CITY OF SAN DIEGO
MEMORANDUM

DATE: April 16, 2004

TO: All City Employees, Contract Workers and Volunteers

FROM: P. Lamont Ewell, City Manager
Casey Gwinn, City Attorney
Rich Snapper, Personnel Director
Terri Aja Webster, Acting Auditor and Comptroller
Chuck Abdelnour, City Clerk

SUBJECT: Equal Employment Opportunity (EEO) Policy – Annual Statement

It is important to reaffirm our commitment to the principles of equal employment opportunity, and to a work environment free of discrimination and harassment. The City does not tolerate harassment, discrimination or retaliation in any form. EEO allegations will be taken seriously, and investigated in a prompt, thorough and objective manner. Violations of this Policy may result in disciplinary action, up to and including termination, even if it is the first time such behavior occurs.

We are committed to ensuring that the principles of fair and equal treatment are understood, respected, and practiced throughout the organization. Federal and State laws make it unlawful to discriminate on the basis of any protected class or category, such as: race, color, creed, religion, sex, national origin, age (40 or older), disability, marital status, ancestry, medical condition (e.g., AIDS/HIV, history of cancer), pregnancy, and sexual orientation. Our EEO policy builds upon this foundation and extends to every employee the City's commitment to provide a workplace that is consistent with the law and actively supports and implements behaviors of a high performing work environment. All City employees, contract workers and volunteers are expected to adhere to the higher standard of conduct that this Policy defines. Although actions may not rise to the level of a violation of law, they may still violate the City's EEO Policy.

It is our expectation that every employee support the principles of equal opportunity as stated in this Policy. Managers and supervisors are responsible for enforcing these principles and for providing every City employee with a discrimination-free and harassment-free work environment. Supervisors should understand how important this issue is, and that they will be held accountable for ensuring that equal opportunity practices are adhered to in their work units.

1. EQUAL TREATMENT

All employees shall be treated equally without regard to race, color, creed, religion, sex, national origin, age (40 or older), disability, marital status, ancestry, medical condition (e.g., AIDS/HIV, history of cancer), pregnancy, and sexual orientation. These classes and/or categories are the "protected classes" covered under this Policy.

The City is committed to ensuring that all employment decisions (e.g., promotions, transfers, job rotation, training, work assignments, hiring and firing, merit increases, overtime, rewards and discipline) and other terms and conditions of employment are made without regard to an individual's protected status.

2. DISCRIMINATION-FREE & HARASSMENT-FREE WORK ENVIRONMENT

All employees are entitled to a work environment free from discrimination and harassment. Discriminatory treatment occurs when an individual uses a protected class as a basis for an adverse employment action or decision. Behavior constitutes unlawful harassment when it is unwelcome and unsolicited, offends or otherwise causes distress, and is undertaken because of an individual's protected status.

Harassment creates a negative atmosphere that reduces work productivity and morale, undermines the integrity of the workplace, and destroys professionalism. Harassment includes any unwelcome, unsolicited and/or unwanted behavior towards coworkers, subordinates, supervisors, or volunteers, which offends, humiliates, embarrasses, intimidates, or otherwise causes distress because of a person's race, color, creed, religion, sex, national origin, age (40 or older), disability, marital status, ancestry, medical condition (e.g., AIDS/HIV, history of cancer), pregnancy, and sexual orientation. Examples include: the use of derogatory comments, slurs, jokes, or derogatory pictures, cartoons, or posters.

Good faith employment actions do not constitute harassment. Good faith employment actions taken by a supervisor or manager, such as: offering constructive feedback or criticism, holding employees accountable, and providing discipline, where appropriate, do not constitute, and should not be mistaken for, harassment or retaliation. These employment actions are aimed at enhancing workplace productivity and/or addressing work performance, and are within the responsibilities and obligations of City supervisors and managers.

The City has a **100% Response Policy** on harassment. This means the City will investigate every report of an alleged incident made in the workplace and will take appropriate action to investigate. The result of that action may range from informal counseling to disciplinary action, up to and including termination, the first time such behavior occurs. Prior incidents of harassment may be considered when assessing the facts and circumstances of a later complaint.

Every City employee is expected to support and enforce this Policy. Supervisors who observe or know of a harassing situation, and fail to take corrective action, may be disciplined even if the harassment is not taking place in their work unit.

3. SEXUAL HARASSMENT

Sexual harassment is a particular form of harassment that creates an offensive working environment. Sexual harassment is unprofessional and not supportive of a high performing work environment. With regard to sexual harassment, as with other forms of harassment, the City has a 100% Response Policy.

Federal law defines sexual harassment as:

> *Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: 1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual; or 3) such conduct has a purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.*

Although actions may not rise to the level of a violation of law, they may still violate the City's EEO Policy.

Sexually harassing conduct can be physical, verbal, visual, or written, and can occur between people of the same or opposite sex. Sexual harassment can occur between peers, supervisor to subordinate, subordinate to supervisor, member of the public to employee, and within or across departments.

Written examples of sexual harassment include letters, e-mails, notes and invitations which may be perceived as suggestive or obscene. Verbal examples of sexual harassment include derogatory comments, slurs or jokes; recounting one's sexual exploits; or starting and spreading rumors about the sex life of an employee. Other examples include:

- Sexually suggestive or explicit gestures
- Derogatory or sexually explicit pictures, cartoons, posters, or other forms of pornography
- Unwelcome touching, hugging or massaging
- Blocking or cornering an individual
- Revealing parts of the body when such exposure violates common decency
- Graphic comments about a person's physique
- Sexually suggestive objects or pictures, including electronic media and computer graphics, displayed in areas of common viewing (Reference: AR 90.62 Electronic Mail and Internet Use, which states "All uses of City Computer equipment, electronic systems and electronic data, including E-Mail and the Internet, are limited to work-related purposes only.")
- Job actions taken to pressure an individual into accepting sexual advances
- Remarks or jokes made that a person cannot do the job because the person is a male or female
- In some circumstances, repeatedly asking someone for a date after being turned down

Sexual harassment by supervisors and managers can include a statement or insinuation that a refusal to provide sexual favors or a rejection of sexual favors will result in reprisal, withholding support for appointments, promotions or transfers, failure of probation, change of assignments, or a poor performance rating.

Whether or not an alleged action constitutes sexual harassment will be determined on a case-by-case basis by assessing the entire record and the totality of the circumstances. Factors such as the nature of the sexual advances and the context in which the alleged incidents occurred will be considered in assessing the allegations and in determining the appropriate resolution.

Whether or not harassment occurred depends *not* on whether the act was intended to cause harm, ***but rather on the impact of the act on the individual's employment or work environment.*** For example, a person who teases in a sexual manner or tells sexual jokes may create an offensive work environment for another worker even though the person intended such actions merely to be "good fun." This applies to field jobs as well as office jobs. If one's behavior is harassing to an individual or group of individuals, it does not matter that the harasser failed to recognize the behavior as harassing.

This Policy does not prohibit mutually welcome social relationships between employees. (Reference: AR 95.60, Conflict of Interest and Employee Conduct, which does prohibit employees from supervising or influencing employment decisions associated with members of their immediate family or any other person with whom the supervisor has a close personal relationship). Persons involved in consensual relationships must exercise caution to prevent the development of harassing behavior or use of authority inappropriately. However, if the consensual relationship changes and is no longer mutual, conduct once welcome by both individuals may become offensive to one.

4. PERSONS WITH DISABILITIES

The Americans with Disabilities Act (ADA) and Fair Employment and Housing Act (FEHA) are the Federal and State laws which provide protections to employees with disabilities. Pursuant to these Acts, the City will evaluate the feasibility of providing reasonable accomodation for those applicants or employees who, because of their disability, are unable to perform the essential functions of the job. The City does this by having a supervisor and/or EEO Liaison engage in a timely, good faith interactive process with employees in need of reasonable accommodation (Reference: AR 96.21 – City Policy for People with Disabilities: Employment; consultation provided by the City's ADA Chair, Human Resources Department, 619-236-6313).

5. APPOINTING AUTHORITY INTERVIEWS

All appointing authority interviews shall be job related and conducted in a non-discriminatory manner. Interview questions and selection materials should be based on relevant criteria and should be carefully designed so as to not have an adverse impact on a person's race, color, creed, religion, sex, national origin, age (40 or older), disability, marital status, ancestry, medical condition (e.g., AIDS/HIV, history of cancer), pregnancy, and sexual orientation.

6. UNCLASSIFIED MANAGERIAL RECRUITMENTS

The City Manager will approve the recruitment method and strategy for all Managerial Unclassified Recruitments in a manner which is consistent with this Policy.

7. PERFORMANCE EVALUATIONS

Job performance evaluations for supervisors and managers should include a review of their support of the EEO Policy.

8. ENFORCEMENT OF EEO POLICY

The City's Equal Employment Opportunity Policy and Complaint Resolution Procedures are described in detail in Administrative Regulation 96.50, which applies to all employees in the City of San Diego, including contract workers and volunteers.

In order to rise to the level of an EEO violation, the violation must be based on an individual's protected status, or must be in retaliation or response to an individual's filing of an EEO complaint.

9. REPORTING A VIOLATION

Any employee who feels this Policy is being violated should immediately bring the matter to the attention of any of the individuals or offices listed below:

- Department Director / Assistant Director
- Department EEO Liaison / Deputy Director
- Any supervisor **(It is not necessary to follow the chain of command.)**
- Departmental Human Resources or Equal Employment Opportunity Office
- Personnel Department Equal Employment Investigations Office (EEIO) (619-236-7133)
- City Manager's Equal Employment Opportunity Program (EEOP) (619-235-5802)
- Labor Relations Office (619-236-6313)
- City Attorney's Office (619-533-5800)

In addition, employees may file a complaint directly with the following external agencies:

- State of California Department of Fair Employment and Housing (DFEH) (800-884-1684)
- Federal Equal Employment Opportunity Commission (EEOC) (202-663-4900)

City employees may also seek confidential personal counseling from the Employee Assistance Program (EAP) at (619) 533-3460. EAP counseling is intended for the personal benefit of the individual and offers a setting where various courses of action can be explored.

Confidentiality

When responding to a report of an EEO policy violation, the City will make every effort to protect the privacy of all individuals involved. However, anonymity and complete confidentiality cannot be guaranteed once a complaint is made, or when inappropriate behavior is made known. While an individual's expressed desire regarding confidentiality will be seriously considered, those wishes must be weighed against the responsibility of the City to investigate possible violations of this Policy and to take corrective and preventive action where appropriate. Information pertaining to complaints will be maintained in confidence to the fullest extent of the law.

Equal Employment Opportunity Report Form (EDP 100, 1-02)

An Equal Employment Opportunity Report Form must be used to record, track, resolve and report any and all violations of this Policy. A reference tracking number must be assigned to the report form in order to proceed with the fact finding investigation, and can be obtained by calling the City Manager's Equal Employment Opportunity Program at (619) 235-5802. Departments can order these forms through Central Stores, and should maintain them with their respective EEO Liaison (Deputy Director, etc.) and Payroll Specialist. Depending upon the violation and the circumstances, appropriate action may include discipline up to and including termination, the first time such behavior occurs.

10. RETALIATION

Retaliation toward an employee for an alleged violation of this policy or for participating in an investigation regarding violations of this Policy is unlawful and will not be tolerated. Supervisors and managers should be reminded that employees have a right to report what they believe is a violation of this Policy. Employees who believe they have been the victim of retaliation may raise this issue by following the same procedures used for filing an original complaint.

The City will not tolerate harassment of employees who report an alleged violation, or who participate in any subsequent investigation. Subtleties of retaliation will also not be tolerated. These subtleties may include: a change in work assignments or work location, uncharacteristically denying leave requests, uncooperativeness toward the person who is the object of retaliation, unsupported discipline, poor performance reports, or other actions that adversely affect the work environment and are perceived to be associated with, or in response to, the employment action in question.

Retaliation may appear in many forms such as between supervisors and employees, or employees and co-workers.

This EEO Policy has been established to ensure that *all* City employees, contract workers and volunteers are aware of their rights and responsibilities, and that the workplace is free from discrimination and harassment. It is our expectation that every employee will support the principles of equal opportunity as stated in this Policy. Equal Employment Opportunity helps create and maintain a high performing work environment, and is the right thing to do.

P. Lamont Ewell
City Manager

Casey Gwinn
City Attorney

Rich Snapper
Personnel Director

Terri Aja Webster
Acting Auditor and Comptroller

Chuck Abdelnour
City Clerk