULGATION

All department heads are directed to make the contents of this administrative regulation known to all employees in their departments; and to provide the same information to all new employees in the future.