

**MOORPARK CITY COUNCIL
SUPPLEMENTAL
AGENDA REPORT**

TO: Honorable City Council
FROM: Deborah S. Traffenstedt, Deputy City Manager *DST*
DATE: May 15, 2014 (CC Meeting of 5/21/14)
SUBJECT: Consider Adopting Revised City Council Policies Resolution and Rescinding Resolution No. 2013-3176

DISCUSSION

A new first page of the draft resolution for Item 10.I. is attached to this supplemental agenda report to correct the recital for Policy 2.5, Conflict of Interest Appraisal (prior reference to Ordinance No. 429 was incorrect). The prior agenda report discussion pertaining to the change to Policy 2.5 was not correct. The new subsection 3 for Policy 2.5 was not previously discussed with the City Council, but is being recommended by staff for this update to the City Council's Policies Resolution. Staff has corrected the title for Policy 2.5 and further revised subsection 3 (see attached revised pages 19 and 20; reference the gray shaded text).

Staff is also recommending additional edits for Policy 2.6, Policy against Harassment, Discrimination, and Retaliation. The revised Policy 2.6 is attached, and shows the additional edits on pages 24, 25, 27, and 28 (reference the gray shaded text), as recommended by the City Attorney's office.

STAFF RECOMMENDATION

Adopt Resolution No. 2014-_____, as further amended for Policies 2.5 and 2.6.

Attachment: Revised City Council Policies Resolution pages 1 and 19-29

RESOLUTION NO. 2014-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
MOORPARK, CALIFORNIA, ADOPTING REVISED COUNCIL
POLICIES AND RESCINDING RESOLUTION NO. 2013-3176

WHEREAS, the City Council has directed that its policies be compiled and adopted in one resolution; and

WHEREAS, the City Council adopted Policies Resolution No. 2013-3176 on April 17, 2013, and since that update the Council has considered and approved several new policies to be incorporated into the next update of the Council's Policies Resolution, and at the May 21, 2014, regular meeting considered a revised Policies Resolution incorporating all of the prior approved Council policies as well as other amendments and new policies as follows:

Policy 1.10, City Council Identification Badges and Picture Identification Card, has been modified, including the title, to more comprehensively address City Council identification badge and picture identification card issuance, use, and return policy language.

Policy 2.2 No. 7, Advertising and Appointment Procedures for Appointments to Boards, Commissions, and Committees, has been modified to add language to waive the requirement for incumbent applicants to make a presentation before the City Council if there any no other new applicants, and includes other editorial revisions.

Policy 2.5, Conflict of Interest Appraisal, has been amended, ~~as approved by the City Council with adoption of Ordinance No. 429 on May 7, 2014,~~ to include a dollar limit for costs incurred for City Attorney opinions on conflict of interest without City Council approval.

Policy 2.6, Policy Against Harassment, Discrimination and Retaliation, has been amended to be consistent with current law. Language has also been added to authorize the City Manager to require acknowledgment of this policy by certain contractors.

Renumbered Policy 2.20 through 2.22, Moorpark City Library Materials Selection through Moorpark City Library Circulation, were moved from the Parks, Recreation and Community Services Department to the Administrative Services Department when the responsibilities for the Moorpark City Library were reassigned on July 1, 2013; and revisions were made to these policies as approved by the City Council on December 18, 2013, and for language consistency.

Policy 3.5, First-Time Home Buyer Affordable Housing Program, has been amended as approved by the City Council on December 4, 2013, to limit the number of persons purchasing a home through the City's First Time Home Buyers Program to no more than two for a joint purchase.

Members, all City Management staff, and all other City Manager designated employees and contract staff to attend. Any member of the City Council, Commissioner, Board Member, management employee, designated employee, or designated contract staff unable to attend the scheduled group ethics training shall be required to complete other ethics training that complies with requirements of Government Code Section 53235 et seq. The City Clerk shall maintain a record of completion on the required ethics training, for each person, consistent with applicable state law.

Policy 2.5: Conflict of Interest Appraisal ~~and City Attorney Opinions~~

1. Conflict of Interest Appraisals shall be allowed to provide proof and rebut the presumption that the financial effect of a governmental decision on real property, in which a public official has an economic interest, is presumed to be material (Section 18705.2 of Title 2, Division 6, California Code of Regulations), as provided below:
 - A. Two conflict of interest appraisals shall be allowed per year per Councilmember if real property in which a Councilmember has an economic interest is the subject of a City Council decision or if any part of that real property is located within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision.
 - B. One conflict of interest appraisal shall be allowed per year per Planning Commissioner, if real property in which a Planning Commissioner has an economic interest is the subject of a Commission decision or if any part of that real property is located within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision.
 - C. One conflict of interest appraisal shall be allowed per year per for the City Manager, if real property in which the City Manager has an economic interest is the subject of a City government decision or if any part of that real property is located within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision.
 - D. One conflict of interest appraisal shall be allowed per year for the Community Development Director, if real property in which the Community Development Director has an economic interest is the subject of a City government decision or if any part of that real property is located within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision.
2. The amount of funding for conflict of interest appraisals shall be a budgetary consideration determined during the budget process as the Council looks at actual projects that are likely to be considered during the following fiscal year.

3. Costs incurred for City Attorney Opinions on conflict of interest are restricted to be under \$5,000.00. Any amount \$5,000.00 or higher would require City Council approval.

Policy 2.6: Policy against Harassment, Discrimination, and Retaliation

1. Purpose and Policy.

A. Purpose. The City of Moorpark is committed to providing a work environment which is free of harassment or discrimination because of ~~gender, gender identity or expression, genetic characteristics or information, race, color, national origin, ancestry, religion, creed, sex, physical or mental disability, medical condition, marital status, veteran status, sexual orientation, age,~~ gender; gender identity or expression; genetic characteristics or information; race; color; national origin; ancestry; religion; creed; sex; physical or mental disability; medical condition; marital status; military or veteran status; sexual orientation; age; victim of domestic violence, sexual assault, or stalking; or any basis protected by applicable federal, state, or local law. The City is also committed to providing a work environment free from retaliation because of an employee's opposition to unlawful harassment or discrimination or participation in an employment discrimination or harassment investigation, proceeding, or hearing. In keeping with this commitment, this Policy strictly prohibits harassment, discrimination, and retaliation of this nature. Behavior or actions which result in or establish an environment of such harassment, discrimination, or retaliation are strictly prohibited.

B. Policy. The City maintains a strict policy prohibiting all types of harassment or discrimination because of ~~gender, gender identity or expression, genetic characteristics or information, race, color, national origin, ancestry, religion, creed, sex, physical or mental disability, medical condition, marital status, veteran status, sexual orientation, age,~~ gender; gender identity or expression; genetic characteristics or information; race; color; national origin; ancestry; religion; creed; sex; physical or mental disability; medical condition; marital status; military or veteran status; sexual orientation; age; victim of domestic violence, sexual assault, or stalking; or any basis protected by applicable federal, state, or local law. The City also maintains a strict policy prohibiting retaliation because of an employee's opposition to unlawful harassment or discrimination or participation in an employment discrimination or harassment investigation, proceeding, or hearing. All such harassment, discrimination, or retaliation is prohibited. This policy applies to all employees involved in the operations of the City and prohibits harassment by any employee of the City including supervisors, co-workers, volunteers, and by anyone doing business with the City. If harassment or alleged harassment occurs on the job by someone not employed by the City, the applicable procedures in this policy should be followed as if the harasser were an employee of the City.

- A. **Discrimination.** Discrimination is any action or conduct by which an employee is treated differently or less favorably than other employees similarly situated to him/her for the sole reason that he/she is a member of a legally protected category, such as ~~genetic characteristics or information, race, color, national origin, ancestry, religion, creed, sex, physical or mental disability, medical condition, marital status, veteran status, sexual orientation, age, gender, gender identity or expression; genetic characteristics or information; race; color; national origin; ancestry; religion; creed; sex; physical or mental disability; medical condition; marital status; military or veteran status; sexual orientation; age; victim of domestic violence, sexual assault, or stalking; or~~ any basis protected by applicable federal, state, or local law. For example, it would be discrimination for an individual to be denied employment or terminated from employment because that individual has a disability or is 40 years of age or older.
- B. **Harassment.** Harassment is unwelcome verbal, visual, or physical conduct that creates an intimidating, offensive, or hostile work environment or that interferes with work performance when such conduct is based on an employee's ~~genetic characteristics or information, race, color, national origin, ancestry, religion, creed, sex, physical or mental disability, medical condition, marital status, veteran status, sexual orientation, age, gender, gender identity or expression; genetic characteristics or information; race; color; national origin; ancestry; religion; creed; sex; physical or mental disability; medical condition; marital status; military or veteran status; sexual orientation; age; victim of domestic violence, sexual assault, or stalking; or~~ any basis protected by applicable federal, state, or local law. Such conduct constitutes harassment when:
- 1) Submission to the conduct is made either an explicit or implicit condition of employment;
 - 2) Submission to or rejection of the conduct is used as the basis for an employment decision; or
 - 3) The harassment unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.
- C. **Harassment Examples.** Harassing conduct can take many forms and includes, but is not limited to, slurs, jokes, statements, gestures, pictures, computer images, or cartoons regarding an employee's ~~gender, genetic characteristics or information, race, color, national origin, ancestry, religion, creed, sex, physical or mental disability, medical condition, marital status, veteran status, sexual orientation, age, gender, gender identity or expression; genetic characteristics or information; race; color; national origin; ancestry; religion;~~

creed; sex; physical or mental disability; medical condition; marital status; military or veteran status; sexual orientation; age; victim of domestic violence, sexual assault, or stalking; or any basis protected by applicable federal, state, or local law.

D. Sexual Harassment.

- 1) Sexual harassment is unwanted sexual advances; requests for sexual favors; or visual, verbal or physical conduct of a sexual nature when:
 - a) Submission to such conduct is made a term or condition of employment; or
 - b) Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or
 - c) Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment.
- 2) This definition includes many potential forms of offensive behavior. The following is a list of some examples:
 - a) Unwanted sexual advances.
 - b) Offering employment benefits in exchange for sexual favors.
 - c) Making or threatening reprisals after a negative response to sexual advances.
 - d) Visual conduct: leering, making sexual gestures, or displaying of sexually explicit jokes.
 - e) Verbal sexual advances or propositions.
 - f) Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body or dress, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
 - g) Physical conduct: touching, assault, impeding or blocking movements.
 - h) Retaliation for threatening to or reporting harassment.

- i) Sexual harassment can occur between members of the same or opposite sex. Sexual harassment on the job is unlawful whether it involves co-worker harassment, harassment by a supervisor or manager, or harassment by anyone doing business with or for the City.

E. Supervisor. Any employee having authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or to effectively recommend that action, if, in connection with the foregoing, the exercise of that authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

3. Mandatory Training.

A. All Employees. A copy of this Policy will be given to all employees of the City on the first day of employment, and acknowledgment will be required as described in Section 10 of this Policy. This Policy shall be redistributed to all employees following any amendment action, and acknowledgment will be required as described in Section 10.

B. Supervisory Employees.

- 1) All supervisors will be trained once every two (2) years, as scheduled by the City's Human Resources/Risk Management Division, on matters relating to the prevention, reporting, and investigation of harassment, discrimination, and retaliation. Further, individuals appointed to supervisory positions from a non-supervisory position or as a new employee shall receive training within six (6) months of their hiring or assumption of the supervisory position.
- 2) Supervisory training will last for a minimum of two (2) hours.
- 3) Supervisory training will be conducted in a classroom or other interactive setting and will, at a minimum, cover the following topics:
 - a) Information and practical guidance regarding federal and state statutory laws about harassment, including sexual harassment;
 - b) Information about the correction of harassment and the remedies available to victims of harassment; and
 - c) Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation.

4. Preventing Harassment and Discrimination. The City's complaint procedure provides for a prompt, thorough and objective investigation of every harassment or discrimination claim, appropriate disciplinary action against one found to have engaged in unlawful harassment or discrimination, and appropriate remedies to any victim of harassment or discrimination. Employees should follow the following procedure to notify the City of alleged harassment and/or discrimination:

A. Submitting a Complaint. Employees who believe they have been harassed or discriminated against on the job, including by persons doing business with or for the City, must provide a verbal or written complaint to his/her supervisor, department head, Personnel Officer, Human Resources Analyst, or the City Manager as soon as possible. If the reported conduct involves a person in the employee's direct chain of command or if for any reason the employee feels uncomfortable making a report to his/her direct supervisor or department head, the report must be made to the Personnel Officer, Human Resources Analyst, or the City Manager. If the complaint involves the City Manager, the complaint should be reported to the Personnel Officer or in his/her absence, directly to the City Attorney. Complaints regarding the City Manager will be forwarded by the Personnel Officer or City Attorney to the City Council for consideration during closed session. Complaints regarding a member of the City Council must be reported to the City Manager or the City Attorney.

The complaint should include details of the incident(s), names of individuals involved, and the names of any witnesses. Supervisors and/or department heads must immediately refer all harassment and discrimination complaints to the Personnel Officer, Human Resources Analyst, or City Manager.

B. Investigation of Complaints. All incidents of alleged harassment and discrimination that are reported must be investigated. The City will undertake and/or direct a prompt, thorough, and objective investigation of the harassment or discrimination allegations. The City Manager will determine who will conduct the investigation on behalf of the City, unless this decision is delegated to the City Attorney. The investigation will be completed and a determination regarding the harassment or discrimination alleged will be made and communicated to the employee(s) who complained and the accused harasser(s). If the City determines that harassment or discrimination has occurred, the City will take effective remedial action commensurate with the circumstances. Appropriate action will also be taken to deter any future harassment or discrimination. If a complaint of harassment or discrimination is substantiated, appropriate disciplinary action, up to and including termination of employment, will be taken. The City will also take appropriate action to remedy any loss to the employee resulting from the harassment or discrimination. The City Attorney's office will notify the complainant in writing regarding action taken against the person responsible for the harassment or discrimination. The City Attorney's office will also instruct the complainant to

immediately report recurring or continuing harassment, discrimination, or retaliation.

- C. Employees may be placed on a paid administrative leave during an investigation until the conclusion of discrimination or harassment investigation.
- D. All employees should note that the failure to use the City's complaint procedure may have an adverse effect on any claim under this Policy if such claims are litigated.
- E. If a complaint is found to be a malicious false accusation, the employee who brought forth the complaint will be subject to disciplinary action.

5. Confidentiality. The City will take all reasonable steps available to maintain the confidentiality of all complaints of harassment and discrimination as well as all information gathered during the investigation. ~~However, employees may not make an anonymous complaint and the City cannot guarantee absolute confidentiality as disclosure of information is necessary to complete the investigation.~~ All employees involved in the investigation of harassment or discrimination complaints will be admonished to keep all information related to the investigation confidential, and that revealing such information is grounds for discipline. Anonymous complaints will be taken seriously and investigated; however, the ability to investigate or the extent of the investigation may be limited by the inability to follow-up with the complaining party. A person other than the person(s) who was (were) the target of the alleged harassment or discrimination may make a complaint.

6. Employee's Duty to Disclose Benefits Received. Employees are hereby informed that no supervisor, manager, or officer of the City, or other person or entity doing business with the City, is authorized to expressly or impliedly condition the receipt or denial of any benefit, compensation, or other term or condition of employment on an employee's consent to any sexual demand. To the contrary, all employees are instructed that they must refuse such demands and report them promptly either to his/her supervisor, department head, Personnel Officer, Human Resources Analyst, or City Manager. Any employee who is found to have obtained any benefit from the City because he/she submitted to an unreported sexual demand will be disciplined appropriately, and may be subject to reimbursing the City for the value of any benefits received. Any employee making such a demand will also be subject to discipline.

7. Anti-Retaliation Policy. The City prohibits retaliation against any employee because of the employee's opposition to a practice the employee reasonably believes to constitute employment discrimination or harassment; or because of the employee's participation in an employment discrimination or harassment investigation, proceeding, or hearing. Any retaliatory adverse action because of such opposition or participation will not be tolerated; and may also be unlawful.

making a report to his/her supervisor or department head, the report must be made to the Personnel Officer, Human Resources Analyst, or the City Manager. If the complaint involves the City Manager, the complaint should be reported to the Personnel Officer, or in his/her absence, directly to the City Attorney. Complaints regarding the City Manager will be forwarded by the Personnel Officer or City Attorney to the City Council for consideration during closed session. Complaints regarding a member of the City Council must be reported to the City Manager or the City Attorney.

The complaint should include details of the incident(s), names of individuals involved, and the names of any witnesses. Supervisors and/or department heads must immediately refer all retaliation complaints to the Personnel Officer, Human Resources Analyst, or City Manager.

- 2) Investigation of Complaints. All complaints of prohibited retaliation which are reported to the City will be investigated. The City will undertake and/or direct a prompt, thorough and objective investigation of the retaliation allegations. The City Manager will determine who will conduct the investigation on behalf of the City, unless this decision is delegated to the City Attorney. The investigation will be completed and a determination regarding the alleged retaliation will be made and communicated to the employee who complains and to the person(s) accused of retaliation.
- 3) If the City determines that an individual has suffered adverse action in retaliation for opposition to alleged harassment or discrimination, or participation in a proceeding related to alleged harassment or discrimination, the City will take effective remedial action appropriate to the circumstances. The City will also take action to deter any future retaliation. If a complaint of unlawful retaliation is substantiated, appropriate disciplinary action, up to and including termination of employment, will be taken. The City Attorney's office will notify the complainant in writing regarding action taken against the person responsible for the retaliation. The City Attorney's office will also instruct the complainant to immediately report recurring or continuing harassment, discrimination, or retaliation.
- 4) Employees may be placed on a paid administrative leave during an investigation until the conclusion of a retaliation investigation.
- 5) All employees should note that the failure to use the City's complaint procedure may have an adverse effect on any claim under this Policy if such claims are litigated.

6) If a complaint is found to be a malicious false accusation, the employee who brought forth the complaint will be subject to disciplinary action.

E. Confidentiality. The City will take all reasonable steps available to maintain the confidentiality of all complaints of retaliation as well as all information gathered during the investigation; ~~However, employees may not make an anonymous complaint and the City cannot guarantee absolute confidentiality as disclosure of information is necessary to complete the investigation.~~ All employees involved in the investigation of retaliation complaints will be admonished to keep all information related to the investigation confidential, and that revealing such information is grounds for discipline. Anonymous complaints will be taken seriously and investigated; however, the ability to investigate or the extent of the investigation may be limited by the inability to follow-up with the complaining party. A person other than the person(s) who was (were) the target of the alleged harassment or discrimination may make a complaint.

8. Additional Enforcement Information. In addition to the City's internal complaint procedure, employees should also be aware that the EEOC and the DFEH investigate and prosecute complaints of harassment, discrimination, and/or retaliation in employment. You can contact the EEOC as follows: Los Angeles District Office, 255 East Temple, 4th Floor, Los Angeles, California 90012; 800-669-4000. You can contact the DFEH as follows: Los Angeles Office, 611 West Sixth Street, Suite 1500, Los Angeles, California 91117; 800-884-1684. Additional information can be found on the EEOC's website (www.eeoc.gov) and/or the DFEH's website (www.dfeh.ca.gov).

9. Documentation. All harassment, discrimination, and retaliation complaint investigations and corrective actions shall be documented by the Human Resources/Risk Management Division and/or City Attorney. The documentation shall include a summary of the investigation and an explanation of the appropriateness of the corrective actions. All related files shall be retained by the Human Resources/Risk Management Division until such time as file destruction is approved by the City Council in accordance with records retention requirements. A record of a harassment complaint will not be included in an employee's personnel file if the complaint is found to be unwarranted or a false accusation after conducting an investigation.

10. Employee/Volunteer/Contractor Acknowledgment of Receipt of Policy against Harassment, Discrimination, and Retaliation. All employees shall be given a copy of this Policy on the first day of employment, shall be given the time to read the Policy during their new employee orientation meeting, and shall be required to sign a form acknowledging the following:

I acknowledge receipt of the City of Moorpark Policy against Harassment, Discrimination, and Retaliation. I understand that it is my responsibility to read and comprehend its contents. If I have any

questions, I shall submit any questions in writing to the Personnel Officer or Human Resources Analyst within seven (7) days of receipt of the Policy and signing the acknowledgment form.

The City Manager or his/her designee may determine that certain volunteers and contractors shall also be required to receive, read, and acknowledge receipt of the City of Moorpark Policy against Harassment, Discrimination, and Retaliation.

This Policy shall be redistributed to all employees and applicable volunteers and contractors following any amendment, and no less than once every two years, with reading and receipt acknowledgment required as described above.

Policy 2.7: Drug-Free Workplace

1. **General Policy:** It is the goal of the City of Moorpark ("City") to create a healthy and safe work environment in order to deliver the best and most cost-efficient municipal service. It is the responsibility of the City employees to cooperate in efforts to protect the life, personal safety, and property of co-workers and fellow citizens. Substance abuse has been found to be a contributing factor to absenteeism, substandard performance, increased potential for accidents, poor morale, and impaired public relations. It is the goal of this policy to prevent substance abuse in the workplace. Employees must take all reasonable steps to abide by and cooperate in the implementation and enforcement of this policy. Alcohol and/or drug abuse will not be tolerated on or off the job for any employee, and disciplinary action, up to and including termination, will be used as necessary to achieve the goal of eliminating substance abuse in the workplace.

This policy applies to all City employees. Certain City employees are also subject to the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. No. 102-143, 105 Stat. 952), which requires alcohol and drug testing of safety-sensitive transportation employees who are required to have a commercial driver's license (49 CFR Parts 40, 382, as amended).

In order to comply with the Department of Transportation regulations, the City has developed specific guidelines regarding when and how drug-alcohol testing will occur, as well as provisions on rehabilitative services available to all covered employees. The specific guidelines for employees who are required to have a commercial driver's license are set forth in Policy 2.8.

2. **Definitions:**
 - A. **Alcohol:** Any liquid containing ethyl alcohol (ethanol).
 - B. **Applicant:** Any person applying for employment with the City who has been extended a conditional offer of employment.