DISCRIMINATION AND HARASSMENT PREVENTION POLICY
CITY OF GILROY

The purpose of this policy is to establish a strong commitment by the City to the prevention of all forms of discriminatory harassment in employment, to sensitize and educate employees to the issue of discriminatory harassment, to define discriminatory harassment and to set forth a procedure for investigating and resolving internal complaints of harassment. The City of Gilroy maintains a "zero tolerance" standard regarding any form of discriminatory harassment. This means that conduct which violates the letter or spirit of this policy will be considered misconduct and will subject an employee to disciplinary action up to and including termination even if the conduct does not rise to the level of legally actionable harassment. This policy is subject to modification as needed by the City Administrator.

Applicants, employees, volunteers and persons providing services pursuant to a contract are protected from harassment under this policy that is perpetrated by a City elected official, official, manager, supervisor, employee or non-employee.

DEFINITIONS:

Harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct. It need not be explicit, nor even specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders. Further, applicants, employees, volunteers and contractors are protected from harassment in the workplace and work-related settings.

Harassment is generally defined as unwelcome conduct based on a protected characteristic that results in a work environment which a reasonable person would find hostile or offensive. Also, a complainant need not be the direct recipient of the inappropriate behavior, but rather the inappropriate behavior is taking place in the complainant's work environment. The types of harassing conduct which are prohibited under this policy include, but are not limited to the following:

a. Verbal Harassment – For example, epithets, derogatory comments or slurs, or other threatening, intimidating or hostile comments on the basis of actual or perceived race, religion, color, national origin, ancestry, disability, medical condition, marital status, age, sexual orientation or gender or sex, or other characteristic protected by law. This might include inappropriate sex oriented comments on appearance, including dress or
physical features, well-intentioned compliments, talking about sexual fantasies, or race oriented stories. This also could include referring to an adult as "girl", "hunk", "doll", "honey" or "boy."

b. Physical Harassment – For example, assault, impeding or blocking movement, physical interference with normal work or movement, or other threatening, intimidating or hostile acts when directed at an individual on the basis of actual or perceived race, religion, color, national origin, ancestry, disability, medical condition, marital status, age, sexual orientation, gender or sex, or other characteristic protected by law. This could be conduct in the form of kissing, pinching, grabbing, patting, propositioning, leering, looking a person up and down, blocking a person's path, or making explicit or implied job threats or promises in return for submission to physical acts.

c. Visual Forms of Harassment – The display or circulation of offensive, derogatory, hostile or threatening visual or written material because of race, religion, color, national origin, ancestry, disability, medical condition, marital status, age, sexual orientation, gender or sex or other characteristic protected by law. For example, derogatory posters, notices, bulletins, cartoons, or drawings, graffiti, computer graphics or electronic media transmissions

d. Retaliation – Retaliatory conduct may exist when a person reports harassment and then is disciplined, transferred, shunned, or denied a promotional opportunity due to their filing a complaint, having opposed a practice forbidden by this policy, or having testified, assisted or participated in any manner in any investigation proceeding or hearing conducted by an authorized investigator.

e. Romantic or sexual relationships – Workplace favoritism arising from a romantic or sexual relationship between a supervisory employee and a subordinate employee is prohibited by this policy. For this reason, such relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

GENERAL:

a. No elected official, official, supervisor or manager may engage in discriminatory harassment of another employee, volunteer or contractor under this policy. An elected official, official, supervisor or manager shall not condition employment, employee benefits, or continued employment
by the City of Gilroy on an applicant’s, contractor’s or employee’s acquiescence to the behavior defined above. Elected officials, officials, managers and supervisors shall not tolerate discriminatory harassment of which they are aware and shall act to prevent such harassment. No elected official, official, supervisor or manager may retaliate against any applicant or employee because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing conducted by an authorized person related to a violation of this policy. Violation of any of these provisions will result in disciplinary action which, for City employees, may include discharge.

b. No employee may engage in discriminatory harassment of another employee, applicant, volunteer or contractor under this policy. No employee shall assist any other individual in doing any act which constitutes discriminatory harassment under this policy. No employee may retaliate against any employee because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in any investigation proceeding or hearing conducted by an authorized investigator. Violation of any of these provisions will result in disciplinary action up to and including discharge.

c. Any retaliation against a person for filing a harassment charge or making a harassment complaint is prohibited. Employees found to be retaliating against another employee shall be subject to disciplinary action up to and including termination.

**COMPLAINT PROCEDURE:**

a. Filing – Any employee, job applicant, contractor or volunteer who believes he or she has been harassed may make a complaint orally or in writing with any of the following:

1) Employee’s Supervisor  
2) Any Department Head  
3) Any Division Head  
4) City Administrator  
5) Human Resources Director

Any Department Head, manager, or supervisor who receives a harassment complaint should notify the Human Resources Director immediately.

b. Some people who engage in harassment are unaware that their conduct is offensive and will stop if asked to do so. Therefore, if reasonably possible under the circumstances, employees and contractors are encouraged to tell the harasser that the conduct is offensive and ask that it stop. This should only be done if the employee or contractor feels comfortable with
this approach. The employee should also immediately report the situation to one of the persons listed above in Section 3.a.

c. Upon notification of a harassment complaint, the Human Resources Director shall:

1) Authorize the investigation of the complaint and supervise 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 has relevant knowledge concerning the complaint. This may include victims of similar conduct.

2) Review factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment under this policy; 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 the results of the investigation and the determination as to whether harassment occurred to appropriate persons including to the complainant, the alleged harasser, and the department director. If discipline is imposed, the discipline will not be communicated to the complainant;

4) If harassment occurred, take and/or recommend to the appointing authority (City Administrator) 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 victim and other potential victims from further harassment;

6) Take reasonable steps to protect the victim from any retaliation as a result of communicating the complaint; and

7) If appropriate, take action to remedy the victim's loss, if any, which resulted from the harassment.

d. Should the complaint involve the investigation of a sworn peace officer, the investigation shall be conducted in accordance with Government Code Sections 3300-3311 of the Police Officers Bill of Rights.

e. When a complaint involves alleged harassment by an elected official, the Human Resources Director shall retain an investigator from outside the City to conduct the investigation. The investigator will provide his/her findings the Human Resources Director, along with recommendations for
resolution of the complaint. To avoid any real or perceived conflict of interest, the complaint will not be resolved by any person over whom the City Council has appointive powers. An administrative committee consisting of the Human Resources Director and two department heads shall jointly determine the resolution of any such complaint, including any appropriate remedial and corrective actions.

f. In addition to the above stated complaint procedure, harassment and/or discrimination complaints may be filed with the State Department of Fair Employment and Housing within 365 days or with the Federal Equal Employment Opportunities Commission within 300 days of the harassment or discriminatory event.

g. Complaints shall be kept in confidence as long as legally and practically possible during the complaint process.

DISSEMINATION OF POLICY

A copy of this policy shall be provided to all employees, elected and appointed officials and volunteers of the City, as well as displayed in prominent locations throughout the City. Employees of the City shall receive periodic training on the policy.