RESOLUTION NO. 2016-95

RESOLUTION ADOPTING ADMINISTRATIVE ORDER NUMBER 2-16 TO BE APPLICABLE TO ELECTED AND APPOINTED OFFICIALS

WHEREAS, it is the policy of the City of Fresno to maintain and foster a work environment in which all employees can work free of discrimination, harassment, or retaliation for having complained about suspected illegal conduct; and

WHEREAS, numerous federal, state, and local laws regulate behavior related to a discrimination and harassment free workplace, including City of Fresno Administrative Order 2-16, "Discrimination and Harassment Policy and Complaint Procedure"; and

WHEREAS, the Council believes it is important to understand the same standards and remedies also apply to the City's elected and appointed officials, who are otherwise not necessarily covered by the City's Administrative Orders.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. City of Fresno Administrative Order 2-16 (AO 2-16) is hereby made applicable to all City elected and appointed officials, in addition to employees, except as modified in this Resolution; elected officials shall include the Councilmembers and the Mayor; appointed officials shall include the City Manager, City Attorney, City Clerk, Council Assistants, and Controller, plus appointed members of Charter commissions and boards.

2. All suspected violations of AO 2-16 involving elected or appointed officials shall be reported, whether the person reporting is a victim, observer, or supervisor of a person who is potentially a victim of conduct covered by the AO.

Date Adopted: 06/02/2016
Date Aprroved: 06/23/2016
Effective Date: See Section 7

3. Suspected violations committed by an elected or appointed official shall be reported to the City Attorney, the City Manager, or the Director of Personnel Services, whichever the reporting party is most comfortable discussing the matter with.

4. The City Attorney, in cooperation with the City Manager and Director of Personnel Services, shall take all appropriate actions to investigate and potentially offer options for remedial action to the Council, Mayor, Manager, or an appropriate agency having jurisdiction over the matters. If the City Attorney believes there may be a conflict in handling the matter, independent counsel may be employed. The City Attorney shall make necessary and appropriate reports as to the status of the matters.

5. Any future changes to AO 2-16 shall also apply, and the changes shall be reviewed by the City Attorney to determine whether they substantially affect this Resolution and whether Council should consider an amendment to this Resolution to address the changes.

6. The City Attorney shall arrange annual training on the matters covered in AO 2-16 for the elected and appointed officials, which shall be focused on the issues involving their positions, roles, and responsibilities.

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7. This resolution shall take effect upon its adoption.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the day of June 2nd, 2016.

AYES: Baines, Brand, Brandau, Olivier, Quintero, Soria, Caprioglio
NOES: None
ABSENT: None
ABSTAIN: None

Mayor Approval: June 23rd, 2016
Mayor Approval/No Return: N/A, 2016
Mayor Veto: N/A, 2016
Council Override Vote: N/A, 2016

YVONNE SPENCE, CMC
City Clerk

BY: Yvonne Spence
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY: _____
Douglas T. Sloan
City Attorney

June 21, 2016

RECEIVED

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CITY CLERK, FRESNO CA

Council Adoption: 6/2/2016
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ASHLEY SWEARENGIN

FROM: YVONNE SPENCE, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 6/2/16, Council adopted the attached Resolution No. 2016-95, entitled, **RESOLUTION – Adopting Administrative Order 2-16 to be applicable to elected and appointed officials.** Item No. 1-L, ID#16-654, by the following vote:

Ayes	:	Baines, Brand, Brandau, Caprioglio, Olivier, Quintero, Soria
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before July 1, 2016. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

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APPROVED/NO RETURN: _____

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

_____

_____

Ashley Swearengin, Mayor

Date: 6/23/16

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes	:	
Noes	:	
Absent	:	
Abstain	:	

Subject:	**Discrimination and Harassment Policy and Complaint Procedure**	**Number:** 2-16 **Date Issued:** January 15, 2003 **Date Revised:**
Responsible Department:	**Personnel Services**	**Approved:**

Policy

It is the policy of the City to maintain and foster a work environment in which all employees can work free of discrimination. No form of discrimination or harassment based on race, color, ancestry, national origin, gender, religion, disability, medical condition, marital status, sexual orientation, age, disabled veteran status, or status as a veteran of the Vietnam era, or any other classification protected by law, toward any employee will be tolerated. These protections extend to perceived race, religion, color, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation and age, or an employee who is associated with a person who has or is perceived as having any of those characteristics. This policy also prohibits retaliation against an employee who brings or participates in a complaint of discrimination or harassment.

I. DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT, RETALIATION

A. DISCRIMINATION

1. Definition of Discrimination

   Discrimination is conduct that subjects an employee to disparate treatment on account of his/her protected classification.

2. Examples of Conduct That May Constitute Discrimination

   Examples of verbal, physical or visual conduct that may constitute discrimination include, but are not limited to, depriving an employee of employment opportunities on the basis of a protected classification such as:

   a. refusing to hire or promote a person because of a protected classification;
   b. terminating an employee on the basis of a protected classification;
   c. subjecting an employee to different performance standards or reviews because of protected classification, other than in conjunction with a reasonable accommodation offered to a qualified individual with a disability;
   d. disciplining an employee on the basis of a protected classification; or
   e. depriving an employee of job benefits or compensation on the basis of a protected classification.

B. HARASSMENT

1. Definition of Harassment

Harassment can be verbal, visual, or physical. Although what constitutes harassment will vary with the particular circumstances, it is defined as unwelcome and directed or related to an employee's classification.

2. Examples of Conduct That May Constitute Harassment

Examples of conduct that may constitute harassment are:

a. verbal harassment, such as harassing phone calls, jokes, slurs, epithets, anecdotes, or other derogatory comments directed to an employee or group of employees on account of their protected classification;
b. visual harassment, through the use of writings, graffiti, e-mail, posters, objects or symbols that insult, ridicule or demean an employee or group of employees' protected classification; and
c. physical harassment, such as unwelcome or offensive touching, stalking, or impeding or blocking movement on the basis of a protected characteristic.

C. SEXUAL HARASSMENT

Sexual harassment is conduct meeting the criteria in Section B and elaborated under this provision.

1. Definition of Sexual Harassment

Sexual harassment can be verbal, visual, or physical. Although what constitutes sexual harassment will vary with the particular circumstances, it is defined as unwelcome sexual advances, requests for sexual favors and other acts of 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 or actually does unreasonably interfere with an employee's work performance or creates an intimidating, hostile, or offensive working condition. In addition, gender-based discrimination, which may include acts of verbal, nonverbal, or physical aggression, intimidation or hostility based on a person's gender, but not involving conduct of a sexual nature, may be a form of sexual harassment.

Not all sexual harassment occurs between persons of differing power. Sexual harassment may also occur between co-workers. In addition, while the majority of reported cases of sexual harassment involve a male harassing a female, sexual harassment may also involve a female harassing a male, or a male or female harassing a person of the same gender.

2. Examples of Conduct That May Constitute Sexual Harassment

Examples of verbal, physical or visual conduct that may constitute sexual harassment include, but are not limited to:

a. direct propositions of a sexual nature;
b. sexual innuendoes and other seductive behavior, including subtle pressure for sexual activity such as repeated, unwelcome requests for dates, and repeated inappropriate comments, staring or touching;
c. direct or implied threats that submission to sexual advances will be a condition of employment, promotion, etc.;
d. conduct that has the effect of discomforting, humiliating or both, and that includes one or more of the following:
   (1) comments of a sexual nature, including sexually explicit statements, questions, jokes, anecdotes or graphic material (e.g., sexually explicit visuals such as pin-ups);
   (2) unnecessary or unwanted touching, patting, massaging, hugging or brushing against a person's body or other conduct of a physical nature;
   (3) remarks of a sexual nature about a person's clothing or body;
   (4) insulting sounds or gestures, whistles, etc.;
   (5) unwelcome and inappropriate letters, telephone calls, electronic mail, or other communications.
e. Stalking;
f. Sexual assault.

D. RETALIATION

The City acknowledges and understands that in order to implement a non-discrimination/non-harassment policy, it is essential that all persons who witness or experience discrimination or harassment of the type prohibited by this policy report that discrimination or harassment immediately in order to facilitate early, effective, efficient, and impartial investigation and intervention by the City. Accordingly, any retaliation against an employee for making a discrimination/ harassment complaint, reporting discrimination/harassment that he or she has witnessed, or assisting in a discrimination/harassment investigation, is strictly prohibited.

II. PROCEDURE FOR INTERNAL COMPLAINTS

In the event an employee alleges that he or she has been subjected to employment discrimination practices, harassment on the job, a hostile work environment, or retaliation for having filed a complaint, the procedures below shall serve as the process for resolving such allegations.

A. Step One: Employee (Optional)

An employee may discuss the problem with the offending party in an effort to reach a solution. The problem may simply be a misunderstanding or lack of communication, which may not constitute discrimination or harassment.

B. Step Two: Reporting

If the problem is not corrected by discussing it with the offending party, the employee should report it to his or her supervisor. If the offending party is the complainant's supervisor, the complainant should report the incidents to the next level of supervision. Under these circumstances, Step Three shall apply and, if the parties are unsatisfied with the results of Step Three, then Step Four shall apply. If the offending party is the complainant's Department Director, the complainant should report the incidents directly to the Director of Personnel Services and Step Four of this procedure shall apply. If the offending party is the Director of Personnel Services, the complainant should report the incident to the Chief Administrative Officer and Step Five shall apply.

C. Step Three: Department

The Department Director or his/her designee may attempt to resolve the complaint by discussion with the complainant and the offending party. When this is successful in resolving the complaint, the Department Director shall provide the Director of Personnel Services with a written memorandum of understanding containing the party's signature and proposed remedial or corrective action, if applicable.

If resolution is not achieved, the Department Director or his/her designee shall investigate the complaint. The Department Director shall provide the Director of Personnel Services with a report that documents the nature of the complaint, the department's findings, and the proposed remedial or corrective action, if applicable.

If the Director of Personnel Services does not agree with the level of the proposed remedial or correction action, he/she shall notify the Department Director. If the Director of Personnel Services and the Department Director are unable to agree upon the level of discipline, the matter shall be referred to the Chief Administrative Officer.

Upon the completion of the department's investigation and determination of the level of remedial or corrective action, if applicable, the Department Director or his/her designee shall advise the complainant and accused of the investigative findings.

D. Step Four: Personnel Services

If the complainant or accused is unsatisfied with the outcome of the department's investigation or the offending party is the complainant's Department Director, a

complaint may be made to the Director of Personnel Services. The Director of Personnel Services or his/her designee shall conduct an investigation independent of the department's investigation. Upon the completion of the investigation, the Director of Personnel Services shall provide a written report to the Chief Administrative Officer. Unless otherwise determined and requested by the Chief Administrative Officer, the report shall include the facts, findings, and recommended remedies or corrective action, if applicable. The Chief Administrative Officer shall notify the Department Director of the investigative findings and whether remedial or corrective action is required.

Upon the completion of the investigation and determination of the level of remedial or corrective action, if applicable, the Director of Personnel Services shall advise the complainant of the investigative findings and whether remedial or corrective action was required. If the investigation reveals no wrongdoing on the part of the accused, the Director of Personnel Services shall advise the accused of the investigative findings. If the investigation reveals wrongdoing on the part of the accused, the Department Director or his/her designee shall advise the accused of the investigative findings and impose remedial or corrective action as determined by the Department Director and approved by the Chief Administrative Officer.

E. Step Five: Chief Administrative Officer

If the Director of Personnel Services or a principal staff member is involved in the complaint, the Chief Administrative Officer may assign an independent investigative officer to conduct the investigation.

Upon the completion of the investigation, the investigative officer shall provide a written report to the Chief Administrative Officer. Unless otherwise determined and requested by the Chief Administrative Officer, the report shall include the facts, findings, and recommended remedies or corrective action, if applicable. The Chief Administrative Officer shall determine whether and what remedial or corrective action is required.

III. RIGHTS AND RESPONSIBILITIES

A. Director of Personnel Services

The Director of Personnel Services shall:

1. ensure that this policy and complaint procedure is disseminated to all employees; and
2. coordinate training and provide assistance to department directors, managers, supervisors, and employees in preventing and addressing discrimination and harassment.

B. Department Directors

Department Directors shall:

1. ensure that their respective departments remain free of discrimination, harassment and retaliation;
2. coordinate and cooperate with the Director of Personnel Services in disseminating this policy to all its respective employees;
3. coordinate and cooperate with the Director of Personnel Services in the investigation of complaints involving their respective employees and, when discrimination/harassment has occurred:
   a. take prompt and appropriate remedial action against the accused;
   b. take reasonable steps to protect the complainant from further discrimination/harassment;
   c. take reasonable steps to protect the complainant from retaliation as a result of communicating or participating in the complaint;
   d. take action to remedy the effects of discrimination/ harassment.

C. Employees

1. Employees shall not violate any provision of this policy.
2. When employees are provided with a copy of this policy, they shall certify in writing that they have received a copy of this policy.
3. Employees shall participate in sexual harassment and cultural diversity training provided by the City.
4. Employees shall cooperate fully with investigations of discrimination, harassment and retaliation.

IV. INDEPENDENT CONTRACTORS

Discrimination, harassment and retaliation, as provided in this policy, not only includes unlawful conduct of employees by employees, it also encompasses harassment of employees by non-employees with whom the City employees come into contact during work, such as employees of contractors, customers, vendors, suppliers and temporary employment agencies. Accordingly, employees are prohibited from engaging in unlawful conduct of non-employees with whom they come into contact, such as employees of contractors, customers, suppliers and temporary employment agencies.

When departments enter into contracts with independent contractors, the Department Director shall ensure that language is provided in the contract requiring those contractors to be responsible for ensuring that effective policies and procedures concerning the prevention of discrimination, harassment and retaliation exist in their companies.

Appropriate action will be taken if the employee of a customer, vendor, supplier, agency, contractor or other entity with whom the City does business engages in unlawful conduct.

V. SEPARATION OF COMPLAINANT AND ACCUSED

While a report of discrimination, harassment and/or retaliation is being investigated, the complainant's supervisor/manager shall make every effort to temporarily separate the complainant and the accused. When feasible and practical, the complainant's wishes should be given preference.

VI. PROMPT INVESTIGATIONS

Complaints shall be investigated promptly. The nature and details of the investigation process will vary depending on the issues. The City's objective is to make a fair determination on what happened so it can then take corrective action, if warranted, as soon as possible. Refusal to investigate, or intentional delay in investigating, is a violation of this policy. In the event that the Director of Personnel Services and/or Chief Administrative Officer determines that an investigation may be unduly delayed by Personnel Services, an independent investigative officer may be assigned to conduct the investigation.

VII. CONFIDENTIALITY

To the extent possible, the City will make a reasonable effort to investigate complaints in a manner that will protect the confidentiality and privacy interests of all parties. Examples of situations where confidentiality cannot be maintained include circumstances when the City is required by law to disclose information and when disclosure is warranted by the City in order to protect the rights of others. Likewise, employees who are parties, witnesses and participants hereunder should maintain the confidential nature of these complaints.