



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Leo L. Mingle, Jr., Assistant City Manager

SUBJECT: Consideration and possible action to adopt Resolution No. 16-XX – A Resolution prohibiting workplace harassment.

DATE: April 11, 2016

EXECUTIVE SUMMARY

The proposed Resolution will establish policy prohibiting workplace harassment, including informal complaint procedures and formal grievance procedures.

RECOMMENDATION TO CITY COUNCIL

- 1) Adopt Resolution No. 16-XX; or
- 2) Alternatively, discuss and take other action related to this item.

FISCAL IMPACT

There is no fiscal impact at this time.

DISCUSSION

The City Manager will implement the policy.

In compliance with Title VII of the Civil Rights Act of 1964, the California Government Code, and regulatory guidelines of the Equal Employment Opportunity Commission, and the California Fair Employment and Housing Commission, the policy prohibits workplace harassment and extends the prohibition to full and part time employees, workplace volunteers and un-paid interns, and applicants for employment. It also defines harassment and provides examples of verbal, physical, and visual harassment and harassment of a sexual nature.

The policy also provides direction as to the dissemination of the policy to all employees and workplace volunteers, and requires each to know, understand, and comply with the policy.

ATTACHMENT

Resolution No. 16-XX.....2

CITY OF BELLFLOWER

RESOLUTION NO. 16-XX

A RESOLUTION PROHIBITING WORKPLACE HARASSMENT

THE CITY COUNCIL RESOLVES AS FOLLOWS:

SECTION 1. The City Council finds and declares as follows:

A. **Purpose.** To establish a policy 1) prohibiting harassment in the workplace, 2) prohibiting retaliation for harassment complaints made in good faith, and 3) establishing formal and informal procedures for investigating and resolving workplace harassment incidents.

B. **Policy.** It is the policy of the City of Bellflower to prohibit harassment of an employee, workplace volunteer, intern, or applicant for employment by a supervisor, management employee, co-worker, workplace volunteer, intern, or third party on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sexual orientation, gender identity, military or veteran's status, citizenship, primary language, immigration status, pregnancy, sex or age, or retaliation for making complaints of harassment, is prohibited by law and will not be tolerated.

1. Harassment as defined above violates Title VII of the Civil Rights Act of 1964, the California Government Code, and regulatory guidelines of the Equal Employment Opportunity Commission, and the California Fair Employment and Housing Commission.
2. Any act of harassment and any act of retaliation as described above is a violation of this policy and will generally constitute a legitimate non-discriminatory business reason and reasonable cause for disciplinary action up to and including termination of employment.
3. All employees should report any instance of harassment to their immediate supervisor, department head, or the Human Resources and Risk Manager.
4. Supervisors, managers and department heads must report any instance of harassment to the Human Resources and Risk Manager.

C. **Definitions.** Where used herein:

1. "Harassment" means any conduct which is unwelcome, hostile, or abusive and is based on race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sexual orientation, gender identity, military or veteran's status, citizenship, primary language, immigration status, pregnancy, sex or age. Harassment is a form of discrimination. Harassment includes, without limitation, the following:
 - a. Verbal harassment, including use of epithets, derogatory comments or slurs on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sexual orientation, gender

identity, military or veteran's status, citizenship, primary language, immigration status, pregnancy, sex or age.

- b. Physical harassment, including assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sexual orientation, gender identity, military or veteran's status, citizenship, primary language, immigration status, pregnancy, sex or age.
 - c. Visual forms of harassment, including derogatory posters, notices, bulletins, cartoons, or drawings on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sexual orientation, gender identity, military or veteran status, citizenship, primary language, immigration status, pregnancy, sex or age.
 - d. Sexual favors, including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is conditioned upon employment benefit, unreasonably interferes with an individual's work performance or creates an offensive work environment.
2. "Retaliation" occurs when an employee who has made a good faith complaint of harassment is subjected to a material adverse action, including, without limitation, termination, loss of promotion, demotion, or being subjected to hostile behavior from other employees.
 3. "Third party" means any person not an employee or workplace volunteer or applicant for employment, including consultants and contractors doing business with the City, employees of other public agencies, and members of the public in general.

D. Informal Complaint Procedure. Any employee, workplace volunteer, intern or applicant for employment who has been harassed on the job must inform their supervisor, department head or the Human Resources and Risk Manager. To accommodate the unique nature of harassment complaints, a written complaint process is provided for the primary purpose of resolution of a complaint at the earliest possible date. All involved parties will be accorded due process. Elements of this process are:

1. The Human Resources and Risk Manager, as directed by the City Manager, will receive written harassment complaints.
2. All complaints will be fairly, timely, and thoroughly investigated by an impartial qualified person. The City will document and track the complaint's progress.
3. There will be a timely response and resolution to the investigation.
4. The City Manager will authorize investigation of the written complaint. The investigation may entail collection of documents from the complaining person

and other sources, reviews of emails, photographs, and other documents in the record, and interviews of persons with knowledge of the facts. The City Manager will review factual information collected to determine whether the alleged conduct constitutes harassment, giving consideration to the record as a whole and the totality of circumstances, including the nature of the verbal, physical, visual or sexual favor aspect of the conduct described in the complaint and the context in which the alleged incidents occurred, and take and/or authorize appropriate action.

5. The City will keep complaints and investigations confidential to the extent possible.
6. Retaliation against an employee, workplace volunteer, intern, or applicant for employment who has made a complaint of harassment in good faith or participated in the investigation of a complaint violates this policy.
7. If the investigation finds misconduct, appropriate remedial measures will be taken. Conclusions will be based on the evidence collected in the investigation.
8. Upon completion of the informal complaint process, the person who made the complaint will be provided with written notice setting forth, generally, the conclusions reached by the City and the remedial measures, if any, that will be taken.

E. Formal Grievance Process. Formal grievance procedures of the City are available for resolution of complaints alleging harassment on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, sexual orientation, gender identity, military or veteran status, citizenship, primary language, immigration status, pregnancy, sex or age, or harassment and retaliation for making such complaints, if the complaint is not adjusted to the satisfaction of the employee, workplace volunteer, intern or applicant for employment in the informal process. Any employee, workplace volunteer, intern, or applicant for employment must notify the City Manager, in writing within five (5) working days of the completion of the informal process of his/her desire to have the formal grievance process initiated.

1. **Extension of Time Requirements** - Time limits specified in the formal grievance procedures may be extended if informal complaint procedures for a harassment complaint were initiated within the applicable time limits for filing a formal complaint. In these instances, if the complaint on the above basis is not adjusted to the satisfaction of the employee, the time limits for filing a formal grievance should begin as of the date of notification of action taken by the Department Head. If the employee, workplace volunteer, intern, or applicant for employment did not initiate pre-grievance procedures within the time limits of the applicable normal grievance procedure, the City Manager or his designee may recommend extension of the filing deadline for a formal complaint. It should be reemphasized that the City wishes to know of any complaint alleging harassment as soon as possible after the conduct which is the subject of the complaint has occurred.

2. **Waiver of Informal Step** - Preliminary informal steps to resolve a grievance may, depending on the circumstances of the complaint, be waived by the City Manager and the formal grievance initiated at an appropriate higher step in the process.

F. Retaliation. No employee, workplace volunteer, intern or applicant for employment who makes a complaint of harassment in good faith will be retaliated against for making such a complaint or for participating in the investigation of such a complaint.

G. Dissemination of Policy. Each employee, workplace volunteer, and intern is responsible for knowing, understanding, and fully complying with the provisions of this policy.

1. A copy of this policy will be provided to each new employee, workplace volunteer, and intern on their first day of work and each will sign a receipt for the policy which will be placed in their individual personnel file.
2. A copy of this policy will be provided to each regular employee, workplace volunteer, and intern in August of each year, and to each seasonal employee, workplace volunteer, or intern when they return to active status, and each will sign a receipt for the policy which will be placed in their individual personnel file.
3. All employees, workplace volunteers, and interns who were employed by the City on April 1, 2016, will be provided with a copy of this policy, and each will sign a receipt for the policy which will be placed in their individual personnel file.
4. Copies of this policy will be posted on employee bulletin boards throughout the City.

SECTION 2. The City Manager will establish policies and procedures as necessary to carry out this policy.

SECTION 3. The Mayor, or presiding officer, is hereby authorized to affix his signature to this Resolution signifying its adoption and the City Clerk, or her duly appointed deputy, is directed to attest thereto.

SECTION 4. This Resolution will become effective immediately upon adoption.

PASSED, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BELLFLOWER THIS ____ DAY OF _____ 2016.

Dan Koops, Mayor

ATTEST

Mayra Ochiqui, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, Interim City Attorney