

## Anti- Discrimination and Harassment Policy

### Introduction

The Town of Monterey strives to create and maintain a work environment in which people are treated with dignity, decency, and respect. The environment of the Town should be characterized by mutual trust and the absence of intimidation, oppression, and exploitation. The Town of Monterey will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy, Town of Monterey will seek to prevent, correct, and discipline behavior that violates this policy.

All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include, but is not limited to: verbal or written reprimand, suspension, or termination of employment.

Managers and supervisors who knowingly allow or tolerate discrimination, harassment, or retaliation, including the failure to immediately report such misconduct to human resources (HR) or the Select Board, are in violation of this policy and subject to discipline.

### Definitions

The Town of Monterey, in compliance with all applicable federal, state and local anti-discrimination and harassment laws and regulations, enforces this policy in accordance with the following definitions and guidelines:

**Discrimination-** It is a violation of Town of Monterey's policy to discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, national origin, ancestry, age 40 years or older, religion, disability status, mental illness, sex, sexual orientation, gender identity or expression, genetic information, active military or veterans status, or marital status.

Discrimination of this kind may also be strictly prohibited by a variety of federal, state and local laws, including Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1967 and

the Americans with Disabilities Act of 1990. This policy is intended to comply with the prohibitions stated in these anti-discrimination laws.

Discrimination in violation of this policy will be subject to disciplinary measures up to and including termination.

**Harassment-** Town of Monterey prohibits harassment of any kind, including sexual harassment, and will take appropriate and immediate action in response to complaints or knowledge of violations of this policy. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate or coerce an employee, co-worker, or any person working for or on behalf of Town of Monterey.

The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal harassment includes comments that are offensive or unwelcome regarding a person's race, color, national origin, ancestry, age 40 years or older, religion, disability status, mental illness, sex, sexual orientation, gender identity or expression, genetic information, active military or veterans status, or marital status, or other protected status, including epithets, slurs and negative stereotyping.
- Nonverbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of person's race, color, national origin, ancestry, age 40 years or older, religion, disability status, mental illness, sex, sexual orientation, gender identity or expression, genetic information, active military or veterans status, or marital status, or other protected status.

**Sexual harassment-** Sexual harassment is a form of unlawful employment discrimination under Title VII of the Civil Rights Act of 1964 and G.L. c. 151B, and is prohibited under Town of Monterey's anti-harassment policy. In Massachusetts, sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment." G.L. c. 151B, § 1.

Sexual harassment occurs when unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature:

- Is made explicitly or implicitly a term or condition of employment.
- Is used as a basis for an employment decision.

- Unreasonably interferes with an employee's work performance or creates an intimidating, hostile or otherwise offensive environment.

Sexual harassment may take different forms. The following examples of sexual harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal sexual harassment includes innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor (this includes repeated, unwelcome requests for dates); and verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sexual in nature and unwelcome.
- Inquiries into one's sexual experiences or discussion of one's sexual activities.
- Nonverbal sexual harassment includes the distribution, display or discussion of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds; leering; staring; whistling; obscene gestures; content in letters, notes, facsimiles, e-mails, photos, text messages, tweets and Internet postings; or other forms of communication that are sexual in nature and offensive.
- Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, and forced sexual intercourse or assault.
- Dissemination of sexually explicit voice mail, email, downloaded material or websites.

### **Retaliation**

No hardship, loss, benefit or penalty may be imposed on an employee in response to:

- Filing or responding to a bona fide complaint of discrimination or harassment.
- Appearing as a witness in the investigation of a complaint.
- Serving as an investigator of a complaint.

Lodging a bona fide complaint will in no way be used against the employee or have an adverse impact on the individual's employment status. However, filing groundless or malicious complaints is an abuse of this policy and will be treated as a violation.

Any person who is found to have violated this aspect of the policy will be subject to discipline up to and including termination of employment.

### **Confidentiality**

All complaints and investigations are treated confidentially to the extent possible, and information is disclosed strictly on a need-to-know basis. If it is not practicable to maintain

confidentiality of the identity of the complainant during the investigation, the HR director will take adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a complaint or investigation under this policy will be maintained in secure files within the HR department.

## **Complaint Procedure**

The Town of Monterey has established the following procedure for lodging a complaint of harassment, discrimination, or retaliation. The Town will treat all aspects of the procedure confidentially to the extent reasonably possible.

1. Complaints should be submitted to the HR director as soon as possible after an incident has occurred, preferably in writing. If the complaint is submitted to a supervisor or a supervisor is made aware that violation of this policy may be occurring, then the supervisor should notify the HR director of the alleged violation. The HR director may assist the complainant in completing a written statement or, in the event an employee refuses to provide information in writing, the HR director will put into writing the verbal complaint.
2. Upon receiving a complaint or being advised by a supervisor that violation of this policy may be occurring, the HR director will review the complaint with Town Counsel as necessary.
3. The HR director will initiate an investigation to determine whether there is a reasonable basis for believing that the alleged violation of this policy occurred.
4. If the HR director deems that the investigation should be conducted by another person, the HR director should notify the Select Board, and the Select Board should choose an alternate person to conduct the investigation.
5. If necessary, reasonable accommodations will be made during the course of the investigation. This may include, but is not limited to, scheduling changes, moving work spaces, or administrative leave.
6. During the investigation, the HR director or alternate person conducting the investigation, together with Town Counsel as necessary, will interview the complainant, the respondent, and any relevant witnesses to determine whether the alleged conduct occurred. The HR director or alternate person will review any available and relevant documents or other materials related to the alleged conduct in coming to conclusions.
7. Upon conclusion of the investigation, the HR director or alternate person conducting the investigation shall make findings as to whether there is a reasonable basis for believing that the alleged violation of this policy occurred, and identify any recommended corrective actions. Corrective actions may be discipline of an employee, including but not limited to: verbal or written reprimand, suspension, or termination of employment. The recommended appropriate action will depend on the following factors:
  - a) the severity, frequency and pervasiveness of the conduct;
  - b) prior complaints made by the complainant;

- c) prior complaints made against the respondent; and
  - d) the quality of the evidence (e.g., firsthand knowledge, credible corroboration).
8. If the investigation is inconclusive or if it is determined that there has been no violation of policy but potentially problematic conduct may have occurred, the HR director or alternate person conducting the investigation may recommend appropriate preventive action.
  9. If the recommended corrective actions can be implemented by the Department head or other supervisor, the HR Director or alternate person conducting the investigation shall notify the Select Board of the same.
  10. In cases of severe, repetitive, or otherwise concerning violations of this policy, the HR director or alternate person conducting the investigation may recommend that corrective action is warranted by the Select Board, and shall submit a written report including findings and recommended corrective actions to the Select Board. All relevant and available documents or other materials, including notes or recordings of interviews, that were considered by the HR director or alternate person in the investigation shall also be submitted to the Select Board simultaneously.
  11. The Select Board shall review the written investigative report and all relevant and available documents. The Select Board shall review the corrective actions recommended by the HR director or alternate person, and shall enact corrective actions which the Select Board finds appropriate.
  12. The respondent has the right to be at any Select Board meeting at which his or her alleged violations of policy and any corresponding discipline is deliberated by the Select Board. The Select Board will offer such disciplinary hearings as executive session meetings, but the respondent has the right to have the matter deliberated on in open meeting of the Select Board.
  13. After the investigation is completed and any corrective action is decided upon, the HR director will meet with the complainant and notify the complainant of the findings of the investigation and any corrective action that has been taken.

### **Corrective Action**

If it is determined that inappropriate conduct has been committed by one of the Town's employees, the Town will take such corrective action as is appropriate under the circumstances. This may range from counseling to termination from employment or may include such other forms of training and/or disciplinary action as deemed appropriate under the circumstances.

### **Alternative legal remedies**

In addition to the above, if you believe you have been subjected to discrimination or harassment of any type, including sexual harassment and retaliation, you may file a formal complaint with either or both government agencies set forth below. Using the Town's complaint process does not prohibit you from filing a complaint with these agencies. Each of

the agencies requires that claims be filed within 300 days from the alleged incident or when the complainant became aware of the incident.

**United States Equal Employment Opportunity Commission (“EEOC”)**

JFK Federal Building 15 New Sudbury Street, Room 475  
Boston, MA 02203  
(800) 669-4000

**Massachusetts Commission Against Discrimination (“MCAD”)**

Boston Office:

One Ashburton Place, Room 601  
Boston, MA 02108  
(617) 994-6000

Springfield Office:

436 Dwight Street, Room 220  
Springfield, MA 01103  
(413) 739-2145

**Reasonable Accommodation for Qualified Individual with Disability**

Consistent with the requirements of the Americans with Disabilities Act (ADA), as amended, the Massachusetts Fair Employment Law, and all applicable federal, state or local law, the Town will reasonably accommodate qualified individuals with a disability if such accommodation would allow the individual to perform the essential functions of the job, unless doing so would create an undue hardship on the Town’s operations.

Any individual seeking a reasonable accommodation may submit a request to the HR Director. The Town may require the individual to participate in an interactive discussion in connection with any such request. Furthermore, individuals requesting a reasonable accommodation may not receive the specific accommodation requested if the Town determines that an alternate accommodation would be effective in allowing the individual to perform the essential functions of the job.