



## **CITY OF NEW BRAUNFELS POLICIES AND PROCEDURES**

### **PROCEDURE(S): HARRASSMENT FREE WORKPLACE**

**EFFECTIVE DATE: MAY 20, 2019**

**REVISION DATE(S):**

## **HARRASSMENT FREE WORKPLACE**

Every City of New Braunfels employee should be able to work in an environment free of discrimination, harassment (non-sexual and sexual), bullying and retaliation. For such an environment to exist, each of us must play a role. Management must take a proactive role in setting and enforcing appropriate standards of behavior, and all employees must behave in accordance with those standards. The following policy prohibiting discrimination, harassment, bullying and retaliation applies any time an individual is on City premises or engaging in work-related activities, including City-sponsored events, on or off City premises. The City is committed to ensure that each employee works in an environment of mutual respect which is free of discrimination, harassment and bullying. An employee will be counseled or disciplined appropriately, up to and including termination, if he/she is found to have:

1. Violated this policy; or
2. Made reports of discrimination, harassment or bullying proven to be false; or
3. Retaliated in any form against an employee who makes a complaint, participates in an investigation, or otherwise opposes discrimination or harassment including the use of the City's Open-Door Policy.

### **A. Discrimination**

The City is an equal opportunity employer that encourages advancement of all employees. The City will not, under any circumstances, discriminate against an employee, job applicant, citizen, customer or vendor with regard to race, color, religion, sex, gender identity, sexual orientation, age, disability status, pregnancy, citizenship, national origin, genetic information, political affiliation, veteran status or any protected classification under federal or state law. The City does not discriminate regarding its employment practices, including but not limited to the following:

- Advertisement;
- Recruitment;
- Hiring;
- Job assignment;



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- Transfers;
- Promotions;
- Compensation;
- Training and development; and
- City-sponsored events.

#### Discrimination based on disability:

To ensure compliance with the Americans with Disabilities Act (ADA) and Americans with Disabilities Act as Amended (ADAAA), the City offers equal employment opportunity to qualified individuals and strictly prohibits discrimination against qualified individuals on the basis of disability.

The City will provide reasonable accommodation to the known physical or mental impairments of an otherwise qualified individual with a disability if such reasonable accommodation will enable the individual to perform the essential functions of the position at issue. The City's obligation under this policy is limited to providing reasonable accommodations that will not result in undue hardship to the City.

Any employee seeking a reasonable accommodation for a disability that affects the employee's ability to perform the essential functions of the position shall make a written request to the Human Resources Department.

Employees who have a complaint involving potential violations of the ADA or ADAAA, including but not limited to harassment, discrimination, or failure to provide a reasonable accommodation, must immediately contact their immediate Supervisor, Human Resources, and/or the City Manager or designee.

### **B. Harassment**

In this policy, harassment is defined as a serious, severe or pervasive conduct, that is unwanted or offensive that has the purpose or effect of violating a person's dignity or creating an intimidating, humiliating, hostile or offensive environment. Harassment or disrespectful behavior can be verbal, non-verbal, or physical. Sexual harassment is a more specific kind of harassment. As such, some of the following examples of harassment might also apply to sexual harassment which is covered in greater



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detail in the next section. Examples of what could be perceived as harassment include, but are not limited to:

- Offensive jokes, comments or pranks [verbal, written, and visual];
- Inappropriate physical contact such as touching, pinching, pushing, grabbing, unnecessary brushing against someone, invading personal space;
- Intimidation;
- Threats of violence;
- Name calling;
- Spreading rumors about co-workers;
- Humiliating initiation practices/ hazing;
- Outing or threatening to out someone as gay, lesbian or transgender;
- Racist, sexist, homophobic or ageist jokes, or derogatory or stereotypical remarks about a particular ethnic, social, linguistic or religious group, or gender;
- Jokes or remarks based on ancestry; physical characteristics such as hair, skin color or facial features; race-linked illnesses; culture including a person's name, cultural dress, or grooming practices; and accent or manner of speech.

The City does not tolerate harassment of any kind on the basis of race, color, religion, sex, gender identity, sexual orientation, age, disability status, pregnancy, citizenship, national origin, genetic information, political affiliation, veteran status or any protected classification under federal or state law.

### **C. Sexual Harassment**

1. Sexual harassment is illegal. As used in this policy, sexual harassment is defined as any unwelcomed sexual advance, requests for sexual favor and other verbal or physical conduct of a sexual nature that takes place under any of the following conditions:
  - Submission to such conduct, either explicitly or implicitly, affects an individual's employment;
  - Such conduct has the effect of unreasonably interfering with the individual's work performance;
  - Such conduct creates an intimidating, hostile or offensive work environment.



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2. Sexual harassment includes a range of subtle and not-so-subtle behaviors such as, but not limited to:
  - Making unwanted sexual advances;
  - Telling sexually explicit jokes or stories and/or sharing sexually explicit pictures; also includes the use of vulgar or derogatory language;
  - Requesting a sexual favor;
  - Other unwelcomed verbal, physical, or non-verbal conduct of a sexual nature or with sexual overtones such as hugging, kissing, massaging, touching, or standing too close, intentionally brushing up against another's body, whistling or leering;
  - Displaying sexually explicit material such as a cartoon, picture, magazine, calendar, video or audio recording, DVD, and cable programming;
  - Promising [directly or by implication] a promotion, wage increase, special treatment, etc. in exchange for a sexual favor;
  - Stalking;
  - Giving unwanted attention, gifts or messages;
  - Threatening [directly or by implication] an employee with termination or adverse treatment if he/she does not submit to a sexual act or acts.

### D. Workplace Bullying

The City of New Braunfels promotes a healthy workplace culture where all employees are able to work in an environment free of bullying behavior. Workplace bullying can also be considered harassment when the behavior is persistent, severe and pervasive. Bullying occurs when a person or group of people in a workplace, either intentionally or unintentionally, single out another person or group of people for unreasonable, embarrassing, or intimidating treatment. Workplace bullying is unacceptable and will not be tolerated. This policy shall apply to all employees, regardless of his or her employee status (salaried or hourly employee, full-time, part-time, temporary or seasonal employee, appointed, or independent contractor). Any employee found in violation of this policy will be disciplined, up to and including immediate termination. Independent contractors found to be in violation of this policy



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may be subject to contract cancellation.

#### Definition:

In this policy, bullying is defined as persistent, malicious, unwelcome, severe or pervasive mistreatment that harms, intimidates, offends, degrades or humiliates an employee, whether verbal, physical or otherwise, at the place of work and/or in the course of employment.

#### Examples:

The City of New Braunfels considers the following types of behavior to constitute workplace bullying. Please note, this list is not meant to be exhaustive and is only offered by way of example:

- Verbal aggression (angry outbursts, excessive profanity);
- Repeated infliction of verbal abuse, such as the use of derogatory remarks, insults and epithets;
- Personal attacks (teasing, taunting, name-calling);
- Sabotage of a co-worker's work product or undermining of an employee's work performance;
- Vandalizing personal belongings;
- Cyber-bullying;
- Humiliating initiation practices/hazing;
- Spreading malicious rumors;
- Social isolation;
- Deliberately excluding someone from meetings or communications without valid reason, or encouraging others to do so;
- Consistent ignoring or interrupting of an employee in front of co-workers;
- Staring, glaring or other nonverbal demonstrations of hostility;
- Excessive monitoring or micro-managing, unless such is required due to poor work performance;
- Unreasonable interference with an employee's ability to do his or her work (i.e., overloading of emails, unrealistic deadlines, meaningless tasks);
- Being held to a different standard than the rest of an employee's work group, unless such is required due to poor work performance;
- Inappropriate, exaggerated or untrue derogatory remarks about someone's performance, particularly in front of others;
- Encouraging others to turn against the targeted employee;



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- Stalking;
- Conduct that a reasonable person would find hostile, offensive, and unrelated to the employer's legitimate business interests.

Here are a few examples which are not considered workplace bullying:

- expressing differences of opinion;
- offering constructive feedback;
- making a legitimate complaint about another worker's conduct.

### E. Retaliation

Retaliation occurs when an employee or supervisor punishes another employee for:

- filing in good faith a verbal or written complaint of alleged discrimination, harassment or bullying;
- refusing sexual advances;
- cooperating with or participating in an investigation of alleged discrimination, harassment or bullying; or
- engaging in any conduct protected by law.

The City prohibits threats or acts of retaliation, retribution, intimidation, or harassment against such employees. Any reports of retaliation will be treated seriously, investigated promptly and impartially.

### F. Reporting Procedures

It is important for employees to come forward and report any perceived discrimination, harassment or bullying behavior. Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of these behaviors. Therefore, the City strongly urges the prompt reporting of complaints or concerns so that rapid and constructive action can be taken. The City will make every effort to stop alleged discrimination, harassment or bullying before it becomes severe or pervasive, but can only do so with the cooperation of its employees. The City further strongly



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encourages all employees to formally report any concerns of assault, battery, or other bullying behavior of a criminal nature to the New Braunfels Police Department.

#### **Supervisor Responsibility:**

The City requires any supervisor who witnesses possible violations of this policy, irrespective of reporting relationship, to immediately report this conduct to the Human Resources Director or his/her designee. Supervisors have a responsibility to promptly consult the Human Resources Department for a proposed course of action. Any supervisor who condones or fails to take appropriate actions may be found in violation of this policy and could be subject to discipline, up to and including termination.

#### **Steps for Reporting Possible Violations of this Policy:**

**Step 1:** Employees who believe they have experienced or witnessed conduct that violates this policy, should promptly advise the offender that his or her behavior is unwelcome or offensive and request that such behavior immediately stop. Although the employee may find it difficult to directly confront the offender, sometimes, the offending conduct may be a misunderstanding that can be quickly resolved.

**Step 2:** If the behavior continues or if the employee does not feel comfortable addressing the offender, then the employee needs to report their concerns or complaints either verbally or in writing to his or her supervisor;

**Step 3:** If the employee is not comfortable reporting to the supervisor or does not believe the supervisor satisfactorily resolved the matter, then it must be reported to the Human Resources Department before the conduct becomes severe or pervasive. Individuals should not feel obligated to report their complaints to their immediate supervisor first before bringing the matter to the attention of the Human Resources Department.

**Step 4:** If the employee's complaint involves an employee of the Human Resources Department, then the complaint can be submitted to the City Manager's Office. If the employee believes they have been retaliated against, please contact the City Manager's Office.



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<b>If an Employee...</b>	<b>Then the Employee Should...</b>
Believes he/she is the victim of discrimination, harassment or bullying, or has been exposed to such offensive conduct	Tell the person to stop the conduct immediately.
Does not feel comfortable addressing the alleged offender	Tell his/her immediate supervisor.
Does not feel comfortable discussing the problem with a particular supervisor	Tell the Human Resources Department.
Has a complaint against a member of the HR Dept.	Tell the City Manager’s Office.
Believes he/she is the victim of retaliation	Tell the Human Resources Department.
Does not feel comfortable discussing the problem with the HR Dept., or has a complaint against a member of the HR Dept. regarding a retaliation claim	Tell the City Manager’s Office.
Wants to report harassment or discrimination but wants to remain anonymous	Contact EthicsPoint at 1.866.883.9397 or online at <a href="http://www.cityofnewbraunfels.EthicsPoint.com">www.cityofnewbraunfels.EthicsPoint.com</a> .

**G. Investigations**

All complaints will be carefully investigated immediately by the Human Resources Department. Remember that a person who files a complaint does not have to be the victim or target of the offensive behavior but could be a witness to the offensive behavior. A complainant may withdraw a complaint at any time; however, the City will pursue an investigation to determine whether disciplinary action is warranted either on the basis of a validated complaint or the falsification of a complaint. Falsified allegations shall warrant disciplinary action up to and including termination.



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The following procedures apply to investigations:

1. Ask complainant for a voluntary written statement (the complaint). If no statement is provided, HR will prepare a written complaint containing the nature of the allegations.
2. Instruct complainant to refrain from discussing the details of the incident with anyone other than the investigator or their private attorney, but only during the pendency of the investigation;
3. Notify the City Manager;
4. Notify the alleged offender of the nature of the complaint and provide a copy of the written complaint upon request, as well as the steps of the investigation; the alleged offender will receive additional opportunities for information and response pertaining to the investigation;
5. Interview the alleged offender, the complainant and witnesses;
6. To the extent possible, maintain confidentiality of the investigation and only reveal information on a 'need to know' basis.

The identities of those involved may have to be revealed in the normal course of the investigation so the City cannot guarantee complete confidentiality. However, unauthorized disclosure can be cause for discipline up to and including termination.

In the case that the complaint is against an employee in the Human Resources Department, then report to the City Manager's Office.

### **H. Failure to Comply**

All above requirements must be followed. Any employee who deviates from these reporting, investigation and confidentiality requirements, may be subject to disciplinary action, up to and including termination of employment.

### **I. Open Door**

1. The City's Open-Door Policy is a commitment that each employee will have the opportunity to



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express job-related concerns and have them addressed by management. Most employee concerns are best addressed through open, honest and direct communication between the employee and his/her Manager. However, at times an employee may feel the issue deserves further management review. The City's Open-Door Policy is intended to provide the communication channel for an employee to seek additional assistance. Although it is our goal to reach a resolution everyone finds satisfactory, there is no guarantee that each instance will be satisfactory to all involved. The employee will, however, receive an explanation of the outcome.

2. In order to resolve an issue, Managers/Supervisors may need to investigate and talk with the employee, the employee's co-workers or others. The resolution of some issues may affect more than one employee. The City will strive to keep any investigations and issues submitted through the Open-Door Policy as confidential as possible.
3. Please raise work-related concerns as soon as possible. If you, as an employee are not satisfied with the response received, please feel free to raise it to the next level of management or avail yourself of the Grievance Policy and Procedures as outlined in the employee handbook.

### **J. Duty to Warn**

Employees have a duty to warn their Manager/Supervisor or the Human Resources Department if they are aware of or suspect any potential situation, incident or ongoing workplace behavior involving other employees, former employees, or individuals that may be physically threatening or violent in nature and endanger the safety of employees, or others on the premises of the City. Threats of physical violence against individuals or the City, regardless of how transmitted [verbal, written, via telephone or electronic mail], should be immediately reported to a member of management. Reports made by employees will be held in confidence to the maximum possible extent and will be investigated as promptly as possible. The City of New Braunfels will not allow any form of retaliation against any employee for making a report in good faith under this Policy.

### **K. Situation Assessment**

Upon receiving any such report, the Human Resources Director and City Management will assess the situation and make a decision on how to respond to the situation. In cases of physical, hostile actions considered endangering or life threatening to employees, customers or other individuals, law



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enforcement action may be required. Depending on the seriousness of the situation, an employee may be suspended with pay to allow time for investigation or immediate disciplinary action, up to and including termination.

### **L. Employee Discipline**

Disciplinary action imposed on an employee found to have committed a violation of this Policy may include one or a combination of the following:

- Apology;
- Counseling;
- Mandated harassment training;
- Verbal warning;
- Written warning;
- Personal reprimand;
- Change in job assignment;
- Job probation;
- Suspension;
- Termination of employment;
- Any other form of appropriate corrective action.

For employees suspended or terminated for violating this Policy, the employee's personal belongings will be retrieved and provided to the terminated employee. In the case of termination, all final termination paperwork will be completed and processed by the HR Department and mailed to the employee.