

## SAN MATEO COUNTY HARBOR DISTRICT

<b>Policy Title:</b> Sexual & Unlawful Harassment Policy	<b>Policy Number:</b> 6.2.5	<b>Date of Approval:</b> 05/20/2020
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The San Mateo County Harbor District plays an important role in the community, interacts with customers and members of the public, and is held accountable for the behaviors and actions of its employees and Commissioners. A fair and non-discriminatory harassment prevention policy is an important part of that accountability and is required under California law.

Therefore, the District is committed to providing a workplace free from any form of unlawful harassment, discrimination, intimidation, or abusive conduct. This policy sets expectations of behaviors aligned with the District's values and supports positive working relationships and a professional work environment. This policy also defines various forms of harassment and unacceptable behavior and identifies the parties responsible for reporting, investigating, and responding to any reports of harassment.

This policy will be provided to all employees and Commissioners and will be available via the Commissioners' policy book, employee handbook, and the District's website.

### **A. Coverage**

This policy applies to all District employees, including all members of the District Board of Harbor Commissioners, and anyone performing work for the District, including independent contractors, volunteers, and interns. The District will not tolerate its employees engaging in harassing or abusive conduct towards any person while the employee is acting in his or her official capacity, during work hours, or while participating in any District activity. The District will take all reasonable and lawful measures to protect its employees from unlawful harassment by any non-employee if the harassment occurs in connection with the employee's performance of his or her work for the District or while engaged in District business.

If the District receives a complaint regarding an independent contractor engaging in behavior that would violate this policy, it will take immediate steps to investigate the complaint and, if appropriate, may remove the contractor from performing work for the District.

### **B. Definitions**

1. "Employee" means any individual performing services for the District, whether paid or unpaid, and acting under the direction and control of the District. "Employee" also includes Commissioners.
2. "The District" (or the "District" or "we") means the San Mateo County Harbor District.
3. "You" means employees and others covered by this policy.
4. "Investigator" means a person with the skills, experience, and proficiencies in examining, reviewing, and scrutinizing harassment and discrimination claims such that the investigator is competent to complete the work and provide a written report to the District.

### **C. Requirements**

The District strictly prohibits and does not tolerate unlawful harassment of any kind.

It is the District's policy that everyone should work in an environment free from unlawful harassment. Approval of, or participation in, unlawful harassment will be considered a violation of this policy. This policy prohibits conduct that violates anti-harassment laws or is not aligned with the District's values, policies, or behavioral expectations. This includes conduct in any work-related setting, whether on the District premises, during working time, or while participating in District activities outside the workplace such as District social events and travel.

Conduct prohibited by this policy includes, but is not limited to, unwelcome and offensive conduct, whether verbal, physical, or visual, that is based upon race, religious creed (including religious dress and grooming practices), ethnicity, color, ancestry, age (40 and over), genetic information, disability (mental and physical, including HIV and AIDS), medical condition (cancer/genetic characteristics & information), national origin (including language use restrictions), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender (including gender identity and gender expression), sexual orientation, marital status, familial status, parental status, domestic partner status, citizenship status, pregnancy (including perceived pregnancy, childbirth, breastfeeding or related medical conditions), military caregiver status, military status, veteran status, use of or request for family and medical leave, or any other status protected by federal, state, or local law.

The District will not tolerate harassing conduct that affects the terms and conditions of employment or tangible job benefits, interferes with work performance, or creates a hostile, intimidating, or offensive work environment. Further, it is a violation of this policy to engage in abusive conduct, as defined by Government Code section 12950.1(i)(2): conduct of an employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to the employer's legitimate business interest. Abusive conduct may include repeated infliction of verbal abuse, such as derogatory remarks, insults, and epithets, verbal and physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct unless especially severe or egregious.

Prohibited harassment may take different forms:

#### **Sexual Harassment**

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and conduct of a sexual nature in the workplace or in the course of conducting District-related business and the following occurs:

1. Submission to, or tolerance of, such behavior is made a condition of employment; or
2. Submission to, tolerance of, or rejection of such behavior is used as the basis for an employment-related decision (e.g., hiring, promotion or demotion, pay raises, etc.); or

## Policy 6.2.5 – Sexual & Unlawful Harassment Policy

3. Such behavior interferes with an employee's ability to perform District work, or creates an intimidating and hostile work environment.

Sexual harassment may be a single incident or a series of harassing acts. Inappropriate conduct that is sexually harassing in nature can involve individuals of the same or opposite sex, a supervisor (or manager) and subordinate, or co-workers of any rank or title. While the District cannot control the conduct of non-employees engaging in District-related business (e.g., customers, contractors, vendors, suppliers, etc.), the District is committed to protecting its employees from harassment by third parties and will respond promptly to employee complaints and take action to the extent permitted by law to ensure a harassment-free workplace.

Sexual harassment may result from a range of subtle to not-so-subtle conduct, depending on the circumstances and can cause emotional distress, anxiety, and other mental harm. It can result from verbal, visual, or physical conduct. Examples of sexual harassment and similar inappropriate conduct prohibited by this policy include, but are not limited to:

1. Unwelcome sexual advances, demands, pressures, or requests for sexual acts or favors.
2. Making or threatening reprisals, whether explicitly or implicitly, after a negative response to sexual advances.
3. Repeated, unwanted sexual flirtations, advances, or propositions.
4. Unwelcome physical contact such as patting, hugging, grabbing, pinching, or brushing against another's body.
5. Offensive visual conduct, including leering, making sexual gestures, or the display of sexually suggestive objects, pictures, artwork, cartoons, or posters.
6. Offensively suggestive or sexually explicit communications in any form, including but not limited to letters, notes, invitations, email, text messages, social media platforms (if work-related or directed towards a District employee), blogs, instant messaging, or voicemail.
7. Sexually-oriented verbal teasing or jokes, inquiries into one's sexual experiences, or discussions of one's sexual activities.
8. Graphic or degrading comments about an individual's appearance or sexual activity.
9. Sexually explicit or offensive images in emails or other forms of electronic messaging.

The legal definition of sexual harassment is broad and, in addition to the above examples, other unwelcome sexual conduct that has the effect of creating a workplace environment that is hostile, offensive, chilling, intimidating, or humiliating to other workers may also constitute sexual harassment.

### **Other Forms of Harassment**

The following is a non-exhaustive list of additional behaviors based upon protected categories listed in Section C above that will be considered harassment and are prohibited by this policy:

1. Derogatory and defamatory comments, epithets, slurs, or jokes.
2. Posting or sharing derogatory materials such as posters, cartoons, drawings, or gestures.
3. Aggressive or unwelcome physical conduct such as assault, blocking normal movement, restraint, touching, or other physical interference.
4. Abusive conduct, including but not limited to threats, intimidation, coercion, excessive ridicule, insults, or belittling, carried out with malice and not for a legitimate business reason.
5. Spreading false, vicious, or malicious rumors.
6. Other behavior that creates a workplace where an employee reasonably feels threatened, humiliated, intimidated or bullied in the workplace.
7. The sabotage or intentional undermining of a person's work performance.

### **D. Reporting, Investigation, and Findings**

#### **1. Reporting**

You must report any violations of this policy that you experience or witness. If you believe in good faith that you have been subjected to, witnessed, or otherwise learned of harassment (or any other conduct prohibited by this policy) by anyone, including supervisors, managers, Commissioners, co-workers, or non-employees conducting business with or for the District, you must immediately report the incident.

Verbal or written reports may be made to your supervisor, the Director of Administrative Services, or the General Manager. You are not required to report directly to your supervisor, or to any person engaging in the unwelcome behavior or any other person who is the subject of the report. You can also report a violation to the Department of Fair Employment & Housing ("DFEH") <https://www.dfeh.ca.gov> or the U.S. Equal Employment Commission ("EEOC") <https://www.eeoc.gov>.

Supervisors or managers who receive reports or observe harassing conduct must immediately report it to the Director of Administrative Services or the General Manager. If the Director of Administrative Services is implicated in the report or observation, the conduct may be reported to the General Manager. If the General Manager is implicated, the conduct may be reported to the District's General Counsel. Supervisors and managers should maintain employee privacy to co-workers and not engage in gossip or discussion that could impact any investigation.

#### **2. Investigation**

When the District receives a complaint of harassment (or other conduct prohibited by this policy), it will conduct a fair, timely, and thorough investigation of the allegation

## Policy 6.2.5 – Sexual & Unlawful Harassment Policy

that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. The alleged victim of a harassment complaint shall be updated monthly on the status of the administrative investigation, limited to reporting the investigation is “still active” or “complete pending review.”

Where practicable, the investigation will be conducted by the Director of Administrative Services or his/her designee. The investigation must be thorough and include examining all relevant documents, interviewing witnesses, analyzing witness statements, performing any necessary research, inspecting physical property, and performing any other aspects of the investigation required to create findings and recommendations.

If a complaint involves the Director of Administrative Services, the General Manager, or a Commissioner, or if the nature of the allegations would make it difficult for the Director of Administrative Services to be impartial in the investigation, the District Board of Harbor Commissioners will designate an independent investigator, and take action up to and including hiring outside counsel, subject matter experts, or other professionals to investigate, examine documents, interview all witnesses, analyze witness statements, perform research, inspect physical property, and perform any other aspects of the investigation that can be required to create findings and report to Commissioners. Not all such actions will be appropriate for every investigation, and how each investigation is handled will depend on the nature and severity of the allegations.

### 3. Guidelines

The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. While absolute confidentiality cannot be guaranteed, the District recognizes the importance of its employees’ privacy and acknowledges that employees are more truthful and forthcoming in investigations when they can speak without fear of public exposure.

### 4. Findings

When the investigation is completed, the person filing the complaint and the person alleged to have committed the conduct will, to the extent appropriate, be informed, both verbally and in writing, of the results of that investigation. If it is determined that a violation of policy occurred, appropriate remedial measures will be taken, up to and including termination or a request for resignation.

## **E. Non-Retaliation**

One of the most important protections for employees is being free from retaliation after making a complaint, providing witness information, or participating in any way in an investigation. The District strictly prohibits retaliation in any way against anyone who has lodged a harassment complaint, has expressed a concern about harassment, including sexual harassment, or has participated in a harassment investigation. Further, the initiation of a truthful complaint made in good faith, shall not under any circumstances be grounds for discipline. It is a violation of the District’s policy for an individual to be disciplined or otherwise disadvantaged or harmed because of their activities related to a harassment complaint or investigation.

## Policy 6.2.5 – Sexual & Unlawful Harassment Policy

Persons engaging in any form of retaliation or retribution against any witness or complainant will be subject to disciplinary action, up to and including termination, censure, or a request for resignation.

### **F. Annual Report**

It is important for accountability that the District actively track complaints, investigations and resolutions. To that end, the District will publish a report annually identifying the following information:

1. Number of complaints received;
2. Type of complaint received;
3. Status of accused (employee, contractor, volunteer, Commissioner);
4. Number of investigations initiated;
5. Number of open investigations;
6. Number of completed investigations; and
7. Resolution of each closed investigation, limited to “allegations were supported by the investigation” or “allegations were not supported by the investigation.”

No personal identifiable information shall be included in the annual report.

The report shall be reported out to the Board of Harbor Commissioners in February each year at the regularly scheduled Board Meeting.