

# SAN MATEO COUNTY HARBOR DISTRICT

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| <b>Policy Title:</b><br><b>Sexual &amp; Unlawful Harassment Policy</b> | <b>Number:</b>  | <b>Date of Approval:</b><br>MM/DD/YYYY |
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The San Mateo 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 the employees, contractors, and Commissioners. A fair and non-discriminatory sexual harassment policy is an important part of that accountability and is required under California law. <https://oag.ca.gov/workplace-sexual-harassment> and <https://www.dfeh.ca.gov/legal-records-and-reports/laws-and-regulations/>

Therefore, the District is committed to providing a workplace free from any form of unlawful harassment, discrimination, intimidation, or workplace bullying. 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 outlines the parties responsible for reporting, investigating, and responding to any reports of harassment.

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

## **A. Coverage**

This policy applies to all District employees, all members of the District Board of Harbor Commissioners, and anyone doing business with the District in a work-related situation. This includes applicants, customers, constituents, contingent workers, candidates, suppliers, and vendors.

## **B. Definitions**

1. "Employee" means any individual under the direction and control of the District under any appointment or contract of hire or apprenticeship, express or implied, oral or written.
2. "The District" (or the "District" or "we") means the San Mateo County Harbor District, including its subsidiaries and various lines of business.
3. "You" means employees and others covered by this policy.
4. "Applicant" means anyone who files a written application or, where the District does not provide an application form, any individual who otherwise indicates a specific desire to the District to be considered for employment.
5. "Candidate" means anyone who has filed any type of notice of intent to run for office as a harbor commissioner.
6. "Investigator" means a person with 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.

6. "Panel" means a designated group of 3 individuals who will carry out an investigation of a complaint and report findings as directed.

### **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, participation in, or acceptance of conduct that creates even the potential for unlawful harassment will be considered a violation of this policy. This policy prohibits conduct that violates the letter or spirit of anti-harassment laws or conduct not aligned to 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 activities outside the workplace such as District-related social events and travel.

Conduct prohibited by this policy includes, but is not limited to, unwelcome 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, denial of family and medical leave, or any other status protected by federal, state, or local law.

The District will not tolerate such 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 workplace bullying. 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 when anyone is engaged in harbor district activities 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 a decision; or
3. Such behavior interferes with an employee's ability to perform his or her 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, co-workers, an employee, or a non-employee (third party) such as a customer, constituent, contractor, vendor, or supplier.

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, 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 sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, chilling, intimidating, or humiliating to male or female 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. Bullying behavior, including but not limited to threats, intimidation, coercion, ridicule, insults, or belittling, including coordinating those activities with non-employees.
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 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, suppliers, vendors, customers, constituents, candidates, or other third parties, 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/index.cfm>.

Supervisors or managers who receive reports or observe harassing conduct must immediately report it to the Director of Administrative Services or the General Manager. 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 that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected. Complainants, victims, and anyone alleged to have committed harassment will be entitled to periodic updates on the progress of the investigation on at least a monthly basis. Investigations will not be delayed or postponed.

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 that can be required to create findings and recommendations.

If a complaint involves the Director of Administrative Services, the General Manager, or a Commissioner, the District Board of Harbor Commissioners will designate an independent investigator and panel, and take action up to and including hiring outside counsels, 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.<sup>1</sup>

#### 4. Guidelines

The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The District will reasonably document and track the progress of all investigations so that the process is transparent and creates public confidence in the District.

#### 5. 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 inappropriate conduct has occurred, appropriate remedial measures will be taken, up to and including termination or a request for resignation. In addition to remedial measures, if the complainant believes that there continues to be a disagreement or difference that requires intervention, formal mediation may be offered to the complainant with costs paid by the District.

If after findings are made available to either the complainant or the perpetrator, if either party is dissatisfied with the findings, either party may write a formal rebuttal to the District memorializing their disagreement with the findings, the basis for the disagreement including a discussion of evidence, documents, statements that support their position.

### **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

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<sup>1</sup> See Appendix A for Panel process and additional information.

sexual harassment, or has participated in a harassment investigation. Further, the initiation of a complaint, 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 sexual harassment complaint or investigation.

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. Reporting and Tracking**

Transparency of process and accountability are important aspects of this entire policy. Quarterly and annual reports of complaints, investigations, findings, and any rebuttals shall be provided to the Harbor Commissioners in a report<sup>2</sup>. Personal informational privacy shall be protected in the report, however, the report shall be complete, comprehensive, and well-reasoned.

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<sup>2</sup> See Appendix B.

## APPENDIX A

The Panel Process is intended to create greater accountability with investigations that may involve persons with influence, authority, or the potential to exercise control over sexual harassment complaints, investigations, and findings. The following list of duties and procedures are incorporated into the sexual harassment policy:

Duties of Director of Administrative Services: The director, or their designee, shall maintain a list of ten panelists who are pre-approved to provide services associated with investigations. The panelist shall be chosen by the director or their designee based upon areas of expertise, professional experience, balance of skills among the panel, fees and costs, and knowledge of the District.

Duties of a Panel: The panel shall review and coordinate with the investigator on aspects of the investigation and shall provide guidance to the District, including the Commissioners, on recommendations and decision making related to the complaint, investigation, findings, rebuttal, and related matters. The panel shall maintain confidentiality and privacy in order to safeguard the sexual harassment complaint process but shall not use confidentiality and privacy to shield offenders.

APPENDIX B

Quarterly Reporting Format

The quarterly reporting as required herein is as follows:

| Number of Complaints this Quarter | Details of claims, complaints, and conduct | Present Number of Complaints under Investigation | Present Number of Panels Appointed | Expected date of Findings |
|-----------------------------------|--|--|------------------------------------|---------------------------|
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Annual Reporting Format

The annual reporting as required herein is as follows:

| Total Number of Complaints for YEAR | Details of claims, complaints, and conduct | Number of Complaints Investigated this YEAR | Details on panels appointed this year | Details and Information on findings this year | Any recommended policy changes or actions to be taken as a result of complaints, investigations or findings |
|-------------------------------------|--|---|---------------------------------------|---|---|
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The information provided on a quarterly and annual basis should be extensive, detailed, and unrestrained. The purpose of the reporting is to create accountability and awareness at the District for the benefit of employees and the public trust.