

LIVERMORE-PLEASANTON FIRE DEPARTMENT  
JOINT POWERS AUTHORITY

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. LPFD 2001-01

**RESOLUTION AMENDING THE PERSONNEL RULES  
FOR THE LIVERMORE-PLEASANTON FIRE  
DEPARTMENT JOINT POWERS AUTHORITY**

WHEREAS, the cities of Livermore and Pleasanton formed a Joint Powers Authority to operate fire services; and

WHEREAS, the Joint Powers Authority Agreement delegated certain personnel duties to the Authority Board; and

WHEREAS, the delegated personnel functions include adopting Personnel Rules;

NOW, THEREFORE, THE LIVERMORE-PLEASANTON FIRE DEPARTMENT  
JOINT POWERS AUTHORITY BOARD RESOLVES AS FOLLOWS:

Section 1: The Board hereby amends the following item to the existing LPFD Personnel Rules:

Rule #15, Harassment Policy and Complaint Procedure (Revised Rule text attached).

Section 2: This resolution shall become effective immediately upon its passage and adoption.

I HEREBY CERTIFY THAT THE FOREGOING WAS DULY AND REGULARLY ADOPTED BY THE LIVERMORE-PLEASANTON FIRE DEPARTMENT JOINT POWERS AUTHORITY BOARD, AT A MEETING HELD ON APRIL 24, 2001 BY THE FOLLOWING VOTE:

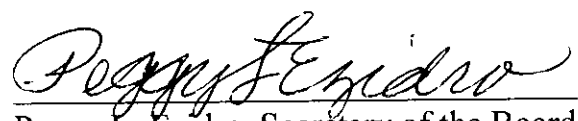
AYES: Boardmembers - Ayala, Brown, and Dietrich

NOES: None


ABSENT: Boardmember Michelotti

ABSTAIN: None

ATTEST:

  
Peggy L. Ezidro, Secretary of the Board

APPROVED AS TO FORM:

  
Michael H. Roush, Board Counsel



# LIVERMORE-PLEASANTON

## FIRE DEPARTMENT GENERAL OPERATIONS

G.O.#: 200.02

EFFECTIVE DATE: 02/01/01

PREV. DATE: 7/1/99

SECTION: Personnel

SUBJECT: Anti-Harassment Policy & Complaint Procedure

FIRE CHIEF: *ASW. [Signature]*

UNION PRESIDENT: *[Signature]*

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### I. PURPOSE

- A. To establish a Livermore-Pleasanton Fire Department policy prohibiting harassment of any kind, including sexual;
- B. To define types of harassment
- C. To provide a complaint and resolution process
- D. To state the department's commitment to prevent all forms of harassment

### II. RESPONSIBILITY

- A. It is the responsibility of all employees to follow this general order.
- B. All Supervisors must ensure that all subordinates follow this general order.

### III. INTRODUCTION

The Livermore-Pleasanton Fire Department ("Department") Human Relations Committee was formed to address issues of harassment in the Department. Department members had reviewed the existing anti-harassment policy and wished to develop a policy that more closely reflected the unique situations involving fire departments. Additionally, and equally important, members of the Department wanted to develop a policy that more proactively prevents issues from occurring in the future. The Committee believes that the Department is, generally, a cohesive group, but that a policy should be specifically adopted by the Department to address any potential problems. The policy is intended to foster a cooperative spirit and reduce the potential for conflict.

The policy calls for resolution at the earliest possible time by encouraging the informal direct resolution of harassment issues between employees. The policy also recognizes that harassment is not limited to sexual or gender harassment, but encompasses other protected characteristics. The policy also reflects the importance of the Department's responsibility to take prompt and thorough action in response to complaints of harassment.

#### IV. DEFINITION OF HARASSMENT

Harassment of an applicant or employee by a supervisor, management employee or co-worker on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, pregnancy, age (over 40) or sexual orientation (or perception that an applicant or employee possesses one of these characteristics or associates with individuals with these characteristics) is against the law and will not be tolerated by the Department.

Disciplinary action, including termination, will be imposed for behavior described in the following definition of harassment:

Verbal Harassment — Verbal harassment includes epithets, derogatory comments or slurs on the basis of any of the protected characteristics listed above. This includes unwelcome or unwanted sex-oriented comments on appearance, including dress or physical features, or unwelcome or unwanted race-oriented comments.

Physical Harassment — Physical harassment includes battery or assault, stalking, impeding or blocking movement, or any physical interference with normal work or movement, when directed at an individual on the basis of the protected characteristics listed above. This includes pinching, grabbing, patting, propositioning, or leering.

Visual Harassment — Visual forms of harassment include derogatory, suggestive, or demeaning posters, notices, bulletins, cartoons, books, magazines, videos, pictures or drawings on the basis of the protected characteristics listed above.

Written Forms of Harassment — Written forms of harassment include letters, notes or email that contain derogatory suggestive or demeaning comments related to the protected characteristics listed above.

Sexual Favors — Sexual favors includes making sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature which is implicitly or explicitly conditioned upon an employment benefit, or making explicit or implied job threats or promises in return for submission to sexual favors.

Harassing conduct need not be specifically directed at the victim. Rather, the Department recognizes that all employees have the right to work in a place free from harassment, regardless of whether the conduct is directed at them.

#### V. COMPLAINT/RESOLUTION PROCESS

Any employee may file a complaint of harassment, orally or in writing, to any supervisor, the Fire Chief, Personnel Director, or one of both of the Joint Executive Directors. Employees may also call the Employee Protection Line (800) 576-5262; Code 10104) to report complaints of harassment. An employee is not required to make a complaint to a supervisor, the Fire Chief, Personnel Director, Joint Executive Directors, or to call the Employee Protection Line, but failure to do so hinders the Department's ability to take

corrective action. Delay in making a complaint hinders the Department's ability to thoroughly investigate the complaint and to promptly remedy the issue.

The process below encourages informal resolution, if possible. Elements of this process are set forth below:

(1) One-to-One Resolution:

Employees are urged, but not required, to resolve issues on a one to one basis. For example, an employee is encouraged to directly inform the employee offender of the offensive or unwelcome/unwanted nature of the conduct by advising the employee offender that the conduct is offensive or unwelcome/unwanted. If, however, the employee is not comfortable advising the offending employee about the conduct, if the employee has advised the offending employee about the conduct but is dissatisfied with the response, or if one to one resolution cannot be reached, the employee may pursue either the Informal Resolution or Formal Resolution process, as outlined below.

(2) Informal Resolution Process:

The supervisor to whom the complaint and a request for the Informal Resolution process is made shall first informally, but separately, interview the complainant and the accused offender. The supervisor shall have the discretion to formalize an investigation based on the nature or egregiousness of the complaint.

- (a) The supervisor shall first assess whether the complaining conduct falls under the definition of harassment, as defined in this policy. If the supervisor concludes that the conduct complained about is not based on, or because of, a protected characteristic, the supervisor will so advise the complaining party. In that case, this policy shall not apply, and the supervisor shall assess whether the alleged conduct violates any Department or City policy and take appropriate action pursuant to Department or City procedures.
- (b) If the supervisor's initial assessment is that the conduct may fall within the definition of prohibited conduct, the supervisor shall first attempt to reach an informal resolution with both parties; provided however that the supervisor has the discretion, based on the nature or the egregiousness of the complaint, to process the complaint under the Formal Resolution procedure set forth below. Additionally, the supervisor shall process the complaint under the Formal Resolution procedure set forth below if he or she determines that the alleged conduct, if true, would warrant discipline of at least a written reprimand.
- (c) If the accused offender does not agree to the informal process, if a resolution acceptable to the complaining party, the accused employee or the supervisor cannot be reached, or if the complaining employee decides to request the Formal Resolution process, then the complaint will be taken to the Formal Resolution level.

- (d) If informal resolution is attempted, the supervisor shall complete the process within 30 days after the complaint is received.
  - (e) The supervisor shall make a written record of his or her efforts to resolve the complaint informally. If the complainant and the accused offender reach an informal resolution, the supervisor shall maintain a record of the complaint and the resolution. The complaining employee and the accused offender may separately attach an addendum to further comment on the complaint and the resolution. However, a complaint will not be considered resolved through the Informal Resolution process unless the complaining party, the accused employee and the supervisor concur that a satisfactory resolution has been reached. The supervisor shall prepare an informal resolution agreement that the employees and supervisor will sign.
  - (f) Because supervisors must prepare interim evaluations for personnel who transfer during their evaluation period, the supervisor completing the accused offender's evaluation shall assess whether reference to the agreement should be made in the employee's evaluation.
  - (g) A copy of the agreement shall be placed in a sealed envelope and forwarded to the Personnel Director. The outside of the envelope shall identify the names of the complaining party, the accused offender and the supervisor.
  - (h) The Personnel Director shall maintain copies of the informal resolution agreements in a separate, confidential file. This file shall be reviewed in the future only by the Fire Chief and Personnel Director if an employee is subject to serious disciplinary action for violation of this policy. They shall only review those agreements to which the accused employee was a party. Serious disciplinary action is defined as any action that would result in loss of pay or time.
  - (i) If the accused employee has not been the subject of another complaint in the following three years, the Personnel Director shall maintain the documentation only for the amount of time required by state and federal law.
- (2) Formal Resolution:  
If a resolution cannot be reached at the informal level or if an employee opts to file a formal complaint initially, then the complaint shall be formalized and forwarded to the next level of supervision, i.e., Division Chief, Deputy Chief or Fire Chief.
- (a) The supervisor shall first assess whether the complaining conduct falls under the definition of harassment, as defined in this policy. If the supervisor concludes that the conduct complained about is not based on, or because of a protected characteristic, the supervisor will so advise the complaining party. In that case, this policy shall not apply, and the supervisor shall assess whether the alleged conduct violates any

Department or City policy and take appropriate action pursuant to Department or City procedures.

- (b) Any complaint made by an employee against his or her supervisor shall be directed to the Fire Chief for a formal investigation. Any complaint made by an employee against the Fire Chief shall be directed to the City Manager for a formal investigation.
  - (c) Upon receipt of a formal complaint, the supervisor, after consultation with the Deputy City Manager and the City Attorney, shall initiate a formal investigation. The formal investigation may include hiring an outside investigator and taking tape-recorded interviews. Every effort will be made to protect the privacy of parties involved in the complaint. Files pertaining to complaints will be maintained in a secure confidential manner.
  - (d) The formal investigation will include a review of factual information collected to determine whether the alleged conduct constitutes harassment, giving consideration to the record as a whole and the totality of circumstances, including the nature of the verbal, physical, visual or sexual favor aspect of any complaint and the context in which the alleged incidents occurred.
  - (e) The formal investigation shall be completed within sixty (60) days. The City may, for good cause or by mutual agreement, take more time to complete the investigation. The City shall advise the complaining party that the investigation will take longer than sixty (60) days to complete and provide an estimate of the completion date.
- (4) Investigative Documents/Results: Upon completion of the formal investigation, the complaining employee shall be advised whether the complaint was sustained or not sustained. He or she shall not receive a copy of the investigative materials or report. If the charges are sustained, the Department shall take appropriate corrective action. The complaining employee shall not be advised of the particular personnel action, if any, against the accused offender. If the charges are not sustained, neither the complaint or the investigation shall be referenced in any documents which may impact the terms and conditions of employment of the accused employee.
- (a) All investigative records, whether the charge is sustained or not sustained, shall be maintained by the Personnel Director in a confidential file. The documents contained in this file shall be maintained and disclosed as required by law and City policy.
- (5) Police Department Referral: The Department may also forward a complaint to a law enforcement agency, if appropriate. Any complaint that in the Fire Chief's judgment warrants referral to a law enforcement agency shall automatically be investigated as a formal complaint. The Department will pursue its investigation regardless of the law enforcement agency's action or inaction.

- (6) False Complaints: Knowingly and falsely accusing someone of harassment or otherwise knowingly giving false information in an investigation of harassment shall be grounds for disciplinary action, up to and including termination.

#### IV. DEPARTMENT'S COMMITMENT TO PREVENT HARASSMENT

Third Party Involvement: If a nonsupervisory employee witnesses behavior that is in violation of this policy, but not directed at them, he or she can also initiate a complaint of harassment. The "third party" non-supervisory employee who witnesses harassing behavior by one person against another, is not legally obligated to report this conduct to a supervisor. All employees, however, are encouraged to address offensive behavior via the steps outlined in this policy.

Because the Department wants to eliminate harassment from the workplace and can take corrective action only if it is aware of inappropriate conduct, the Department encourages witnesses to report offensive or harassing conduct either to the offending employee directly or to a supervisor.

Supervisor's Responsibility: If a supervisor witnesses harassing conduct, he or she shall first attempt to resolve the conduct informally and make a record as described above. If informal resolution is not feasible, then the supervisor shall make a formal report to the Fire Chief who shall institute a formal investigation. Any individual who is serving in an "Acting" supervisory role shall advise the regular supervisor upon his or her return to work of the conduct he or she witnessed. Failure of a regular or acting supervisor to carry out this responsibility can result in civil liability to the Department and will be cause for disciplinary action as to the supervisor, up to and including termination.

The Department shall provide appropriate training for supervisors and managers on conflict resolution and investigations of complaints. The Department shall every two years also provide training to all staff regarding recognizing and preventing harassment. The Department may require more frequent training, at the Fire Chief's discretion.