

ORDINANCE NO. 3578 C.S.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY

AMEND CITY CODE SECTION 25-3.03 HARASSMENT/DISCRIMINATION POLICY

SECTION 1: WHEREAS, it is the policy of the City to ensure compliance with state regulations that prohibit discrimination, harassment, and retaliation in the workplace; and

WHEREAS, the City desires to maintain a zero-tolerance policy of discrimination, harassment, and retaliation; and

WHEREAS, the City desires to maintain a workplace free from abusive conduct; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the draft ordinance does not involve the approval of a "project" because the ordinance and its implementation do not result in a direct or indirect physical change in the environment or in a reasonably foreseeable indirect physical change in the environment. (See Pub. Resources Code Section 21065: CEQA Guidelines Section 15357, 15377, 15378,)

NOW THEREFORE, the Monterey City Council declares as follows:

SECTION 2: Monterey City Code, Chapter 35, Section 3.03 is hereby amended to read as follows:

"25-3.03 Harassment / Discrimination/ Retaliation / Abusive Conduct/Bullying Policy

a. Policy

The City of Monterey is committed to providing a work environment that is free of discrimination, harassment, abusive conduct/bullying, and retaliation and will take all reasonable steps to prevent discrimination, harassment, abusive conduct/bullying and retaliation from occurring. This rule describes the City regulations designed to achieve this goal.

The City will not tolerate or condone discrimination, harassment, bullying/abusive conduct or retaliation prohibited by law, or as defined by this policy, of employees, applicants, unpaid interns, and volunteers, by any persons, including supervisors, co-workers, and third-parties. This policy prohibits retaliation against individuals who report a violation of this policy or who assist in the City's investigation of a complaint made under this policy. The City will take disciplinary action, up to and including termination, against an employee who violates this policy.

b. Protected Class Categories

Protected Class categories under Federal, State, or local law include race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex (includes, pregnancy, childbirth, breastfeeding and/or related medical conditions), gender, gender identity, gender expression, age, sexual orientation, and/or military and veteran status.

c. Prohibited Conduct

1. Quid Pro Quo

Quid pro quo is one form of sexual harassment. Quid pro quo occurs when: (1) an employee is subject to unwelcome sexual advances, conduct, or comments by a supervisor or other authority over the employee; (2) the harassment is based upon sex; and (3) the employee's reaction to the complained of harassment affects tangible aspects of the employee's compensation, terms, conditions, or privileges of employment or negatively impacts the employee's ability to perform their job.

2. Hostile Work Environment: Harassment and Discrimination

A work environment is unlawfully hostile if an employee is subjected to unwanted harassing or discriminatory conduct associated with a person's protected class status. The City has a zero-tolerance policy for harassing or discriminatory conduct and may discipline an employee for engaging in any type of harassment, including harassment that does not rise to the level of severe or pervasive. Employees are also protected from the creation of a hostile work environment based on witnessing such harassing or discriminatory conduct, even if the employee is not personally subjected to it.

While it is not possible to list all those circumstances that may constitute a hostile work environment based on discrimination or harassment, the following are some examples of conduct prohibited under the City's policy:

- Verbal conduct - such as threats, epithets, derogatory comments based on a protected class status; derogatory or suggestive comments about a person's body or dress; cursing, swearing, or slurs made based on a person's protected class; unwanted sexual advances, invitations, sexually degrading words used to describe an individual; or suggestive or obscene letters, notes, e-mails, invitations, or jokes.
- Physical conduct - such as assault, unwanted touching, impeding or blocking movement, and/or physical interference with normal work or movement made on the basis of a person's protected class status.
- Visual conduct - making derogatory gestures; leering; or displaying derogatory posters, photographs, videos, notices, bulletins, cartoons, e-mails, drawings, or other harassing depictions on the basis of a person's protected class status.
- Sexual favoritism - Favoritism or preferential treatment in the terms and conditions of employment on the basis of sexual conduct, sexual attraction, appearance, and/or physical characteristics or attributes.

In addition to the examples above, a hostile work environment can arise from alienating employees based on a protected class status, such as giving employees the silent treatment, or unreasonably refusing to make eye contact or to acknowledge an employee. Hostile work environment can also arise for unreasonably criticizing an employee's work performance based on perceived or known protected class status.

3. Retaliation

Retaliation is taking adverse employment action against any employee for engaging in protected activity. Protected Activity may include, but is not limited to, any of the following:

- Reporting any incidents of harassment or discrimination, or perceived discrimination, harassment, or abusive conduct/bullying;
- Participating in any investigation relating to a complaint of discrimination, harassment, or abusive conduct/bullying;
- Filing a complaint with a federal or state agency;
- Participating in or cooperating with a federal or state enforcement agency that is investigating alleged unlawful activity, discrimination, harassment, or abusive conduct/bullying;
- Testifying as a party or witness regarding alleged unlawful activity, discrimination, harassment, or abusive conduct/bullying;
- Associating with another employee who is engaged in a Protected Activity;
- Making or filing a complaint regarding alleged unlawful activity, discrimination, harassment, or abusive conduct/bullying; or
- Calling a governmental agency's (such as DFEH or EEOC) "Whistleblower hotline."

Adverse Action may include, but is not limited to, any of the following:

- Real or implied threats of intimidation to attempt to or prevent an individual from reporting alleged wrongdoing;
- Refusing to hire an individual because of Protected Activity;
- Denying promotion to an individual because of Protected Activity;
- Taking any form of disciplinary action because of Protected Activity; or
- Altering work schedules or work assignments because of Protected Activity.
- An employee is protected from retaliation even if the allegations complained of are found not to be a violation of this policy.

4. Abusive Conduct/Bullying

In addition to prohibited harassment and discrimination based on protected class status, the City is committed to protecting its employees from abusive conduct/bullying. Abusive conduct/bullying means, as defined in Government Code section 12950.1, as may be amended from time to time, "...conduct of an employer or employee in the workplace, with malice, 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. A single act shall not constitute abusive conduct, unless especially severe and egregious." Abusive conduct/bullying may occur in, but is not limited to, the following forms:

- Verbal behavior, which may include written or e-mail communications, ridiculing or maligning a person or his/her family; persistent name calling which is hurtful, insulting or humiliating; using a person as the target of jokes; abusive and offensive remarks;
- Physical behavior, such as pushing, shoving, kicking, poking, tripping, assaulting, or threatening physical assault; or damaging a person's work area or property;
- Gestures, such as non-verbal, threatening or insulting movements or excessive staring; and
- Exclusion, such as socially or physically excluding or isolating a person from work-related activities.

d. Reporting Discrimination, Harassment, Abusive Conduct/Bullying or Retaliation

Any City employee, applicant, unpaid intern, volunteer, and independent contract who becomes aware of any discrimination, harassment, or retaliation prohibited by this policy shall report it immediately to the employee's supervisor, Department Head or Human Resources Director.

Reports may be made orally or in writing, free of requirements as to form, however, the City requests that a complaint be as detailed as possible and include the names of individuals involved and names of any witnesses, and a list of the allegations determined by the employee to violate this policy, including direct quotations, as much as possible, when language is relevant.

Supervisors receiving reports under this policy must report it immediately to the Department Head or Human Resources Director.

All employees are responsible for reporting conduct prohibited by this policy. The responsibility to report conduct prohibited by this policy arises even if the conduct is directed toward someone else and even if the person toward whom it is directed does not want it reported.

Because reports of conduct prohibited by this policy will be treated as serious charges, the making of a deliberately false complaint may subject the maker to disciplinary action. Employees, however, will not be disciplined for making a complaint under this policy that is not

found to be a violation of this policy so long as the employee did not deliberately make a false complaint.

Under no circumstances will a report be required or expected to be made to the person who engaged in the misconduct that is subject to this report. Under those circumstances, the employee may also report pursuant to the following procedures.

1. Complaint Regarding Department Head (Other than City Manager, City Attorney, or Human Resources Director)

Any time a department head is the accused perpetrator of an incident of discrimination, harassment, abusive conduct/bullying or retaliation under the definitions of this policy, the complaint shall be made to the Human Resources Director who shall investigate the complaint and make a recommendation to the City Manager for the disposition of the complaint.

2. Complaint Regarding City Manager/City Attorney

Any time the City Manager or City Attorney is the accused perpetrator of an incident of discrimination, harassment, abusive conduct/bullying or retaliation under the definitions of this policy, a complaint shall be made to the Department head or Human Resources Director, who shall hire outside counsel to investigate the allegations. After the investigation, outside counsel will make a recommendation to the City Council regarding the disposition of the complaint.

3. Complaint Regarding Human Resources Director

Any time the Human Resources Director is the accused perpetrator of an incident of discrimination, harassment, abusive conduct/bullying or retaliation under the definitions of this policy, the complaint shall be made to the Department head or Assistant City Manager, who shall assume the investigatory role and make recommendations to the City Manager for the disposition of the complaint.

4. Complaint Regarding Member of Council

If a member of the City Council is the accused perpetrator of an incident of discrimination, harassment, abusive conduct/bullying or retaliation under the definitions of this policy, the complaint regarding the Council Member shall be made to the City Attorney or Human Resources Director, who shall retain outside counsel to investigate the allegations and file a recommendation to the City Council for action on the complaint.

- e. Investigation

The City will investigate all reported violations of this policy in a timely and impartial manner. The investigation must be prompt, full, and fair. Unless otherwise stated in the above section on Reporting, the Human Resources Director is responsible for administering the complaint procedure, conducting the investigation, documenting and tracking the progress of the investigation, and reporting the results to the City Manager. The Human Resources Director may delegate these duties to a qualified City employee, private investigator, or outside counsel.

The person performing the investigation shall, within a reasonable period of time:

- Interview the complainant, the accused, and any other person the investigator believes to have knowledge relevant to the charges;
- Gather and review any documentary, electronic, or physical evidence relevant to the charges;
- Consult with legal counsel as needed;
- Determine whether the charges can or cannot be substantiated; and
- Develop recommendations for appropriate remedial and/or disciplinary action, if any.

The Human Resources Director is responsible to tracking the progress of the investigation. Upon completion of the investigation, the Human Resources Director shall communicate the results of the investigation to the City Manager, the complainant, the accused, and, as appropriate, all others directly concerned. All investigations will be closed in a timely manner.

The City will make a good faith effort to conclude the investigation within ninety (90) days. If the City is unable to complete the investigation within ninety (90) days, the Human Resources Director will issue a status letter to the complainant limited to the expected timeline to complete the investigation. Thereafter a similar status letter will be issued by the Human Resources Director to the complainant every thirty (30) days until the investigation is completed.

Employees shall not be exposed to retaliation for participating in an investigation.

f. Corrective Action

If the City determines that prohibited discrimination, harassment, abusive conduct/bullying or retaliation has occurred, the City will take effective remedial action commensurate with the circumstances, up to and including termination. The City will also take appropriate action designed to deter any future discrimination, harassment, abusive conduct/bullying or retaliation.

g. Confidentiality

To the extent possible, reports of harassment, discrimination, abusive conduct/bullying or retaliation, the identification of the complaint and witnesses, investigatory process, and the disposition of the complaint shall be kept confidential to protect the privacy rights of the parties involved.

h. Alternative Complaint Handling

In addition to notifying the City about harassment, discrimination, abusive conduct/bullying or retaliation complaints, affected employees may also direct their complaints to the State of California Department of Fair Employment and Housing and the Federal Equal Employment Opportunity Commission. There are time limits for filing complaints with these agencies. Employees are advised to contact these agencies directly to obtain information on the time limits for filing complaints with these agencies.

California Department of Fair Employment and Housing
<http://www.dfeh.ca.gov/>

1 (800) 233-3212

U.S. Equal Employment Opportunity Commission
<http://www.eeoc.gov/>

1 (800) 669-4000

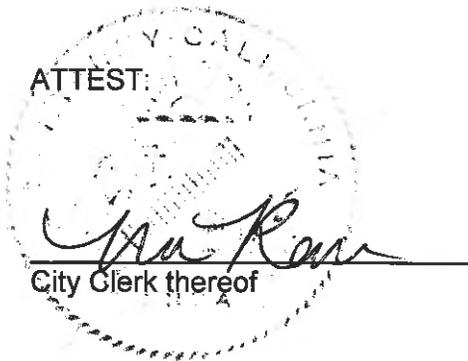
SECTION 3: All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall be in full force and effect thirty (30) days from and after its final passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 20th day of March, 2018, by the following vote:

AYES:	4	COUNCILMEMBERS:	Barrett, Haffa, Smith, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	1	COUNCILMEMBERS:	Albert
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:



[Signature]
Mayor of said City