



CITY OF PALO ALTO OFFICES OF THE CITY MANAGER AND THE CITY ATTORNEY

April 13, 2021

**The Honorable City Council
Palo Alto, California**

Discussion and Recommendation to Council on Referring Investigations of Discrimination, Harassment and Retaliation by Police Officers to the Independent Police Auditor

Recommendation

Policy & Services Committee should discuss and make a recommendation to Council on whether City investigations of uniformed officers arising from internal complaints regarding employee harassment, discrimination, or retaliation in the workplace should be referred to the Independent Police Auditor (IPA) for secondary review, and if so, how reporting should be handled.

Background

Since approximately 2006, Palo Alto has contracted with an outside firm to act as Independent Police Auditor (IPA). For many years, the IPA has performed several functions for Palo Alto. First, the IPA has provided independent review of PAPD investigations of complaints made by members of the public against police officers and investigations of potential policy violations by uniformed officers that come to the attention of the Chief, even when a complaint is not filed. Department management confers with IPA periodically as investigations are opened and in process. When the Department's investigation is complete, the IPA conducts a secondary review and assesses "thoroughness, objectivity and appropriateness" of the investigation and disposition. Where appropriate, the IPA provides recommendations for training, procedural adjustments or other follow-up actions. Second, the IPA has reviewed every deployment of a TASER device and the PAPD's use of force review of that deployment, regardless of whether a complaint is filed. Approximately twice a year, the IPA has produced a written public report to the City Manager and City Council summarizing the IPA's conclusions and comments.

In late 2019, the City Council adopted the current IPA contract. At that time, the approved contract excluded review of City investigations of uniformed officers

arising from internal complaints regarding employee harassment, discrimination, and retaliation in the workplace from the IPA scope of work. The December 16, 2019 Staff report can be found here: <https://www.cityofpaloalto.org/civicax/filebank/documents/74434>

In November 2020, Council directed that the IPA's scope of review be expanded to include secondary review of:

- incidents where an officer uses a baton, chemical agent, less-lethal projectile, canine, or firearm (in addition to TASER uses, which have been and will continue to be reviewed by the IPA)
- incidents resulting in an injury requiring treatment beyond minor medical care in the field
- the Police Department's handling of Supervisory Inquiry Reports (formerly called Informal Inquiry Reports) (complaints that are sufficiently investigated and resolved through expedited review)

Council also directed changes to the schedule of reporting to improve timeliness and accountability and indicated that it will meet publicly with the IPA two times each year. Contract changes are underway that will implement these changes. Staff expects the changes to be approved by Council before their summer break and to be reflected in the next IPA report, anticipated to be published in the second half of 2021.

In its November 2020 meeting, Council asked Policy & Services to consider and make a recommendation to Council on whether the IPA's scope should be further revised to include review of City investigations of uniformed officers arising from internal complaints regarding employee harassment, discrimination, and retaliation in the workplace. If the Policy & Services Committee supports adding this scope, the Committee may wish to consider direction to staff and the IPA on reporting.

Analysis

State law requires all police agencies to receive and investigate complaints from the public regarding the conduct of police officers. (Cal. Penal Code §832.5.). All police agencies also have internal management controls whereby potential violations of department policies or conduct standards are investigated, even when a complaint is not filed. A second level of independent review (auditing) of police investigations is not required by law. Independent review is entirely

discretionary. Where a city chooses to implement secondary review, the parameters of review are completely up to the city. Many large metropolitan cities work with an independent auditor. It is rare for a smaller city such as Palo Alto to do so.

Since the inception of the IPA program in Palo Alto in 2006, the IPA has reviewed investigations regarding sworn personnel. Most IPA reviews have involved officers' interactions with the public (for example while patrolling, conducting investigations, issuing citations, or making arrests). In 2019, discussions began in Palo Alto as to whether the IPA should investigate and comment on City investigations of internal personnel matters not directly involving members of the public. In late 2019, Council determined that the IPA's contract should not include review of these matters. In 2020, Council asked the Policy & Services Committee to consider the issue again, focusing on potential IPA review of City investigations of uniformed officers arising from internal complaints regarding harassment, discrimination, or retaliation.

The City and Police Department have comprehensive policies prohibiting harassment, discrimination and retaliation in the workforce. (See Attachments A and B.) In addition to prohibiting any conduct that is discriminatory or harassing, the City's policies prohibit retaliation of any kind against anyone who makes a complaint or participates in an investigation. Under the City's policies, any employee with a concern about harassment, discrimination or retaliation can complain through multiple channels, including to their supervisor, the Human Resources Department, or any manager at the City.

Depending on the nature of the issues raised, an investigation involving harassment, discrimination or retaliation may be conducted by the involved department, the Human Resources Department, or an outside specialized employment investigator. Discrimination, harassment and retaliation investigations can involve sensitive, embarrassing or upsetting incidents. They often involve multiple employees or a work unit. Emotions, perceptions, and experiences can be strongly felt and highly personal. The results of investigations are communicated in very brief summary form to complainants and subjects, and, to the extent appropriate, managers with a need to know. Other than these limited disclosures, allegations, investigations and findings are kept confidential. The primary purpose of this confidentiality is to safeguard the privacy of everyone involved, including complainants, subjects, and witnesses. This is critical to encouraging employees to come forward with their concerns and encouraging witnesses to speak frankly and fully with investigators.

In addition to the City's internal complaint process, employees with concerns about discrimination, harassment or retaliation can also contact the state Department of Fair Employment and Housing (DFEH) and the federal Equal Employment Opportunity Commission (EEOC). Depending on the issues, additional forums may also be available, including union grievance procedures, the Department of Labor (DOL), the Occupational Safety and Health Administration (OSHA), and state and federal court.

Each year, the City receives and investigates a number of complaints of harassment, discrimination or retaliation in various departments. The Police Department has relatively few, but they do occur from time to time. Investigations of harassment, discrimination or retaliation typically result from a complaint made by another City employee, which could be a subordinate, peer, or an employee of a higher rank. In the investigation of a specific complaint, it is not uncommon for other problems with workplace dynamics to be revealed. This offers an opportunity for intervention and for improvements to be made that were not identified in the initial complaint. In cases where discrimination, harassment or retaliation is found to exist, appropriate action is taken to remedy the situation. Where warranted, this can include disciplinary action up to and including termination.

Amongst jurisdictions that conduct independent secondary review of police matters, some include employee harassment, discrimination and retaliation, and other do not. For many jurisdictions with police auditing functions, the publicly available reports do not include matters regarding discrimination, harassment or retaliation. Staff has identified a handful of reviews of human resources matters in other jurisdictions' publicly available reports. In some cases, these reviews appear to be "one-off" requests to review specific incidents rather than a continuing practice. Finally, some jurisdictions report on matters in list form, without details regarding incidents.

There are policy arguments on both sides of the question. Primary among the arguments in favor of including harassment, discrimination or retaliation investigations under IPA review, is that if a sworn officer has engaged in such behavior towards other City employees in the workplace, there is a risk that similar conduct could be directed at the public. In light of this possibility, proponents of IPA review of such cases state that the City should avail itself of a secondary level of review by the IPA, and the public should receive some information in the form of public IPA reports.

On the other hand, secondary review and reporting of investigations of allegations of discrimination, harassment and retaliation can present significant privacy and confidentiality challenges for complainants, witnesses and subjects. In a small police department, it will be difficult to publicly report allegations and findings at the level that the IPA typically employs in its reporting without revealing the identity of complainants, witnesses and subjects. If allegations, facts of the investigation and findings were to be publicly disclosed, individuals' lives and careers could be impacted, and the effectiveness of the City's complaint resolution system could be negatively impacted. The prospect of public reporting could discourage complainants from coming forward, or witnesses from cooperating fully with investigators when their colleagues and supervisors may be implicated. These are the reasons that the City has not publicly reported on these matters to-date. While secondary review by the IPA offers some potential for additional insights, the risks to personal privacy and an effective and confidential human resources complaint system should be considered as well.

If the Policy & Services Committee favors IPA review but is concerned that the confidentiality and cooperation of complainants, witnesses and subjects may be affected, the Committee could recommend that staff and the IPA explore procedures to balance these goals. If directed, staff would work with the IPA regarding options and bring results back to the Committee. Staff could also further research reporting practices in other jurisdictions and return to Committee with examples.

Resource Impact

If the IPA scope is expanded to include review of investigations of discrimination, harassment and retaliation, a contract amendment will be needed for the IPA contract. Cost is unknown but likely to be minimal. Additional duties would be required of City staff in the Police Department and Human Resources Department, within existing budgets.

Policy Implications

The City has policies prohibiting discrimination, harassment and retaliation, and has a policy of auditor review of significant incidents in the Police Department. This issue has a nexus to both policies and may require some balancing and coordination.

Environmental Review

Approval of this contract is not a project for the purposes of the California Environmental Quality Act. No environmental review is required.

ATTACHMENTS:

- Attachment A: Anti-Harassment Policy (PDF)
- Attachment B: Discriminatory Harassment Policy (PDF)

Department Heads: Ed Shikada, City Manager and Molly Stump, City Attorney

ANTI-HARASSMENT POLICY

INTRODUCTION

The City of Palo Alto is committed to providing a work environment free from all forms of harassment. Actions, words, jokes or comments based on such characteristics as race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, age, or the perception that a person has such a characteristic, are prohibited. Those subject to this policy include all employees (including permanent, temporary, probationary, part-time and full-time), independent contractors, supervisors, managers, volunteers and elected officials. All phases of the employment relationship including recruitment testing, hiring, upgrading, promotion/demotion, layoffs, termination, rates of pay, benefits and selection for training are covered by this policy.

Because the City is committed to a workplace free from harassment of any kind, the City's policy sets a higher standard for behavior than is set by the law. Under both federal and state law, illegal harassment occurs when it is based on a person's protected class (race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age) and the harassment reaches a level that is sufficiently severe and pervasive to alter a person's working conditions. However, the City's policy against harassment covers all harassing behaviors based on a person's protected class whether or not it would be found to be illegal. This policy reflects the City's desire to maintain work environments that are harmonious and productive. Those found to have violated the City's policy will be subject to discipline, which is commensurate with the severity of the offense.

The directive of the City Council is that management, administrative, supervisory personnel, and employees at all levels of City government share in the responsibility of ensuring a working environment free from harassment.

Prevention is the best tool for the elimination of harassment. The City of Palo Alto will take all steps necessary to prevent harassment from occurring. These steps include affirmatively raising the subject through training and this written policy; expressing strong disapproval of inappropriate conduct; and developing appropriate sanctions.

POLICY STATEMENT

The City of Palo Alto opposes all forms of harassment on the job and in the workplace, including acts of employees and non-employees. The City is committed to providing a work environment in which employees are treated with

respect and dignity and which is free from harassment. Unwelcome conduct, as described in the Forms of Harassment section below, based on race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, age, or the perception that a person is a member of any of these protected classes, or any person associated with a person of a protective class, violates the City's policy and will not be tolerated. Reports of such occurrences will be thoroughly investigated and appropriate disciplinary action will be taken up to, and including, termination, if appropriate.

Retaliation against a person bringing a complaint or against a person participating in an investigation of a complaint is strictly prohibited. Those engaging in retaliatory behavior will be subject to discipline up to and including termination. Retaliatory conduct may exist when a person is subject to discipline, denied promotion, or is shunned as a result of bringing a complaint of harassment or supporting a claim of harassment. Persons who report harassment are not to be punished because they complained in good faith.

FORMS OF HARASSMENT

Harassment includes but is not limited to a single act as described below:

Verbal Harassment

Examples can include epithets, derogatory comments, jokes, or slurs on the basis of a protected class (race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age). This may include well-intentioned comments on a person's appearance or race-related stories. This may also include referring to an adult as "girl" or "boy" or using terms such as "hunk," "babe" "stud," or "honey." Verbal harassment may also include sexual innuendo jokes, suggestive sounds, or stories of a sexual nature.

Physical Harassment

Examples can include pinching, grabbing, patting, leering, staring or touching. Other examples could be blocking movement or interfering with a person's normal work when directed at the person because of his/her protected class or perceived protected status, or association with such a person (race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age). Put simply, physical harassment may include any kind of unwanted physical contact.

Visual Harassment

Examples can include posters, cartoons, gestures or written materials which discuss or depict people based on their race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age. Visual harassment may also include Internet sites or other electronic media of a sexual or offensive nature.

Unwanted Sexual Advances

Examples can include requests for sexual favors and other acts of sexual nature, if submission is made a term or condition of employment, if submission to or rejection of the conduct is used as the basis for employment decisions, or if 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.

Sexual Harassment

Sexual harassment is a specific type of gender harassment, which can take any of the forms of harassment described above. Sexual harassment under this policy refers to unwelcome conduct of a sexual nature or that is based on sex that has the effect of interfering with a person's work performance or creating an intimidating, hostile or offensive working environment. Included under the umbrella term of sexual harassment are overt forms of harassment such as making employment benefits conditional on sexual favors, as well as much more subtle forms. Sexual harassment includes behavior by women directed at men, by men directed at women, same sex harassment, and harassment based on sexual orientation.

Guidelines for Identifying Harassment

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

- A. Harassment is any conduct which is "unwelcome" and which is taken because of an individual's protected classification(s).
- B. It is irrelevant whether the victim appears to have voluntarily "consented" to the conduct so long as the conduct was "unwelcome".
- C. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. A work environment that is hostile to persons who belong to protected classification(s) evolves over time. Small incidents can add up to harassment. The fact that no one is complaining now does not mean that no one will complain if the conduct is repeated in the future.
- D. Even visual, verbal, and/or physical conduct between two employees who appear to welcome it can constitute harassment of a third applicant, employee or contractor who merely observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at the victim.

E. Conduct can constitute harassment in violation of this policy even if the person engaging in the conduct has no intention to harass. Instead, the focus is upon whether a person in the affected protected classification would generally find the conduct to be offensive. The reason for focusing on the recipient of conduct is that the life experiences of those in protected classifications can create heightened sensitivities. Whether the conduct at issue is offensive enough to constitute harassment is viewed from the perspective of one who belongs to the same protected classification as the victim. Therefore, even well-intentioned conduct (such as calling female employees “Hon”, or hugging, or complimenting physical appearance) can violate this policy: a) the conduct is directed at or implicated a protected classification would generally view the conduct as offensive.

F. A single act can violate this policy and provide potential grounds for discipline. Therefore, if you are in doubt as to whether any particular conduct may violate this policy, do not engage in the conduct, and seek guidance from a supervisor.

STANDARDS OF BEHAVIOR

Any conduct, which discriminates or harasses a person covered by this policy on the basis of race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age violates the City’s policy and will not be tolerated.

Because we all come to work with different backgrounds and experiences, it is natural that various levels of sensitivity are represented. Well-meaning people can disagree about what is offensive or inappropriate. In order to clarify what type of behavior is acceptable and unacceptable in the workplace, the following examples are provided as a means of offering guidance and promoting a comfortable and harassment free work environment for all.

This policy is focused on the interpretation of the victim and not the intent of the harasser. It is important for you to be aware that you can be in violation of this policy even if you did not intend to harass. It is not one’s intentions but one’s actual behavior that is analyzed in a complaint.

Prohibited conduct includes, but is not limited to:

- Disparaging or offensive comments or jokes about a person’s actual or perceived, or association with a person based upon that person’s race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age.

- Any behavior or practice which treats an individual differently because of his or her actual or perceived race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age.
- Systematic exclusion of an individual because of his or her race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age.
- Using slang names or labels related to actual or perceived, or association with a person based upon race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age.
- Ignoring or failing to take seriously a person who reports or complains of harassment.
- Blaming the person who reports or complains of harassment, or suggesting that they are “thin skinned,” “too sensitive,” or that they lack a sense of humor.
- Continuing behavior directed toward a person’s race, color, religion, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation, or age once a person has objected to the behavior.
- Displaying sexual pictures, cartoons, or calendars.

PROCEDURES FOR POLICY IMPLEMENTATION

The following is a list of the responsibilities assigned to City staff to ensure the policy is enforced:

- A. Department Heads’ Responsibility – Department Heads are responsible for distributing this policy statement to current and new employees and for directing complaints to the Human Resources Director. Department Heads are also responsible for the supervisors’ responsibilities listed below.
- B. Contractors, Officers and Employees’ Responsibility – All City employees and contractors and officers are responsible for adhering to this policy and for following guidelines set forth in this policy. The City is committed to immediately addressing harassing behavior but the City cannot correct what it is unaware of. Employees are responsible for reporting incidents of harassment quickly so that proper action can be taken. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor. Any individual who discusses the content of an investigatory interview will be subject to discipline. An individual is responsible for

fully cooperating with the City's investigation into alleged violations of this policy.

- C. Supervisors' Responsibility – Supervisors must take all steps necessary to prevent harassment from occurring by affirmatively raising the subject, expressing strong disapproval of inappropriate behavior/language, and informing employees of their right to raise the issue. The Supervisor's job is to be aware of employees' interactions in the workplace and to enforce this policy. It is a Supervisor's responsibility to ensure that the person who complains of harassment is not subject to any form of retaliation as a result of bringing the complaint.
- D. City Manager's Responsibility – The City Manager is responsible for ensuring the policy is enforced citywide.
- E. Human Resources Director's Responsibility – The Human Resources Director is responsible for investigating all complaints of harassment or for hiring an outside investigator to investigate, taking appropriate action (including recommending remedial measures or discipline), as well as providing citywide "awareness" training and management/supervisor training.

COMPLAINT PROCEDURES

Confidentiality will be maintained to the extent possible, given the City's need to investigate, discipline as necessary, and take remedial action,

- A. An individual who believes he or she has been harassed may make a complaint verbally or in writing with any of the following:
 - 1) Immediate supervisor
 - 2) Any supervisor or manager within or outside of the department
 - 3) Department Head
 - 4) Human Resources Director

In order to provide Human Resources Department staff with a person outside of the department to report concerns, individual Human Resources employees may make complaints directly to the Assistant City Manager.

An individual has the option to report harassment or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These agencies offer

legal remedies and a complaint process, City bulletin boards have posters which list DFEH and EEOC officers and telephone numbers.

- B. Any supervisor, manager, or department head who receives a harassment complaint must notify the Human Resources Director immediately.
- C. Upon receiving notification of a harassment complaint, the Human Resources Director shall:
 - 1) Authorize and supervise the investigation of the complaint and/or investigate the complaint. The investigation will include interviews with: a) the complainant; b) the accused harasser; and c) any other persons the Human Resources Director has reason to believe have relevant knowledge concerning the complaint.
 - 2) In consultation with the City Attorney, review the factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment, in violation of the City's policies, giving consideration to all factual information, the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred.
 - 3) Report to appropriate persons the summary of the results of the investigation and the determination as to whether harassment in violation of City policy occurred. Appropriate persons, includes the complainant, the alleged harasser, the supervisor, and the department head. If discipline is imposed, the discipline will not be communicated to the complainant.
 - 4) If harassment in violation of City policy occurred, take and/or recommend to the appointing authority prompt and effective remedial action against the harasser. The action will be commensurate with the severity of the offense.
 - 5) Take reasonable steps to protect the complainant from further harassment.
 - 6) Take reasonable steps to protect the complainant and the participants in the complaint process from retaliation as a result of communicating the complaint.
 - 7) If appropriate, take action to remedy the victim's loss, if any, which resulted from the harassment.

CONCLUSION

The City recognizes the uniqueness of each allegation. When determining whether alleged conduct violates this policy, the totality of each circumstance will be investigated and evaluated. All incidents will be reviewed on a case-by-case basis.

This policy is not to be construed as prohibiting mutually welcome social relationships between employees that have no bearing on employment conditions, decisions, or benefits.

Discriminatory Harassment

328.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent [department/office] members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

328.2 POLICY

The Palo Alto Police Department is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation (Government Code § 12940(k); 2 CCR 11023). The [Department/Office] will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. The [Department/Office] will take preventive and corrective action to address any behavior that violates this policy or the rights it is designed to protect.

The nondiscrimination policies of the [Department/Office] may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline.

328.3 DEFINITIONS

Definitions related to this policy include:

328.3.1 DISCRIMINATION

The [Department/Office] prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on the actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status and other classifications protected by law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment, can include making derogatory comments, crude and offensive statements or remarks; making slurs or off-color jokes, stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters or material; making inappropriate physical contact; or using written material or [department/office] equipment and/or systems to transmit or receive offensive material, statements or pictures. Such conduct is contrary to [department/office] policy and to a work environment that is free of discrimination.

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328.3.2 SEXUAL HARASSMENT

The [Department/Office] prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position or compensation.
- (b) Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- (c) Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

328.3.3 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

- (a) Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the California Fair Employment and Housing Council guidelines.
- (b) Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with City or [department/office] rules or regulations, or any other appropriate work-related communication between supervisor and member.

328.3.4 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation or opposed a discriminatory practice. Retaliation will not be tolerated.

328.4 RESPONSIBILITIES

This policy applies to all [department/office] personnel. All members shall follow the intent of these guidelines in a manner that reflects [department/office] policy, professional law enforcement standards and the best interest of the [Department/Office] and its mission.

Members are encouraged to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher-ranking supervisor or manager. Complaints may also be filed with the Chief of Police, the Personnel and Training Lieutenant or the City Manager.

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Any member who believes, in good faith, that he/she has been discriminated against, harassed or subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with resolution as stated below.

328.4.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of each supervisor and manager shall include, but are not limited to:

- (a) Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- (b) Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.
- (c) Ensuring that his/her subordinates understand their responsibilities under this policy.
- (d) Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- (e) Making a timely determination regarding the substance of any allegation based upon all available facts.
- (f) Notifying the Chief of Police or Personnel and Training Lieutenant in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment or retaliation no later than the next business day.

328.4.2 SUPERVISOR'S ROLE

Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing or retaliatory. Supervisors and managers shall be aware of the following considerations:

- (a) Behavior of supervisors and managers should represent the values of the [Department/Office] and professional law enforcement standards.
- (b) False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members or issuing discipline, in a manner that is consistent with established procedures.

328.4.3 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment or retaliation are encouraged to contact a supervisor, a manager, the Chief of Police, the Personnel and Training Lieutenant, the City Manager or the California Department of Fair Employment and Housing for further information, direction or clarification.

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328.5 INVESTIGATION OF COMPLAINTS

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the [Department/Office] that all complaints of discrimination, retaliation or harassment shall be fully documented and promptly and thoroughly investigated.

328.5.1 SUPERVISORY RESOLUTION

Members who believe they are experiencing discrimination, harassment or retaliation should be encouraged to inform the individual that his/her behavior is unwelcome, offensive, unprofessional or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing his/her concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

328.5.2 FORMAL INVESTIGATION

If the complaint cannot be satisfactorily resolved through the process described above, a formal investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include, but is not limited to, details of the specific incident, frequency and dates of occurrences and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed or retaliated against because of their protected status, are encouraged to follow the chain of command but may also file a complaint directly with the Chief of Police, Personnel and Training Lieutenant or the City Manager.

328.5.3 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the [Department/Office]. Members who believe that they have been harassed, discriminated or retaliated against are entitled to bring complaints of employment discrimination to federal, state and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

328.6 DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be thoroughly documented on forms and in a manner designated by the Chief of Police. The outcome of all reports shall be:

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- Approved by the Chief of Police, the City Manager or the Personnel and Training Lieutenant, depending on the ranks of the involved parties.
- Maintained in accordance with the [department/office]'s established records retention schedule.

328.6.1 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation and the actions taken to remedy or address the circumstances giving rise to the complaint.

328.7 TRAINING

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that he/she has been advised of this policy, is aware of and understands its contents and agrees to abide by its provisions during his/her term with the [Department/Office].

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents and agree that they will continue to abide by its provisions.

328.7.1 SUPERVISOR TRAINING

All supervisors shall receive specific training and education regarding sexual harassment, prevention of abusive conduct and harassment based on gender identity, gender expression and sexual orientation within six months of assuming a supervisory position. Refresher training shall be provided every two years thereafter (Government Code § 12950.1; 2 CCR 11024).

328.7.2 TRAINING RECORDS

The Personnel and Training Lieutenant shall be responsible for maintaining records of all discriminatory harassment training provided to members. Records shall be retained in accordance with established records retention schedules and for a minimum of two years (2 CCR 11024).

328.8 WORKING CONDITIONS

The Administrative Services Division Captain or the authorized designee should be responsible for reviewing facility design and working conditions for discriminatory practices. This person should collaborate with other City employees who are similarly tasked (2 CCR 11034).