

**CITY OF MILPITAS, CALIFORNIA**  
**STANDARD OPERATING PROCEDURE**

**SUBJECT: ANTI-DISCRIMINATION POLICY AND INTERNAL COMPLAINT PROCEDURE**

**1.0 Purpose:**

The purpose of this policy is:

- (1) to reaffirm the City's commitment to prohibit and prevent unlawful discrimination (including harassment) in all workplaces of the City of Milpitas;
- (2) to define discrimination and harassment prohibited under this policy;
- (3) to set forth a procedure for investigating and resolving complaints of prohibited discrimination and harassment; and
- (4) to set forth a procedure for considering requests for reasonable accommodation made by qualified individuals with disabilities.

This policy shall not be construed to create a private or independent right of action. This policy is intended to prohibit discrimination consistently with Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the California Fair Employment and Housing Act and California Labor Code section 1102.1.

**2.0 Policy:**

Discrimination against or harassment of an applicant or employee by a supervisor, management employee, co-worker, or contractor on the basis of race, religion, sex, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation is strictly prohibited and will not be tolerated.

Disciplinary action up to and including dismissal may be instituted for behavior described in the definition of prohibited discrimination and harassment set forth below.

Retaliation against a person for filing or otherwise making a discrimination or harassment complaint in good faith, or other good faith involvement in a discrimination or harassment investigation, is prohibited. Employees found to be retaliating against another employee shall be subject to disciplinary action up to and including dismissal.

**3.0 Definition:**

Prohibited discrimination and harassment for purposes of this policy, includes but is not limited to:

Speech, such as epithets, derogatory comments or slurs, and lewd propositioning on the basis of race, sex, religion, national origin, ancestry, disability, medical condition, marital status, age, or

sexual orientation. This includes, without limitation, inappropriate sex-oriented comments on appearance, including dress or physical features, and race-oriented stories and jokes.

Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement when directed at an individual on the basis of race, sex, religion, national origin, ancestry, disability, medical condition, marital status, age or sexual orientation. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied threats or promises in return for submission to physical acts.

Visual insults, such as derogatory posters, cartoons, or drawings related to race, sex, religion, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation.

Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive work environment.

Adverse employment actions carried out on account of race, sex, religion, national origin, ancestry, disability, medical condition, marital status, age, or sexual orientation.

Adverse employment actions carried out in retaliation for good faith submission of discrimination or harassment charges, or good faith participation in an investigation made pursuant to this policy.

#### **4.0 Reporting and Complaint Procedure:**

- (A) An employee or job applicant who believes he or she has been subjected to discrimination or harassment in violation of this policy by another employee, a client, or a contractor is encouraged to make a complaint orally or in writing to 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.
  
- (B) Any supervisor, manager or department head who (1) receives a discrimination or harassment complaint or (2) observes or otherwise learns of harassing behavior against an employee or job applicant shall notify the Human Resources Director immediately.

#### **5.0 Investigative Procedure:**

- (A) Employees and applicants who believe they have been subject to discrimination or harassment covered by this policy may submit a complaint on the form designated by the Human Resources Director.

Employees are encouraged to submit a complaint as soon as reasonably possible after first being subject to discrimination or harassment.

(B) After receiving a complaint, the Human Resources Director shall take steps to investigate the matter. The Human Resources Director may attempt an informal resolution. The Human Resources Director may reject a discrimination or harassment complaint that is incomplete or which fails to contain sufficient information to state a claim of discrimination or harassment covered under the policy.

(C) All City employees must cooperate fully, and be truthful and forthright, when providing information in response to a City investigation under this policy.

(D) The Human Resources Director shall notify the complainant(s) and respondent(s), department head, and other appropriate persons, regarding the disposition of complaints made pursuant to this policy.

(E) The City may take lawful measures to assure appropriate confidentiality during the investigation and related time periods.

#### **6.0 Remedial Action:**

(A) If discrimination or harassment is found to have occurred in violation of this policy, the City shall take action to ensure or confirm that the discrimination or harassment at issue is stopped. The City may take whatever measures are appropriate to ensure its workplaces remain free of unlawful discrimination or harassment.

(B) Employees found to have engaged in discrimination or harassment covered by this policy may be subject to disciplinary action up to and including termination of employment.

(C) Employees found to have been dishonest or uncooperative during an investigation made pursuant to this policy may be subject to disciplinary action up to and including termination of employment.

#### **7.0 Appeal**

No later than ten working days after being notified regarding the outcome of a complaint made pursuant to this policy, a complainant may appeal to the City Manager. The appeal shall be in writing, verified under penalty of perjury, and contain an explanation why the complainant believes the pending disposition is incorrect. The appeal must be received by the City Manager no later than ten working days after the date of the outcome from which the appeal is taken. Failure to appeal within the ten day period means that the earlier disposition is final. The City Manager (or his/her designees) shall respond in writing after considering the appeal.

#### **8.0 Disabilities**

Qualified individuals with disabilities may submit requests for reasonable accommodation on forms designated by the Human Resources Director. The City shall consult with the affected employee or applicant and determine whether a reasonable accommodation is necessary or appropriate.

#### **9.0 Miscellaneous**

**No. 001**  
**Effective 8/4/98**  
**Revised: 8/4/98**  
**Replaces SOP 16.7 and SOP 16.8**

The City may allow alternative procedures for complaints, investigations and remedial efforts made pursuant to this policy.

This policy may be periodically amended to ensure its consistency with state or federal legal requirements.

The City will provide training to its employees regarding this policy, the laws prohibiting discrimination and harassment in the workplace, and the reporting and complaint procedure outlined in this policy.

**10.0 Dissemination of Policy:**

This policy shall be disseminated to all City employees. The City may require employees to sign an acknowledgment of the policy's receipt, which may be maintained in the employee's personnel files.

Related Administrative Policies:	Violence in the Workplace and Internal Complaint Procedure
Related SOP:	Disciplinary Actions



Harassment and discrimination in employment, housing, public accommodations, and services are against the law.



Department of Fair Employment and Housing

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## Hate Violence

Under the Ralph Civil Rights Act, it is against the law for any person to threaten or commit acts of violence against a person or property based on race, color, religion, ancestry, national origin, age, disability, gender, sexual orientation, political affiliation, or position in a labor dispute.

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## Filing a Complaint

If you believe you are a victim of illegal discrimination or hate violence, you can file a complaint with DFEH by following these steps:

- Contact us at (800) 884-1684 (employment, public accommodation, and hate violence) and (800) 233-3212 (housing)
- Be prepared to present specific facts about the alleged harassment, discrimination, or denial of leave
- Provide copies of documents that support the charges in the complaint
- Keep records and documents about the complaint, such as paycheck stubs, rent receipts, membership applications, and other materials

DFEH will conduct an impartial investigation. We are not an advocate for either the person complaining or the person complained against. We represent the State of California. DFEH will, if possible, try to assist both parties to resolve the complaint.

If a voluntary settlement cannot be reached, and there is sufficient evidence that establishes a violation of the law, DFEH may issue an accusation and litigate the case before the Fair Employment

and Housing Commission or in civil court. If the Commission or a court decides in favor of the complaining party, the following remedies can be ordered:

- Award of the job or the housing denied to the complainant, or similar relief
- Back pay or promotion for the complainant, or compensation for moving and relocation
- Compensatory damages for the complainant, including emotional distress damages
- Fines, penalties, or punitive damages

For more information, contact DFEH toll free at (800) 884-1684

(employment, public accommodation, and hate violence)  
(800) 233-3212 (housing)

TTY number at (800) 700-2320  
or visit our web site at [www.dfeh.ca.gov](http://www.dfeh.ca.gov)

In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact DFEH at the numbers above.



State of California  
Department of Fair Employment & Housing

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# Discrimination is Against the Law

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## Civil Rights in California

The Department of Fair Employment and Housing (DFEH) enforces California state laws that prohibit harassment and discrimination in employment, housing, and public accommodations and that provide for pregnancy leave and family and personal medical leave. It also accepts and investigates complaints alleging hate violence or threats of hate violence.

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## What DFEH Does

DFEH enforces these laws by

- Investigating harassment, discrimination, and denial of leave complaints
- Assisting parties to voluntarily resolve complaints involving alleged violations of the laws enforced by DFEH
- Prosecuting violations of the law
- Educating Californians about the laws prohibiting harassment and discrimination by providing written materials and participating in seminars and conferences

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## Discrimination in Employment

The California Fair Employment and Housing Act (FEHA) prohibits harassment and discrimination in employment based on the following:

- Race
- Color



The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from the perpetration of acts of hate violence.

- Religion
- Sex (gender)
- Sexual orientation
- Marital status
- National origin (including language use restrictions)
- Ancestry
- Disability (mental and physical, including HIV and AIDS)
- Medical condition (cancer/genetic characteristics)
- Age (40 and above)
- Request for family care leave
- Request for leave for an employee's own serious health condition
- Request for Pregnancy Disability Leave
- Retaliation for reporting patient abuse in tax-supported institutions

Discrimination is prohibited in all employment practices, including the following:

- Advertisements
- Applications, screening, and interviews
- Hiring, transferring, promoting, terminating, or separating employees
- Working conditions
- Participation in a training or apprenticeship program, employee organization, or union

California workers are

- Guaranteed leaves if disabled because of pregnancy
- Guaranteed reasonable accommodation for pregnancy

- Guaranteed leaves for the birth or adoption of a child; for the employee's own serious health condition; or to care for a parent, spouse, or child with a serious health condition
- Protected from harassment because of their sex, race, or any other category covered under the law
- Protected from retaliation for filing a complaint with DFEH, for participating in the investigation of a complaint, or for protesting possible violations of the law

California workers with disabilities are also entitled to reasonable accommodation when necessary in order to perform the job.

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#### Discrimination in Housing

FEHA also prohibits discrimination in the rental and sale of housing based on the following:

- Race
- Color
- Religion
- Sex (gender)
- Sexual orientation
- Marital status
- National origin (including language use restrictions)
- Ancestry
- Familial status (households with children under age 18)
- Source of income\*
- Disability (mental and physical, including HIV and AIDS)
- Medical condition (cancer/genetic characteristics)
- Age

\*Until 12/31/04 unless extended by statute.

Discrimination is prohibited in all aspects of the housing business, including, but not limited to:

- Advertisements
- Mortgage lending and insurance
- Application and selection processes
- Terms, conditions, and privileges of occupancy, including freedom from harassment
- Public and private land-use practices, including the existence of restrictive covenants

Persons with disabilities are entitled to reasonable accommodation in rules, policies, practices, and services and are also permitted, at their own expense, to reasonably modify their dwelling to ensure full enjoyment of the premises.

As in employment discrimination law, persons are protected from retaliation for filing complaints.

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#### Discrimination in Public Accommodations and Services

Discrimination in public services and accommodations is prohibited under the Unruh Civil Rights Act. The law requires "full and equal accommodations, advantages, facilities, privileges, or services in all business establishments." Business establishments covered by the law include, but are not limited to:

- Hotels and motels
- Nonprofit organizations
- Restaurants
- Theaters
- Hospitals
- Barber shops and beauty salons
- Housing accommodations
- Local government and public agencies
- Retail establishments

**CITY OF MILPITAS**  
**STANDARD OPERATING PROCEDURE**

**ADMINISTRATIVE POLICY**

**SUBJECT: VIOLENCE IN THE WORKPLACE AND INTERNAL COMPLAINT  
PROCEDURE**

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**1.0 Purpose:**

The purpose of this policy is:

- (1) to establish a strong commitment to provide a safe work environment, free of violence and threats of violence, in all the workplaces of the City of Milpitas; and
- (2) to set forth a procedure for reporting, investigating and resolving incidents and complaints of violence in the workplace.

**2.0 Policy:**

Violence or threats of violence by or against any City employee, contractor or any other person on City property or while engaged in City business is strictly prohibited and will not be tolerated.

Disciplinary action up to and including dismissal and/or criminal prosecution may be instituted against City employees or contractors who engage in violence or threats of violence in the workplace.

Non-employees on City property who engage in violence or threats of violence may be subject to criminal prosecution.

The City is committed to providing opportunities for employees to be trained in the risk factors associated with workplace violence, methods of preventing situations that could lead to violence, and the proper handling of emergency situations in order to minimize the occurrences of violent incidents in the workplace.

**3.0 Definitions:**

Acts of violence or threats of violence include, but are not limited to, the following:

- 1) Unnecessary shouting, using profanity, yelling or verbally challenging another person to physical combat or fight;
- 2) Physical combat or fighting, including striking, punching, slapping, kicking, pushing or in any other way physically assaulting another person;
- 3) Grabbing, pinching or touching another person in an unwanted way whether sexually or otherwise;

- 4) Engaging in dangerous and/or threatening horseplay;
- 5) Possession, use, or threat of use of a gun, knife or other weapon of any kind on City property, including parking lots, other exterior premises, in City vehicles, or while engaged in activities for the City in other locations. This provision does not apply to public safety or Public Works personnel whose possession of such items is a requirement of the job;
- 6) Threatening harm or harming another person, or any other action or conduct that implies the threat of bodily harm.

#### **4.0 Reporting and Complaint Procedure:**

(A) In the event of an incident of violence or threat of imminent violence in the workplace, employees shall call the Police Department at 9-911 immediately. The primary consideration shall be for employees' safety. No employee shall put him or herself in a situation which will increase the risk of harm. Employees experiencing or observing possible violence in the workplace shall also inform their supervisor or department head as soon as possible.

(B) An employee who believes he or she has been subjected to violence or a threat of violence in violation of this policy by another employee, a contractor, or non-employee on City property or while engaged in City business is also strongly encouraged to make a complaint orally or in writing to any of the following:

- 1) Immediate supervisor;
- 2) Any supervisor or manager within or outside the department;
- 3) Department head; or
- 4) Human Resources Director.

(C) Any supervisor, manager or department head who receives a complaint of violence or threat of violence by or against any employee, or who observes, or otherwise learns of violence or threats of violence by or against an employee shall notify the Human Resources Division immediately. The department head (or his/her designee) shall also respond promptly to workplace safety issues and attempt to ensure the safety of those employees and non-employees in his/her area.

#### **5.0 Investigative Procedure:**

(A) After receiving a complaint of violence or threat of violence, the department head, or his/her designee, shall take steps to investigate the matter. The department head, or his/her designee, may attempt an informal resolution. He or she may reject a complaint that is incomplete or which fails to contain sufficient information to state a claim of violence or threat of violence covered under this policy.

(B) All City employees must cooperate fully, and be truthful and forthright, when providing information in response to an investigation under this policy. Employees found to have been dishonest or uncooperative during an investigation made pursuant to this policy may be subject to disciplinary action up to and including termination of employment.

(C) The department head, or his/her designee, shall notify the complainant(s) and respondent(s), Human Resources Division, and other appropriate persons, regarding the disposition of complaints made pursuant to this policy.

**6.0 Miscellaneous:**

Departments are strongly encouraged to conduct an initial assessment of any potential hazards or risks in their specific work areas and to develop plans for addressing those hazards/risks. Any problems areas shall be brought to the attention of the department head along with a recommendation for correcting the problem(s).

The Human Resources Division shall, where necessary and appropriate, arrange for counselors to work with victims and observers of incidents of violence on City property.

The City may allow alternative procedures for complaints, investigations and remedial efforts made pursuant to this policy.

This policy may be amended periodically.

**7.0 Dissemination of Policy:**

This policy shall be disseminated to all City employees and departments. A copy of this policy may also be maintained in the department's copy of the City of Milpitas Standard Operating Procedures (SOP) Manual. The City may require employees to sign an acknowledgment of the policy's receipt, which may be maintained in the employee's personnel files.

Related Administrative Policies  
Related SOP:

Anti-Discrimination Policy and Internal Complaint Procedure  
Disciplinary Actions

# CITY OF MILPITAS

## Workplace Violence Prevention Policy

### I. PURPOSE

The City of Milpitas recognizes the importance of providing a safe work environment and place to conduct City business for our residents and visitors. For these reasons this policy has been adopted to establish guidelines for the education and training of employees as well as procedures to be followed in the event of a workplace violence incident. The guidelines in this policy are in conformance with CAL-OSHA Guidelines, accepted law enforcement practice and the City's disciplinary policies.

### II. SCOPE

This policy applies to all City of Milpitas employees. Workplace safety and security is every employee's responsibility and it is essential that all employees understand and abide by this policy. Employees should be aware of, and know how to react in the event of any of the three types of workplace violence defined by The California Occupational Safety and Health Administration (CAL-OSHA).

- Type 1 – A violent act by an assailant with no legitimate relationship to the workplace who enters the workplace to commit a robbery or other criminal activity.
- Type 2 – A violent act or threat of violence by a recipient of a service provided by the City of Milpitas, such as a customer.
- Type 3 – A violent act or threat of violence by a current or former worker, supervisor or manager, or another person who has a personal relationship with a City of Milpitas employee or contract employee, such as an abused spouse, domestic partner, etc.

### III. DEFINITIONS for the purpose of this policy are:

**A. A violent act** is an aggressive physical behavior or force exerted for the apparent purpose of violating, damaging or abusing another or damaging property. Violent acts may include, but are not limited to the following:

- Striking, punching, slapping or assaulting another person;
- Fighting or challenging another person to fight;
- Grabbing, pinching or touching another person in an unwanted way whether sexually or otherwise; (see City of Milpitas Anti-Discrimination Policy for additional information)
- Engaging in dangerous, threatening or unwanted horseplay;
- Threatening harm or harming another person, or any action or conduct that implies bodily harm;
- Encouraging or inciting an employee to engage in prohibited activities;
- Possession use or threat of use of a gun, knife or weapon of any kind on City property, including but not limited to buildings, parking lots, parks and other exterior premises, City vehicles, or while engaged in activities for the City at locations outside the City, unless such possession or use is a requirement of the job;
- Stalking or any other type of harassment;
- Causing damage to property.

**B. A threat of a violent act** is a verbal expression or physical action that conveys intent to commit a violent act.

#### **IV. VIOLENCE - FREE WORKPLACE POLICY**

The City of Milpitas is committed to maintaining a safe and secure workplace free from acts of violence or threats of violence. To keep this commitment the City forbids actual or threatened violence against co-workers, visitors, customers or other persons who are either on City premises or have contact with employees in the course of their duties.

Violence or the threat of violence against or by any employee of the City or any other person is not acceptable and will not be tolerated. Should a non-employee demonstrate or threaten violent behavior, he/she will be removed from the site and may be subject to criminal prosecution. Should an employee, during working hours, on City property or during City functions demonstrate or threaten violent behavior he/she may be subject to criminal prosecution and disciplinary action up to and including termination.

#### **V. HAZARD IDENTIFICATION and RESPONSE**

Threats of or actual violent acts may happen or be witnessed by employees, residents, or visitors in and around City facilities at any time. The City of Milpitas relies on the following activities to identify potential threats and exposures. These include:

- A. Reliance on employees to advise supervisors of concerns regarding safety and security. This can be accomplished using procedures contained in the City's Injury, Illness and Prevention Program (IIPP).
- B. Periodic physical inspections of City buildings and facilities to identify conditions which may contribute to criminal activity such as low lighting, functional alarms, cash handling procedures, evidence of vandalism such as graffiti, functional locks, etc.
- C. Review and trending of incident reports of hostile or threatening behaviors witnessed in and around City facilities by department managers and/or Human Resources.
- D. Official complaints to law enforcement of threats which may directly impact the safety of employees or others.
- E. An initial employee survey to assess employee perception of job duties, environmental, or activities which they feel could increase the risk of violence in the workplace. The survey may be used or updated at anytime to revise targeted prevention activity.
- F. Prior to staffing of new facilities or change in use of existing facilities, a safety assessment will be conducted by Facilities to identify safety or security issues for correction and employee awareness training consistent with the IIPP.

## **VI. HAZARD MITIGATION AND MANAGEMENT**

### **A. Unauthorized Weapons**

No person unless a sworn law enforcement officer or other authorized person shall possess weapons as defined and cited in California Penal Code § 171b at a City workplace or on City property and private vehicles, including public parking lots.

These may include but are not limited to the following:

- Firearms
- Explosives/ammunition
- Knives with blades over four inches long
- Stun guns
- BB guns

### **B. Access Control**

Access control to “employee only” areas of each facility is limited to authorized personnel only. Facilities which limit building access to designated entrances or maintain “employee only” areas must adhere to City policy for maintaining security of alternate entries and access points. This includes the activation of locks, surveillance, intrusion alarms, or other security hardware and procedures. The identity of all visitors to “employee only” areas, including contractors and vendors doing business with the City, should be verified by City staff to assure authorization for access.

### **C. Employee Training**

All employees shall receive periodic training in workplace security and violence prevention awareness.

Training shall include the following:

- Review and explanation of the Workplace Violence Prevention Policy;
- Recognition of workplace security hazards including indicators of violent behavior;
- Procedures for reporting workplace hazards and/or violent behavior;
- Methods to prevent or diffuse workplace violence;
- Procedures and use of alarms to summon emergency assistance;
- Evacuation procedures, should evacuation become necessary;
- Procedures to request escort to vehicles or other sites if employee considers it unsafe to proceed alone.

### **D. Threat and Hazard Identification and Notification**

- All employees are instructed to be aware of and evaluate potential safety and security concerns or hazards in their work environment. Employees should report concerns along with any recommendations for mitigation to their supervisor or Human Resources immediately. Potential for exposure to violent situations should be evaluated by supervisors for any unusual work assignment in a location not typical to daily operations. This could include any off site events, temporary accommodation, business travel, etc.
- Any recommendation for the improved safety and security in and around City facilities will be evaluated by Police, Human Resources, and/or the Safety and Risk Management Committee.

- Information regarding potential threats will be shared balancing safety and privacy issues. Human Resources, the City Attorney, and Risk Manager, with final authorization by the City Manager, will authorize the scope and method of information dissemination.
- Results of site inspections which contain security items will be shared, as needed, by postings in employee areas or email notification.

## **E. Responding to Actual or Potential Violence**

1. All threats of violence must be taken seriously. It is the responsibility of each employee to notify a supervisor of any violent act or a threat of a violent act against themselves or any other persons or property. Employees shall inform a supervisor of these acts immediately or as soon as practical.
2. If a person recognized to have been a prior security concern enters a City facility, employees who observe, based on previous events or training, behavior which could result in a threat or criminal action should immediately convey this information to their immediate or acting supervisor. The supervisor shall evaluate the situation and take appropriate action including alerting the Milpitas Police Department at 9-911 or 263-1212. In the absence or inability of a supervisor to respond, any employee may alert the Milpitas Police Department.
3. In cases where there is an **immediate threat** to employee safety or the safety of the public, employees should call 9-911 from a desk phone for immediate emergency assistance and remove themselves and others, if possible, from the area. Employees may be advised that they can pre-program 263-1212 into personal or City cell phones to provide quick access to emergency response.
4. If phones cannot be used safely, activation of an available silent alarm may be necessary. If possible, when the police arrive, a knowledgeable employee from the building should meet the officer outside the building and explain the current situation.
5. Once the immediate danger has passed and freedom of movement is restored, those evacuating the building must convene at their designated assembly location as cited in the individual City of Milpitas Evacuation Plan so that their safety may be confirmed and Police can gather information about the incident. Police will obtain the contact information of non-employee witnesses.
6. For incidents of threats of acts of physical violence initiated by a City employee that may result in disciplinary action, the Department Director or on-duty supervisor shall report the incident to the Milpitas Police Department. The Department Director or on-duty supervisor shall complete an Incident Report Form [see Appendix A] and forward the document to Human Resources. The Human Resources Department will ensure that appropriate investigation procedures are followed [see Appendix B].
7. If an employee has an active restraining order which prohibits contact from another individual, the employee should provide a copy of the order to the Milpitas Police Department and is encouraged to advise his/her immediate supervisor. Human Resources will maintain a copy of the order on file. Any reported violation of the restraining order will be investigated as a criminal matter.

**Appendix A: Incident Report Form**

**CITY OF MILPITAS  
INCIDENT REPORT FORM**

Please complete this form (using blue or black ink) within 24 hours of an incident, and submit to Risk Manager in the Finance Department. Please state the facts to the best of your ability and not your opinions.

Date of incident: \_\_\_\_\_

Exact Location of Incident: \_\_\_\_\_

Time of incident: \_\_\_\_\_  A.M.  P.M.

Name of Person Injured/ Involved: \_\_\_\_\_ Gender:  Male  Female

If Minor, Name of Parent/ Guardian: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Was the person Injured:  Yes  No Describe Injury/ Illness: \_\_\_\_\_

Describe and provide details of incident: *(Please attach separate sheet as needed)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What were the Condition / Environment of the area of the Incident: (i.e. Lighting, Surface/Floor)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Actions Needed/Taken by Whom? \_\_\_\_\_

If person was injured, were they treated, and if so, where? \_\_\_\_\_

Was local emergency contact alerted?  Yes  No  Police  Fire  Paramedic

Other Individuals Involved: *(ex: other Employees, Witnesses)*

Name	Address	Phone Number

Name of Person Completing Report: \_\_\_\_\_

Title: \_\_\_\_\_ Local Phone: \_\_\_\_\_

Signature: \_\_\_\_\_ Date Report Completed: \_\_\_\_\_

Supervisor/Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **Appendix B: Investigation Procedures**

1. Supervisors and employees shall fully cooperate in any administrative or criminal investigation into a violent act or a threat of a violent act occurring in the workplace.
2. Department Managers and Supervisors are responsible for investigation of internal incidents involving City employees. The investigation report must include detailed and concrete facts about the incident including a proposed action plan to prevent re-occurrence. The investigation should be documented using the City's injury/incident investigation reports as required by the City's Injury and Illness Prevention Program. Due to the potential for criminal investigation, the Milpitas Police will complete an investigation report in addition or in lieu of supervisor's report.
3. Retaliation or the threat of retaliation against a person who reports violence or the threat of violence will not be tolerated. If an employee feels there has been retaliation or the threat of retaliation for reporting violence, the employee is directed to report this retaliation to the Milpitas Human Resources Department. This shall also be reported to the Milpitas Police Department within 24 hours for a possible criminal investigation if deemed appropriate by the Police Department.
4. The Milpitas Risk Management and Safety Committee shall review incident reports and determine if changes to policy, training, communication and security procedures are needed to prevent reoccurrence or improve the current procedures.



**The definition of sexual harassment includes many forms of offensive behavior.**



**Department of Fair Employment and Housing**

- such as a lead, supervisor, manager or agent;
- the employer had no knowledge of the harassment;
- there was a program to prevent harassment; and
- once aware of any harassment, the employer took immediate and appropriate corrective action to stop the harassment.

### **Filing a Complaint**

Employees or job applicants who believe that they have been sexually harassed may file a complaint of discrimination with DFEH within **one year** of the harassment.

DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes.

If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a formal accusation. The accusation will lead to either a public hearing before the Fair Employment and Housing Commission or a lawsuit filed by DFEH on behalf of the complaining party.

If the Commission finds that discrimination has occurred, it can order remedies including:

- Fines or damages for emotional distress from each employer or person found to have violated the law
- Hiring or reinstatement
- Back pay or promotion
- Changes in the policies or practices of the involved employer

Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

For more information, see publication DFEH-159 “Guide for Complainants and Respondents.”

For more information, contact DFEH toll free at  
**(800) 884-1684**  
Sacramento area & out-of-state at **(916) 478-7200**  
TTY number at **(800) 700-2320**  
or visit our Web site at **[www.dfeh.ca.gov](http://www.dfeh.ca.gov)**

*In accordance with the California Government Code and ADA requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publication in an alternative format, please contact DFEH at the numbers above.*



**State of California**  
Department of Fair Employment & Housing

DFEH-185 (11/07)

## **Sexual Harassment**

### **The Facts About Sexual Harassment**

The *Fair Employment and Housing Act* (FEHA) defines sexual harassment as harassment based on sex or of a sexual nature; gender harassment; and harassment based on pregnancy, childbirth, or related medical conditions. The definition of sexual harassment includes many forms of offensive behavior, including harassment of a person of the same gender as the harasser. The following is a partial list of types of sexual harassment:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Actual or threatened retaliation
- Leering; making sexual gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters
- Making or using derogatory comments, epithets, slurs, or jokes
- Sexual comments including graphic comments about an individual's body; sexually degrading words used to describe an individual; or suggestive or obscene letters, notes, or invitations
- Physical touching or assault, as well as impeding or blocking movements



**The mission of the Department of Fair Employment and Housing is to protect the people of California from unlawful discrimination in employment, housing and public accommodations, and from the perpetration of acts of hate violence.**

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### **Employers' Obligations**

All employers must take the following actions against harassment:

- Take all reasonable steps to prevent discrimination and harassment from occurring. If harassment does occur, take effective action to stop any further harassment and to correct any effects of the harassment.
- Develop and implement a sexual harassment prevention policy with a procedure for employees to make complaints and for the employer to investigate complaints. Policies should include provisions to:
  - Fully inform the complainant of his/her rights and any obligations to secure those rights.
  - Fully and effectively investigate. The investigation must be thorough, objective, and complete. Anyone with information regarding the matter should be interviewed. A determination must be made and the results communicated to the complainant, to the alleged harasser and, as appropriate, to all others directly concerned.
- Take prompt and effective corrective action if the harassment allegations are proven. The employer must take appropriate action to stop the harassment and ensure it will not continue. The employer must also communicate to the com-

plainant that action has been taken to stop the harassment from recurring. Finally, appropriate steps must be taken to remedy the complainant's damages, if any.

- Post the Department of Fair Employment and Housing (DFEH) employment poster (DFEH - 162) in the workplace (available through the DFEH publications line [916] 478-7201 or Web site).
- Distribute an information sheet on sexual harassment to all employees. An employer may either distribute this pamphlet (DFEH 185) or develop an equivalent document that meets the requirements of Government Code section 12950(b). This pamphlet may be duplicated in any quantity. **However, this pamphlet is not to be used in place of a sexual harassment prevention policy, which all employers are required to have.**
- All employees should be made aware of the seriousness of violations of the sexual harassment policy and must be cautioned against using peer pressure to discourage harassment victims from complaining.
- Employers who do business in California and employ 50 or more part-time or full-time employees *must* provide at least two hours of sexual harassment training every two years to each supervisory employee and to all new supervisory employees within six months of their assumption of a supervisory position.

- A program to eliminate sexual harassment from the workplace is not only required by law, but is the most practical way for an employer to avoid or limit liability if harassment should occur despite preventive efforts.

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### **Employer Liability**

All employers, regardless of the number of employees, are covered by the harassment section of the FEHA. Employers are generally liable for harassment by their supervisors or agents. Harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassing an employee or coworker or for aiding and abetting harassment.

Additionally, the law requires employers to take "all reasonable steps to prevent harassment from occurring." If an employer has failed to take such preventive measures, that employer can be held liable for the harassment. A victim may be entitled to damages, even though no employment opportunity has been denied and there is no actual loss of pay or benefits.

In addition, if an employer knows or should have known that a **non-employee** (e.g. client or customer) has sexually harassed an employee, applicant, or person providing services for the employer and fails to take immediate and appropriate corrective action, the employer may be held liable for the actions of the non-employee.

An employer might avoid liability if

- the harasser is not in a position of authority,

**CITY OF MILPITAS, CALIFORNIA  
STANDARD OPERATING PROCEDURE**

**SUBJECT: COMPUTER, E-MAIL AND INTERNET USE POLICY**

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**1. PURPOSE**

The City's computer systems (including all hardware and software) exist solely for the purpose of conducting City business and are the exclusive property of the City. The City treats all computer files, including electronic mail (e-mail) sent or received, as business information. The purpose of this policy is to: (1) ensure that the computer systems are used for appropriate City business; (2) notify employees that they have no right to privacy in use of the computer systems, including e-mail or internet, (3) advise employees that there are a number of circumstances under which e-mail may be publicly disclosed under the Public Records Act or litigation; and (4) notify employees that the City reserves the right, with or without notice, to access, monitor, review, copy and/or delete any computer files, including e-mail sent or received, and all website communications and/or transactions.

**2. E-mail Use**

- A. All e-mail business communications to non-City employees should use an appropriate professional tone, correct spelling and proper grammar. E-mail is very effective for sharing information, but less effective in resolving conflicts or differences of opinion. Don't argue using e-mail.
- B. The City reserves the right to access, monitor, copy and/or delete any e-mail communications made on City computer systems.
- C. There should be no expectation of privacy in the use of e-mail. Employees should not use e-mail to create or transmit information they wish to keep private. Do not put into an e-mail anything you would not put into a hard-copy memorandum or letter.
- D. When transmitting messages via e-mail, employees should be aware that e-mail messages can be read by persons other than the addressee and that the messages may be later disclosed to outside parties. E-mail messages including (but not limited to) information relative to public projects or policy-making decisions may be subject to disclosure under the California Public Records Act (Government Code section 6250 et seq.) E-mail messages may also be subject to disclosure in litigation or administrative proceedings in the same manner as other City records.
- E. E-mail to and received from attorneys representing the City are privileged communications. Such e-mail communications shall not be distributed or copied to unauthorized individuals.

**3. E-Mail Retention**

- A. E-mail generates correspondence and other documentation, which may be recognized as official City records requiring protection/retention in accordance with the California Public Records Act and the City's Record Retention Program. It is the responsibility of individual employees and their department heads to determine if e-mail is an official City record that must be retained in accordance with the City's Record Retention Program. The City Clerk and City Attorney can assist you in making such a determination. Preliminary drafts, notes or interagency or intra-agency memoranda that are not retained by the City in the ordinary course of business are generally not considered to be official City records subject to disclosure.
- B. Although the use of e-mail is considered official City business, the e-mail system is intended as a medium of communication. Therefore, the e-mail system shall not be used for the electronic storage or maintenance of documentation, including, but not limited to official City records.
- C. If an e-mail message, including any attachments thereto, can be considered an official City record, such e-mails shall be printed as a hard copy, filed, and retained in accordance with the City's Records Retention Program. The sender of the e-mail is responsible for printing and filing it accordingly. Recipients may, at their discretion, retain a hard copy of the e-mail for reference purposes only.
- D. The system administrator will automatically delete any data stored in the e-mail system that is 60 days old. To ensure maximum efficiency in the operation of the e-mail system, staff is encouraged to delete e-mail messages from their systems once they are no longer needed.
- E. Periodically, the City receives requests for inspection or production of documents pursuant to the Public Records Act, as well as demands by subpoena or court order for such documents. In the event such a request or demand is made for e-mail, the employees having control over such e-mail, once they become aware of the request or demand, shall use their best efforts to temporarily preserve any e-mail until it is determined whether such e-mail is subject to preservation, public inspection or disclosure.

#### **4. Internet Use**

- A. Employees may not use the internet for personal purposes without the express permission of the City, except infrequent incidental personal use that does not adversely effect the ability to perform work duties.
- B. Employees have no right to privacy in the use of the internet on City computer systems.
- C. The City reserves the right, with or without notice, to access, monitor, review, copy and/or delete any computer files, including any and all website communications and/or transactions by City employees. The City further reserves the right to monitor any employee's internet use for purposes of determining whether such use is appropriate.

#### **5. Prohibited Uses of E-Mail and the Internet:**

Prohibited uses of E-Mail or the Internet on City computer systems includes, but is not limited to, the following:

- A. To access any obscene or pornographic material;
- B. To transmit sexually explicit images, message or cartoons, ethnic or racial slurs, or anything that may be construed as harassment or disparaging of others based on their race, national origin, ethnic group identification, religion, age, sex, sexual orientation, marital status, color or physical or mental disability;
- C. To conduct ongoing personal business;
- D. To play games;
- E. To conduct illegal activities (such as, but not limited to, gambling), or commit a crime or fraud, or violate any federal, state or local law;
- F. To use the username or password of another person to gain access to his/her e-mail or any other computer account without the person's consent;
- G. To transmit sensitive or privileged information to unauthorized persons or organizations;
- H. To download or otherwise acquire software without prior consent of the Department Head and Chief Information Officer or their designees;
- I. To use the Internet in any manner that causes confidential or sensitive information to be subject to eavesdropping or interception by unauthorized individuals.

**6. Computer Systems - Hardware and Software:**

- A. Employees are prohibited from doing the following:
  - (1) Installing programs on City computer systems without the prior consent of the Department Head and Chief Information Officer or their designees;
  - (2) Copying any City computer program for the purpose of using it on any other computer without the prior consent of the Department Head and Chief Information Officer or their designees;
  - (3) Connecting computers, such as laptops or personal computers, not owned by the City to the City information systems network without the prior consent of the Department Head and Chief Information Officer or their designees;
  - (4) Disclosing an employee's account or e-mail password or otherwise making the account available to others;
  - (5) Infringing on others' access and use of the City's computer systems, including but not limited to:
    - a. The sending of excessive messages, either locally or off-site;
    - b. Unauthorized modification of system facilities, operating systems or disk partitions;
    - c. Attempting to crash or tie up a computer or network;

- d. Damaging or vandalizing City computing facilities, equipment, software or computer files;
- e. Intentionally developing or using programs which disrupt other computer users or which access private or restricted portions of the system and/or damage the software or hardware components of the system.

**7. Violation of Policy:**

An employee's personal or other inappropriate use of the City's computer systems, including e-mail and Internet, may result in loss of the privilege to use such systems.

Acknowledgment:

I certify that I have received, read, and agree to abide by the City of Milpitas' Computer, E-mail and Internet Use Policy as set forth above.

\_\_\_\_\_  
Employee Name Printed

Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Employee Signature

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

\_\_\_\_\_  
Thomas J. Wilson, City Manager

**CITY OF MILPITAS, CALIFORNIA**  
**STANDARD OPERATING PROCEDURE**

**SUBJECT: TELEPHONE SYSTEM, CELLULAR PHONE AND PAGER USE POLICY**

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1. Purpose:

The City provides employees with access to its telephone system and, in limited instances, to cellular phones, calling cards, pagers, radios and personal data devices (PDA's) to facilitate City business. The purpose of this policy is to: (1) ensure that the City telephone system, cellular phones, calling cards, pagers, radios and PDA's are used appropriately; (2) ensure departmental accountability regarding assignment and containing costs and use of this equipment and (3) ensure that the City is properly reimbursed for personal calls made on City equipment. This policy includes all devices which use the telephone system in any way (for example, fax machines, modems, and voicemail).

2. Telephone/Cell Phone Use:

- A. City telephones should always be answered promptly, courteously and professionally.
- B. Personal calls on the City telephone system should be made only on an infrequent, incidental basis, be of reasonable duration, and should not interfere with the ability to perform work duties or disrupt the work of other employees.
- C. Additional Phone Line, Reimbursement for Personal Calls on City Telephones, and Cell Phone Voice Mail
  - (1) One private line is authorized per City issued cell phone. Such private line will be for the user's personal usage. The charges for the private line will be the responsibility of the employee and invoices will be billed to the employee's mailing address by the cell phone vendor. Establishing the private line will be the responsibility of the employee.
  - (2) Employees must reimburse the City for the cost of any personal calls to include usage, text messaging, roaming, long distance or any other charges incurred by the employees personal use. Procedures for reimbursement are included below in Section H.

3. Telephone Voice Mail Use

- A. Employees should not have any expectation of privacy in messages left for them on voice mail. The City reserves the right to access, monitor, transcribe, copy or delete any messages left on the City voice mail system.
- B. Employees who receive voice mail messages on the City telephone system should access and review voice mail messages on a regular basis. They should also delete messages as soon as possible to avoid unnecessarily overtaxing the voice mail system.

4. Cellular Phones, Calling Cards, Pagers, Radios and Personal Data Devices:
  - A. The Information Services Department shall maintain a comprehensive inventory of all City-owned cellular phone, pagers, radios (and their numbers) and personal data devices (PDA's), and the users and departments to whom this equipment has been issued, and will periodically distribute this inventory to the Department/Division Heads. The Department/Division Head shall review this inventory, noting any changes that are necessary, indicate the reason for any missing items, certify that all items as amended on the inventory are in the possession of the Department/Division, and return it to Information Services.
  - B. The Information Services Department shall periodically review the cellular phone, pager, radio and PDA rates being charged to the City and determine the most cost-efficient rates available. In addition, the Information Services Department shall determine the appropriate type of cell phone, pager, radio and PDA to be assigned to employees based on frequency of use and cost.
  - D. Each Department/Division Head has the following responsibilities regarding issuance and use of cellular phones, calling cards, pagers, radios and PDA's within his/her department/division (these responsibilities may be delegated to a designee within the department/division):
    - (1) To determine which employees may be granted the privilege of using a City-owned cellular phone, calling card, pager, radio or PDA. The Department/Division Head shall also conduct an annual review of assignments of this equipment to ensure that the designated employees/users continue to demonstrate a need for the equipment they have been issued. Such equipment shall be assigned only to a limited number of employees who have a job-related need for such equipment. Changes in assignments of this equipment may be made by the Department/Division Head at any time for any reason.
    - (2) To ensure that employees within the department/division use such equipment appropriately and keep personal use of such equipment to a minimum.
    - (3) To ensure that employees within the department/division reimburse the City for personal use of such equipment. The Department/Division Head should circulate bills for such equipment to employees on a monthly basis, and ensure that all payments for personal usage is received within a reasonable time. The Department/Division Head should also review the bills and identify any irregularities or excessive personal usage of City equipment, and notify the employee/user to provide an explanation for his/her personal usage.
  - C. The Finance Department may periodically conduct audits of use of the City's telephone system, cellular phones, pagers, radios and PDA's.
  - E. All bills for City-owned cellular phones, pagers, radios, and PDA's should be submitted directly to the City. In no event shall such bills be addressed to any employee's residence except for private lines acquired by the employee. Employees receiving such bills at their residences are required to ensure that such bills are addressed to the City.

- H. Employees' Reimbursement for Personal Use of Telephones, Cellular Phones or Pagers
- (1) Personal use of City telephones, cellular phones or pagers should be infrequent and only done in cases of significant situations or actual emergencies. Such calls should be kept to a minimum both in length and number of calls made and received. Calls made by employees to notify their family that they must work overtime or have been called back to work are considered business calls for purposes of this policy.
  - (2) The City will only pay for cellular phone and pager costs incurred during the course of conducting City business. Employees are responsible for identifying and reimbursing the City for all personal use of cellular phones and pagers. The Information Services Department shall provide copies of the bills to the Department/Division Heads on a regular basis. The Department/Division Head will review the bills for appropriateness and accuracy, and then distribute the bills to each employee. Each employee shall review the bill and identify personal calls by annotating the calls on the bill and calculate the amount owed for the personal calls. The employee shall then write a check, payable to the City of Milpitas, for the amount owed for the personal calls and give the check, along with a copy of the annotated bill, to the Department Head or his/her designee. If the amount due is \$1.00 or less, the user is not required to provide reimbursement. Payment for personal calls is due within ten business days of the user's receipt of the bill. The Department/Division Head shall submit the bills along with the personal checks and annotated bill to Finance-Cashiering for processing. After dispersing copies of the bills to the Department/Division Heads, the Information Services Department shall submit the original bills promptly to Finance Division-Accounts Payable section for payment.
- I. Department/Division Heads may not approve their own cellular phone invoices. Such approval must be obtained from the Manager of their Department/Division.
- J. Department/Division Heads may, in their discretion, establish department policies which provide for more strict controls over employee use of cellular phones, calling cards, pagers, radios or PDA's than those set forth in this policy. In instances where such equipment is issued to Departments/Divisions and used by more than one employee within the Department/Division, the Department/Division Head may establish department policies for ensuring reimbursement for personal use of such equipment and minimizing any excessive use, either for business or personal use, of such equipment.
- K. City-owned cellular phones, approved for vehicular installation, must be used only in City vehicles, unless authorized by the Department/Division Head or City Manager. Only cellular phones acquired through City-administered contracts are to be installed in City vehicles.
- L. Employees are responsible for maintaining adequate physical protection for all equipment issued to them by the City. Employees shall promptly notify the Department/Division Head if any City-owned cellular phone, pager, radio or PDA is damaged or stolen.

M. Any such equipment purchased by the City is owned by the City and shall be returned to the City when an employee separates from service or when the need for such equipment no longer exists.

5. Use of Personal Cellular Telephone

A. Employees who are designated by their Department Head to receive a City issued cell phone, may for their own convenience and with Department Head approval utilize a personal cell phone instead of a City issued cell phone. The City will not reimburse the employee for usage as their personal cell phone is being used for their own convenience. Employees who require "push to talk" or other features unique to the City cellular network may not be eligible to use a personal phone.

B. When a personal cell phone is utilized, the employee has the responsibility to be available via that phone in the same manner as through a City issued phone.

C. If an employee wishes to use a personal phone, the usage acknowledgment and agreement provided below must be completed.

D. The employees cell phone number will be distributed and protected in the same manner as City issued phone numbers.

E. For those employees requiring access to e-mail via a handheld device, the City will make reasonable efforts to integrate the personal device with the City e-mail system. The City will not provide support for the actual personal handheld device.

F. The City bears no liability for loss or damages to personal cell phones utilized by employees.

G. Occasionally, employees who **do not** have a City-issued cellular phone or have not opted to use a personal phone in lieu of a City issued phone may need to use their personal cellular phone for critical City business. These calls are eligible for reimbursement by the City, provided no other option (i.e., pay phone, hotel phone or home phone) is available. Use of personal cellular phones is discouraged, due to the high cost of cellular phone usage versus standard phone usage. However, employees should consider the cost effectiveness of cellular phones versus other means, such as hotel phones, that may have a surcharge that far exceeds the cost of the use of the cellular phone.

a. Requests for reimbursement should be submitted on a Reimbursed Expenses form to the Finance Department. A copy of the monthly cellular phone bill, with business calls annotated, should be attached.

b. Employees who privately purchase cellular phones and/or pagers should not include the City as co-owner or co-lessee.

6. Violation of Policy

An employee's excessive personal or other inappropriate use of the City's telephone system, cellular phones, calling cards, pagers, radios or PDA's may result in loss of the privilege to use such systems or equipment. Failure to provide prompt and full reimbursement for personal calls may also result in loss of the privilege to use such City equipment. Violation of this policy may also result in disciplinary action.

APPROVED AS TO FORM: Michael J. Ogaz, City Attorney

APPROVED: Thomas C. Williams, City Manager

4.2/SOP

## Personal Cell Phone Usage Acknowledgment and Agreement

I am requesting to use my personal cell phone in lieu of a City provided cell phone. I understand that I will not be entitled to reimbursement for the costs associated with my personal cell phone and agree to the provisions in SOP 04-02 related to use of personal cell phones.

\_\_\_\_\_  
Employee Name Printed

\_\_\_\_\_  
Employee Signature

Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Department Head Approval

cc: Employee File

No. 6.2  
Effective: 04-01-00  
Rev. 04-01-00  
07-01-08

**CITY OF MILPITAS, CALIFORNIA**  
**STANDARD OPERATING PROCEDURE**

**SUBJECT: USE OF CITY VEHICLES AND PRIVATELY-OWNED VEHICLES ON CITY BUSINESS**

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PURPOSE

The purpose of this Standard Operating Procedure ("SOP") is to establish City policies, guidelines and conditions for the use of City-owned and privately owned vehicles in connection with official City business. The City is dedicated to eliminating conditions that adversely affect the well being of employees and threaten the financial stability of the City through accidental losses. All City employees requiring the use of vehicles in connection with their official duties are expected to conform to the conditions set forth in this SOP. This SOP will also replace SOP 6.2.1 (Mileage Reimbursement Claims).

POLICIES

A. Use of Vehicles

1. No City vehicle will be assigned for the exclusive use of any employee or used by City employees for transportation to and from work without written approval of the City Manager or his/her designee.
2. The Department Head will evaluate, on an annual basis, the City business circumstances necessitating the assignment of a City vehicle for the exclusive use by any employee to ascertain whether this use is still warranted and shall report his or her findings to the City Manager.
3. It is the responsibility of the Fleet Maintenance Supervisor to maintain a current listing of the exclusive users of City vehicles and assure vehicles are made available for scheduled inspection and maintenance.
4. Any non-exclusive use of a City vehicle or use of an employee's privately owned vehicle must be authorized in advance by the Department Head or his/her designee. Use of a privately owned vehicle is allowed only after the Department Head or designee has determined that a City vehicle is unavailable or if a Blanket Authorization has been issued pursuant to Section G.
5. No employee will be permitted to operate a City vehicle without possession of a proper and valid driver's license as authorized by the California Vehicle Code.

Employees who have lost their driving privilege, or have been subjected to reduced use of the privilege, will immediately notify the Department or Division Head of said restriction. An employee who fails to report such license status and continues to operate a City vehicle shall be subject to disciplinary action, up to or including possible demotion or termination.

The Human Resources Department will update the validity of each required driver license through enrollment of all employees in the California Employer Notification Program (PULL). Employees who drive on City business are required to provide proof of automobile liability insurance to the Human Resources Department annually.

6. City vehicles can only be used solely for the purpose of carrying out official City business including standby assignments. Other authorized use is limited to the following:

- a) Driving a City vehicle to lunch or break or minor personal use en route to home if that vehicle is the employee's normal transportation to and from work. Use of a city provided vehicle for lunch or break shall be limited to within the Milpitas city limits.
  - b) Driving a City vehicle to lunch or break if that vehicle is assigned to the employee during his/her work schedule and the employee is en route to an authorized destination. Use of a City provided vehicle for lunch or break shall be limited to within the Milpitas City limits.
  - c) Transporting non-City employees in the case of authorized business; e.g., field checking a site with a contractor, engineer, vendor, or other interested party.
  - d) Attending an authorized meeting on official business (supervisor approval required).
  - e) Any use justified by emergency or extraordinary circumstances, which is reported to the employee's supervisor immediately following the emergency.
7. Unauthorized use of a City vehicle includes but is not limited to:
- a) Personal business (with exception of #6a above).
  - b) Use of City vehicles during lunch or work break (with exception of #6a and #6b above).
  - c) Transporting non-City employees, except in the case of authorized City business.
8. Employees who take vehicles home must not allow family members or others to operate the vehicle.
9. No poster, stickers or advertisements of any form shall be placed upon City vehicles without approval of the Department Head.
10. No City logo or equipment shall be removed from the City vehicles without approval of the Fleet Maintenance Supervisor. Removal of City logo or equipment shall be performed by the Fleet Maintenance employees only.
11. City vehicles shall be legally and appropriately operated and/or parked at all times. Employees who park vehicles at their place of residence should make every effort to park vehicles off the street and in a protected, secure location. Violations issued to the driver or parking violations will be the responsibility of the employee and not the City and must be immediately reported to his/her supervisor.
12. Use of a cellular telephone or any other electronic equipment can interfere with the safe operation of the vehicle. For this reason the use of cell phones in vehicles is restricted as outlined in the cell phone section D.
13. No employee shall operate a City vehicle unless that person and all passengers are restrained by safety belts, or unless specifically exempted by the California Vehicle Code.
14. Smoking is prohibited inside any City vehicles. The City has enacted an ordinance to prohibit smoking within 25 feet of any City owned or leased facilities which include City vehicles.
15. The employee using a City vehicle is responsible for reporting any mechanical or operating problems to the Fleet Maintenance Supervisor.

## B. Financial Responsibility of the City and Employees in Connection with the Operation of Vehicles

### 1. City Vehicles:

- a) Employees who operate City vehicles within the scope of their employment are generally covered by the City's self-funded liability insurance, unless damage or injury is caused by the employee's actual fraud, corruption or malice.
- b) Employees who operate City vehicles outside the scope of their employment are not protected by the City's self-funded liability insurance, and may be subject to personal liability as well as to disciplinary action.

### 2. Privately Owned Vehicles:

- a) Employees who use their personal vehicles for City business are required to maintain automobile liability insurance in compliance with the California Insurance Code with minimum limits of \$100,000/\$300,000/\$50,000, and are not provided primary coverage by the City's self-funded liability insurance. The City offers no automobile liability coverage for the use of an employee's private owned vehicle except when such use is within the scope of the employee's employment and is sponsored and under the direct supervision of the City, and then only in excess to that insurance which the employee personally carries on his or her privately owned vehicle. Payments made to employees pursuant to Section E are intended to cover all costs, including insurance coverage, incurred in operation of the privately owned vehicle.
- b) Employee vehicles are required to be in a safe, working order, including operational turn signals and stop lights, seat belts, and other required automobile safety equipment.

3. Rental Vehicles: The necessity for a rental car must be established and authorized in advance by the Department Head or designee. Employees are required to obtain liability insurance coverage offered by the car rental company when renting vehicles for use on official City business.

## C. Accident Reporting

1. If an employee becomes involved in an accident while operating a City vehicle, or a privately owned vehicle within the scope of employment, the law enforcement agency responsible for accident investigation should be called to the scene and an accident report requested from such authority. If specific and justifiable circumstances exist which make such reporting clearly impractical, the driver shall provide a written report of the accident to his or her supervisor at the earliest possible time clearly detailing the facts and circumstances relating to the accident occurrence, and damages to the City vehicle and other vehicle(s). If possible, the driver should take digital photos of the accident scene and physical damage to include with the written report.
2. The written report should include names, addresses, phone numbers, driver license numbers and insurance information of the parties involved, make, year and license number of the vehicle(s) as well as names, addresses and phone numbers of any witnesses. The employee should not discuss the accident with outside individuals, nor discuss or address fault at the scene of the accident.
3. A copy of the accident report shall be forwarded to the employee's supervisor, department manager, Human Resources (if employee injury occurred) City Attorney and the City's Risk Manager.

D. Use of Cell Phone or Electronic Devices in Vehicles

No employee will be permitted to use a cell phone or any other electronic devices when operating City vehicles or personal vehicles on City business. The following exceptions apply to drivers who are eighteen (18) or older:

1. Employee is a peace officer and the cell phone calls placed or received are directly related to their official duties as a peace officer.
2. Employee is using the cell phone to place an emergency call to a law enforcement agency or his/her emergency services agency. If possible, the employee should park in a safe location before making the call.
3. The cell phone is designed and configured to allow hands-free communication and is used in that manner while driving. Hands-free operation does not eliminate distractions. Employees must minimize the use of cell phones while in motion.

E. Reimbursement for Use of Privately Owned Vehicle

1. Employees who use their personal vehicles on City business are eligible to receive reimbursement at the mileage rate established by the Internal Revenue Service ("IRS").
2. Employees traveling directly from home to authorized destination on City business will be reimbursed for the distance between home and the destination or between work and the destination, whichever is less.
3. Reimbursement will be authorized only after the Department Head has determined in advance that use of a private vehicle on City business is the most economical and practical means of transportation. Blanket authorization pursuant to Section G is an alternative to this requirement.
4. All claims for mileage reimbursement shall be made by completing a Mileage Reimbursement Form, approved by the Department Head and submitted to the Finance Department.

F. Calculation of Compensation

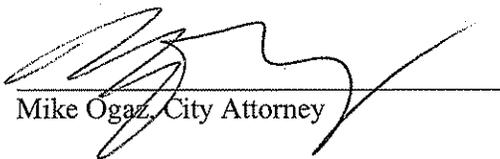
1. In general, the IRS regulations provide that the fair market value of that portion of an employee's free personal use (e.g. commuting) of an employer-provided vehicle is treated as taxable compensation. This policy provides for the City's compliance with the IRS Regulations and establishes guidelines for the calculation of taxable compensation for (1) Flat Rate Monthly Auto Allowance, (2) Mileage reimbursements and (3) the personal use of City vehicles. Any compensation calculated in accordance with this SOP which is deemed taxable under IRS regulations shall be reported on the employee's W-2 unless the vehicle is a qualified exempt vehicle. Qualified exempt vehicles are:
  - a) All those City vehicles which by reason of nature and design are not likely to be used for personal purposes.
  - b) Clearly marked Police or Fire vehicles that are required to be used for commuting by a Police Officer or Firefighter who, when not on regular shift, is on call at all times. Personal use other than commuting in responding to the emergency calls is prohibited.
  - c) Qualified Utility Repair Trucks designed and used to carry heavy tools, testing equipment or parts to respond directly to emergency restoration of utility services.

- d) Unmarked Law Enforcement Vehicles – Personal use by a Police Officer incidental to law enforcement functions, such as reporting directly from home to a stake out or to an emergency situation.
- 2. Mileage Reimbursement - Mileage reimbursements at the rate established by the IRS for the use of the employees' privately owned vehicles on City business shall not be treated as taxable or reportable compensation.
- 3. Personal use of City Vehicle - The City follows the \$1.50 per one way commute rule established by the IRS in calculating compensation accruing to employees who are assigned City vehicles that are not qualified exempt vehicles. The conditions for using the \$1.50 per one-way commute method are:
  - a) The city requires the employee to commute to work in an assigned City vehicle.
  - b) The City has a written policy which prohibits the employee the use of such vehicle for personal use other than commuting or minor personal use.
  - c) Adequate records have been kept to prove that the above conditions have been met.
  - d) The employee is not an elected official, the City Manager or a Department/Division Head.
- 4. Record Keeping – except for qualified exempt vehicles or vehicles used 100% for City business, detailed records must be kept showing the personal and business use of each City vehicle. It shall be the responsibility of the person who is assigned the City vehicle to maintain these records.

G. Blanket Authorization for Use of Private Vehicles

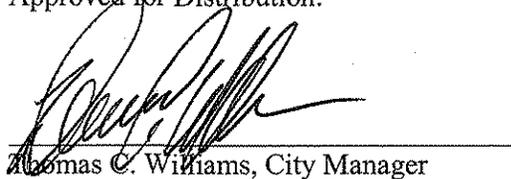
- 1. Notwithstanding any other provision of this Procedure, a Department Head may provide blanket authorization for any employee to use his or her own vehicle while in the scope of employment so long as the vehicle has been pre-approved as meeting the requirements set forth in Section B(2) of this Procedure by the City Risk Manager or designee.
- 2. Use of any private vehicle not meeting the requirements of Section B(2) is prohibited.

Approved as to Form:



Mike Ogaz, City Attorney

Approved for Distribution:



Thomas C. Williams, City Manager

6.2/SOP/Use of City Vehicles and Privately Owned Vehicles on City Business

## CITY OF MILPITAS PROFESSIONAL APPEARANCE POLICY

**INTENT:** The intent of this policy is to ensure that City of Milpitas employees present themselves in a safe, professional, and hygienic manner while at work.

- POLICY:**
1. Employees shall maintain their attire, hairstyle, body art, hygiene and overall professional appearance in compliance with federal and state safety regulations and with City and department safety policies and procedures.
  2. Employees shall wear appropriate business attire while at work and/or while serving as a representative of the City of Milpitas. This means “business formal”, “business dress”, or a uniform approved by the Department Head. Uniforms are to be worn if provided by the City.
    - Examples of “business formal” include suits with blouses, dress shirts and ties, and business footwear.
    - Example of “business dress” include slacks/trousers, jackets, shirts, sweaters, skirts, blouses, dresses, and business footwear. Ties are preferred but not mandatory.
    - Examples of inappropriate attire at all times include flip-flops, T-shirts, shorts (non-uniform), sweatshirts, athletic apparel, athletic shoes, denim or blue jeans, sweat suits, polo shirts (non-uniform) and attire with words or images inappropriate for the workplace, or that create a perception of inappropriate product endorsement.
  3. There are two exceptions to the Business Attire requirement.
    - a. Employees performing physical labor or maintenance duties may with express prior permission by the Department Head, wear khaki style pants, short or long-sleeved T-shirts, sweatshirts, coveralls, and construction-style boots.
    - b. Employees working outdoors may wear City provided hats or caps to protect themselves from the weather.
  4. All attire must be clean and in good repair, with no noticeable holes or stains, and must fit reasonably well (i.e., not too loose or long, not too tight or short).
  5. Employees attending meetings or events with City dignitaries or other professional members of the public must wear “business formal” during such meetings. This includes all meetings and or events where you are representing the City of Milpitas whether at City facilities or at outside private or public places.
  6. Employees shall not display offensive, sexually suggestive, or gang-related body art.
  7. Employees shall maintain a neat and clean appearance and hygiene level as appropriate to the circumstances. This includes maintaining neat and clean clothing, hair, and personal effects, and performing daily personal hygiene.
  8. Employees who dress inappropriately will be 1) First Offense: given a verbal warning 2) Second Offense: written warning 3) Third Offense: subject to formal discipline. At any time the Department Head has the authority to send the employee home to change if dress is not appropriate.