

# HUMAN RIGHTS COMMISSION

CITY OF PALM SPRINGS, CALIFORNIA

[www.palmspringsca.gov](http://www.palmspringsca.gov)

## MEETING AGENDA

**LOCATION: PALM SPRINGS CITY HALL – Large Conference Room  
3200 East Tahquitz Canyon Way**

Monday,  
July 11, 2016



3:00 p.m.

### COMMISSIONERS

**Jack Newby, Chair  
Jilska Chandrasena  
Denise Chappell**

**Janel Hunt  
Wes Rankins, Vice Chair  
Suzanne Severin  
Deborah Sutton-Weiss**

### Student Representatives

**Angelina Pinkney, Palm Springs High School  
Kelli Martin, Raymond Cree Middle School**

**Staff Liaison:** Lee Bonno  
Director of Neighborhood & Community Relations

*City of Palm Springs Mission Statement: Palm Springs is an inclusive world-class city dedicated to providing excellent and responsive public services to enhance the quality of life for current and future generations.*

Pursuant to G.C. Section 54957.5 the designated office for inspection of public records in connection with the meeting is the Office of the City Clerk, City Hall, 3200 East Tahquitz Canyon Way, Palm Springs, California.

It is the intention of the City of Palm Springs to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting or in meetings on a regular basis, you will need special assistance beyond what is normally provided, the City will attempt to accommodate you in every reasonable manner. Please contact the Office of Neighborhood and Community Relations, (760) 323-8255, TDD (760) 864-9527, at least 48 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible.

(Please **TURN-OFF** all cell phone ringers during this meeting - thank you!)

1. CALL TO ORDER:
2. FLAG SALUTE:
3. MISSION STATEMENT: "The Mission of the Palm Springs Human Rights Commission is to promote and protect the diversity of our community and to improve human relations through education and community awareness."
4. ROLL CALL:

5. POSTING OF THE AGENDA: This Agenda was available for public access at the City Hall exterior bulletin board (west side of Council Chamber), the City Clerk's office, and Planning Services counter on or before 4:00 p.m., Thursday, July 7, 2016. A courtesy web site posting of the Agenda may be found at the City's web site [www.palmsprings-ca.gov](http://www.palmsprings-ca.gov). Pursuant to the Government Code Section 54957.5, the designated office for inspection of public records in connection with the public meeting of the Human Rights Commission is the office of the City Clerk, City Hall, at 3200 East Tahquitz Canyon Way, Palm Springs, California.
6. PUBLIC COMMENTS: Three (3) minutes per speaker
7. APPROVAL OF THE MINUTES FROM THE JUNE 13, 2016 MEETING
8. ITEMS FOR DISCUSSION / AND OR VOTE:
  - 8.A Non-discrimination in contracting draft ordinance – Councilmember Geoff Kors
  - 8.B City of Palm Springs Administrative Policy Discrimination, Harassment and Retaliation
  - 8.C Decision regarding meeting on Aug. 8, 2016
  - 8.D Scheduling and preparing for the Commission's September planning meeting
  - 8.E Selection of student representatives to the Commission
  - 8.F Task Force Reports:
    - Homelessness Committee – Commissioner Severin
    - Ethics and Transparency Task Force – Chair Newby
  - 8.G Attendance at the Desert Highland Gateway Estates meetings
  - 8.H Public comment at the City Council meetings
9. STUDENT COMMENTS:
10. COMMISSIONER COMMENTS:
11. STAFF COMMENTS:
12. AGENDA ITEMS FOR THE NEXT HRC MEETING:
15. ADJOURNMENT

Enclosures:

1. Minutes from the June 13, 2016 HRC meeting
2. Non-discrimination in contracting draft ordinance
3. City of Palm Springs Administrative Policy Discrimination, Harassment and Retaliation

**THE PUBLIC IS INVITED AND ENCOURAGED TO ATTEND THE HUMAN RIGHTS COMMISSION MEETINGS at 3:00 p.m. THE SECOND MONDAY OF EACH MONTH IN THE LARGE CONFERENCE ROOM IN CITY HALL, 3200 E. TAHQUITZ CANYON WAY.**

**HUMAN RIGHTS COMMISSION**  
of the  
City of Palm Springs

Minutes from the June 13, 2016 Regular Meeting

<u>COMMISSIONERS</u>	<u>Present at this Meeting</u>	<u>Present FY Year-to-Date</u>	<u>FY 2015-16 Excused Absences</u>	<u>FY 2015-16 Unexcused Absences</u>
Jilska Chandrasena	X	10	1	0
Denise Chappell	X	10	1	0
Janel Hunt	X	9	2	0
Jack Newby	X	10	1	0
Wes Rankins	X	11	0	0
Suzanne Severin	X	11	0	0
Deborah Sutton-Weiss	X	8	3	0
Angelina Pinkney, Student Rep	0	6		
Kelli Martin, Student rep.	0	0		

The above roll call record is based on all meeting Minutes from July 13, 2015 thru June 13, 2016

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1. Chair Newby called the meeting to order at 3:00 p.m. He asked for a moment of silence for the shooting victims in Orlando, Florida and dedicated the meeting to their memory.
  2. Commissioner Severin led the flag salute.
  3. Commissioner Sutton-Weiss recited the Mission Statement.
  4. Commissioners Present: Newby, Chappell, Rankins, Severin, Sutton-Weiss, Chandrasena.  
Commissioner Hunt arrived at 3:07 p.m.  
Student Representatives Angelina Pinkney and Kelli Martin were absent.
  5. POSTING OF THE AGENDA: The agenda was posted in accordance with the Brown Act on or before 4:00 p.m., on Thursday, June 9, 2016.
  6. PRESENTATION: Equality Act Day:
    - Councilmember Geoff Kors read the Proclamation supporting the Federal Equality Act and recognizing June 15 as Equality Act Day. Councilmember Kors recognized Richard Noble who walked the Equality Act across the country and also recognized the Human Rights Campaign who helped prepare language for the Equality Act resolution.
  7. PUBLIC COMMENTS: Three (3) minutes per speaker:
    - Richard Noble asked that a couple of changes be made to the resolution prior to the HRC vote to support it. He asked that the year 2015 be deleted, and that the House Bill 3185 be removed. He said there is an American Indian Day (two weeks prior to Columbus Day) and asked the HRC to recognize Columbus Day as Indigenous Peoples' Day.
    - Alan Worthy spoke to the tragedy in Orlando and reiterated his complaints against the PSPD.
    - Ron deHarte Executive Director of Palm Springs Pride, thanked the members of the HRC for their participation in the Harvey Milk Diversity Breakfast. He also spoke about the possibility of the Commission becoming a partner in the 2017 breakfast event.

8. GUEST SPEAKER: Commissioner Sutton-Weiss introduced Antonio Lopez-Cochran, Chair of Some Fabulous Leos, a non-profit organization that raises money and awareness for local charitable organizations that do so much for the community. She noted that Mr. Lopez-Cochran is currently working on a documentary on the life and work of activist George Zander. Mr. Lopez-Cochran noted that Some Fabulous Leos began in Seattle following the celebration of Mr. Zander's 40<sup>th</sup> birthday. Mr. Lopez-Cochran noted three upcoming events designed to fundraise for local LGBT and other organizations in need. The first event will be held on June 25<sup>th</sup> at Restaurant 849, next is a July 20 Happy Hour at the Hard Rock Hotel and finally an event to be held at Toucan's on August 21. Commissioner Sutton-Weiss thanked Mr. Lopez-Cochran and encouraged members of the HRC to support and participate in the work of Some Fabulous Leos. Chair Newby also thanked and praised the work of Some Fabulous Leos.
9. APPROVAL OF THE MINUTES FROM THE MAY 9, 2016 MEETING: The minutes were approved 7-0 following a motion by Commissioner Sutton-Weiss and second by Commissioner Severin.

10. ITEMS FOR DISCUSSION / AND OR VOTE:

10.A Palm Springs Resolution Supporting the Passage of the Equality Act – Councilmember Geoff Kors supported the changes to the resolution suggested by Mr. Noble, and wished to add Congressman Raul Ruiz's name and President Obama's name to the resolution. Councilmember Kors said that is appropriate that Palm Springs be the first city in the nation to endorse the Equality Act. Vice Chair Rankins thanked Councilmember Kors and Mr. Noble and noted that June is unofficially Pride Month. He spoke about the vigil held in Palm Springs following the mass shooting in Orlando. Commissioner Severin echoed the words of Vice Chair Rankins and thanked Councilmember Kors for bringing the resolution before the HRC. Chair Newby entertained a motion to forward the resolution with the Commission's recommendation and with the edits that were discussed. Commissioner Sutton-Weiss made the motion with a second from Vice Chair Rankins. The motion was approved 7-0.

NOTE: Chair Newby called for a brief recess so that a photo could be taken of the Commissioners, Councilmember Kors and Mr. Noble.

10.B Non-discrimination in contracting draft ordinance(s) – Councilmember Geoff Kors said this would be an ordinance on non-discriminating in the City's contracting policies. He said that sometimes contracts include non-discriminatory language and sometimes they do not and that existing categories are outdated and/or incomplete. Councilmember Kors is also looking into an equal benefits ordinance. The first equal benefits ordinance dates back to 1996 in San Francisco that stipulates that the city can only contract with entities that give the same benefits to domestic partnerships that it provides to spouses of its employees. Last year that was extended to cover transgender employees and health benefits at the state level. Councilmember Kors said the ordinance he is working on for Palm Springs would encompass all the categories. He said the way the ordinance is being drafted, it would put some responsibility on the Human Rights Commission to conduct hearings when there are complaints of discrimination against contractors or businesses. Commissioner Severin asked if the ordinance, as proposed, would have flow-downs to sub-contractors, agents, consultants and the like. Mr. Kors noted there are limitations as to how far the City can reach. Vice Chair Rankins noted his experience working with the San Francisco ordinance and the enforcement that went on. Councilmember Kors explained that the ordinance would not require businesses to do anything, it would just prevent the City from entering into a contract with a business, or non-profit or an entity that doesn't provide equal benefits.

NOTE: Councilmember Kors asked permission to go off the agenda to make mention of Transform California a coalition project of a number of organizations working to do public education and research on transgender issues. A launch in Palm Springs is being planned for some time during the week of July 11. Lee Bonno will disseminate details when they are available.

10.C Commission's annual report: Chair Newby noted that the draft of the annual report is attached to today's meeting materials. His intention is to update it with information from this meeting and then have it submitted to the City Council. Commissioner Severin noted a couple of edits, but complimented on Chair Newby on its thoroughness.

10.D City of Palm Springs Administrative Policy Discrimination, Harassment and Retaliation: Vice Chair Rankins had requested information on what the City had in place following last month's guest speakers'

presentation about ableism. He said that he had not had the opportunity to fully study the material and asked that it be placed on the agenda for the July meeting. Chair Newby said it appears the information applies to line management and staff. He said he is concerned about work-place environment or hostile workplace and how those issues might be resolved within the City staff. He said that all falls under discrimination, harassment and retaliation. He said there are subtle situations and there needs to be something within the policy that addresses it and how employees can address those situations if they feel they are in a hostile work environment. He feels that the document needs to be expanded to include language about what is meant by a hostile work environment. Commissioner Severin recounted her experience with training on sexual harassment and the fact that it means different things to different people. She would also like the language to be expanded regarding supervisors' responsibilities and obligations to report incidents. Ms. Bonno noted that City supervisors are required to take online training regarding their responsibility and duty to report situations.

10.E Scheduling and preparing for the Commission's September planning meeting – Lee Bonno had placed this item on the agenda for the Commission to start discussing it. This meeting is usually scheduled for a Saturday in September. The consensus was that Commissioners would like to hold this meeting and will wait until the new compliment of Commissioners come onboard in July.

10.F Selection of student representatives to the Commission – Lee Bonno referred to minutes from 2011 when the HRC determined a policy for selecting two student representatives to the Commission. Students are usually chosen by the school Principal and/or Administrator. Commissioner Hunt noted that both students for the 2015-2016 year were very involved in other activities. She indicated that although this was her last HRC meeting, she would be happy to be a liaison between the schools and the HRC in selecting the student representatives.

10.G Task Force Reports:

- Homelessness Committee – Commissioner Severin reported that the May and June meetings were cancelled and the next meeting will be held on July 14. She acknowledged the fine reporting that the Desert Sun had been doing on the issue.
- Ethics and Transparency Task Force – Chair Newby referenced a meeting roughly two weeks ago where all the committees had submitted reports that would be put into a full report for public comment and feedback. The Task Force will return after summer to review the recommendations and the public's input.
- Logo Committee – Vice Chair Rankins and Commissioner Severin displayed the new banner and presented each Commissioner with the new promotional items (pen, sticky notes and magnet). The Commissioners were pleased with the products. She also thanked staff for the news release issued announcing the Commission's new logo. Commissioner Severin showed a number of shirt styles and colors for the Commissioners to select from. The shirts would have the new HRC logo and Commissioners would wear them when they march in parades and at community events. Commissioner Sutton-Weiss suggested having this discussion at the September meeting and ordering the shirts then.

10.H Attendance at the Desert Highland Gateway Estates meetings – Commissioner Chandrasena and Commissioner Chappell attended the May 10<sup>th</sup> meeting during which the high school students received scholarships. Commissioners Rankins and Severin will attend the June 14<sup>th</sup> meeting.

10.I Public Comment from the Commission at City Council Meetings -- Lee Bonno noted that Chair Newby is planning to attend when the HRC's Annual Report is on the Council agenda and that all Commissioners should feel free to attend that meeting.

10.J Recap of the Harvey Milk Diversity Breakfast – Commissioner Severin said more than 740 people attended. Commissioner Hunt said having students attend and participate was very powerful. Vice Chair Rankins said the event was inspiring and well organized. Commissioner Hunt said that Raymond Cree Middle School was the only school in the district that had its own Harvey Milk Day.

10.K Commission's tentative calendar:

**JULY 2016: Ongoing business and orienting new Commissioners**

Commissioner Severin said the list of expectations that former Chair Dee Dee Wilson Barton put together might be a good starting point for a discussion along with information on the website about what the City expects from Boards and Commissions.

10.L Acknowledgement of outgoing Commissioners -- Certificates of Recognition were presented to outgoing Chair Newby and Commissioner Hunt in appreciation for their service on the Commission. Commissioner Hunt said it was difficult to pass up the opportunity to reapply to be on the Commission, but her children and job are keeping her very busy. She said she hopes to join again when her children are older and she has a little more free time. Chair Newby said it is amazing where this Commission is today compared to where it was six years ago. He praised former Chair Dee Dee Wilson Barton and the current Commissioners. Chair Newby said he is most proud of the City's work on diversity, cultural competency/cultural humility training.

11. STUDENT COMMENTS – There were none.

12. COMMISSIONERS COMMENTS: Vice Chair Rankins addressed his comments to the two outgoing Commissioners.

13. STAFF COMMENTS: Lee Bonno announced that she will be retiring from the City of Palm Springs at the end of July.

14. AGENDA ITEMS FOR THE JULY 11, 2016 HRC MEETING:

- Welcome and introduction of new Commissioners with a brief orientation
- Election of a Chair and Vice Chair
- Non-discrimination in contracting draft ordinance
- City of Palm Springs Administrative Policy Discrimination, Harassment and Retaliation

15. ADJOURNMENT: The meeting was adjourned at 4:26 p.m.

Respectfully submitted,



Terry Towne  
Volunteer, Office of Neighborhood & Community Relations

Lee A. Bonno  
Staff Human Rights Commission Liaison  
Director of Neighborhood & Community Relations



## City Council Staff Report

DATE: July 6, 2016

LEGISLATION

SUBJECT: AN ORDINANCE OF CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTION 7.01.040 OF, AND ADDING SECTION 7.06.090 TO, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO NON-DISCRIMINATION IN CITY CONTRACTING.

FROM: David Ready, City Manager

BY: Douglas Holland, City Attorney

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### SUMMARY

This Ordinance reaffirms the policy of the City to promote the principles of equal opportunity in its contracting activities by including terms and conditions in its various contracts that will require those seeking to do business with the city that they will treat contractors, subcontractors, and employees equally and will not engage in discrimination against their contractors, subcontractors, or employees because of their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation or as a member of any other protected class.

### RECOMMENDATION:

Waive text and introduce for first reading an Ordinance of the City Council "AN ORDINANCE OF CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTION 7.01.040 OF, AND ADDING SECTION 7.06.090 TO, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO NON-DISCRIMINATION IN CITY CONTRACTING."

### ENVIRONMENTAL ASSESSMENT:

Staff has reviewed the proposed amendment to the Palm Springs Municipal Code and determined that the proposed ordinance may have a significant adverse effect on the environment. Therefore, consideration and approval of the ordinance is not subject to the California Environmental Quality Act (CEQA), and no further study is needed. (Refer to 15061(b)(3) of the CEQA Guidelines.)

ITEM NO. 3B

## ANALYSIS

The City's general rules and regulations relating to procurement and contracts are contained in Title 7 of the Palm Springs Municipal Code. Chapter 7.06 of the Code discusses the terms and conditions that are typically required in various agreements and contracts. The City currently includes general non-discrimination provisions in its agreements. This is a general administrative requirement; it is not specifically mandated in the Municipal Code. The proposed ordinance will include various non-discrimination requirements as mandatory provisions in city contracts. These provisions will prohibit all city contractors from discrimination on the basis of actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation as these terms are defined by California Law, or association with members of classes protected under this Section or in retaliation for opposition to any practices forbidden under this Section, against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operated by that contractor, and will also require each contractor to include a similar provision in all subcontracts.

The ordinance also prohibits any contractor with a contract in excess of \$10,000 to discriminate in the provision of typical employee benefits between employees on the basis of an employee's, employee's spouse's, employee's domestic partner's, or dependent's actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation as these terms are defined by California Law.

The proposed ordinance requires that each contractor will submit certifications of the contractor's compliance with the provisions of the requirements of the ordinance.

As enforcement will be "complaint based", the ordinance also requires contract provisions that will allow the City to review, monitor, and investigate compliance and requires that each contractor will allow full access to applicable records. The ordinance provides for enforcement and appeals to the City Manager while retaining the City Council's call-up option in the event the Council wishes to review any administrative action in the enforcement of the ordinance. The City Manager also has the ability to waive requirements of the ordinance with the consent of the Council under specified circumstances. The City Manager is also required to provide an annual report on the administrative implementation of the ordinance.

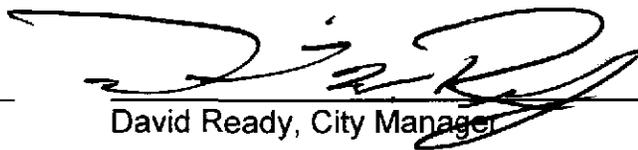
FISCAL IMPACT:

Additional costs will be incurred in the revision of contract language to implement the requirements of the ordinance and to perform the ongoing basic administrative requirements of the program. It is anticipated that these additional costs will be minimal, as enforcement will be complaint based.



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Douglas Holland, City Attorney



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David Ready, City Manager

C: Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTION 7.01.040 OF, AND ADDING SECTION 7.06.090 TO, THE PALM SPRINGS MUNICIPAL CODE, RELATING TO NON-DISCRIMINATION IN CITY CONTRACTING.

*City Attorney's Summary*

*This Ordinance requires the inclusion of various non-discrimination requirements as contract terms and conditions in all agreements where the City is a part. These provisions include various non-discrimination contract terms that will require those seeking to do business with the City that they will treat contractors, subcontractors, and employees equally and will not engage in discrimination against their contractors, subcontractors, or employees because of their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation or as a member of any other protected class.*

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS ORDAINS:

**Section 1.** Section 7.01.040 is amended by amending and or adding the following definitions therein:

“City Manager” means the City Manager of the City, or the designee of the City Manager who shall be an Assistant City Manager, Department Head, or an independent third party hearing officer.

“Contract” means all types of city agreements, regardless of what they may be called, for the procurement of goods, supplies, services, or construction, including without limitation an award of a grant or a real property agreement. For the purpose of this Chapter, the term “contract” includes “subcontract.”

“Contract Administrator” means the Department Head or other city employee designated by the City Manager to administer a Contract between the City and a Contractor and oversee and monitor the Contractor’s performance under the terms of the Contract.

“Contractor” means any person having a contract or purchase order with the City. For the purpose of this Chapter, the term “contractor” includes “subcontractor” and any person who is a party to a real property agreement as defined in this Section.

“Domestic partner” shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

“Real property agreement” means any agreement for the sale, lease, or use of real property owned by or in the lawful possession of the City, including without limitation concessions, franchises, and easements.

“Subcontract” shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

“Subcontractor” means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

**Section 2.** Section 7.06.090 is added to the Palm Springs Municipal Code to read:

#### 7.06.080 Non-Discrimination in Contracting

(1) Statement of Policy.

(a) It is the policy of the City to promote the principles of equal opportunity in its contracting activities by assuring that those seeking to do business with the city will treat contractors, subcontractors, and employees equally and will not engage in discrimination against their contractors, subcontractors, or employees because of their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation or as a member of any other protected class.

(b) It is also the policy of the City to ensure that work performed on behalf of the City is done in a cost effective and high level manner. Employees who are treated fairly are more productive in their jobs and less likely to change jobs, thus helping to ensure that government contracts are both cost effective and completed in a professional manner.

(2) Basic Contract Requirement Prohibiting Non-Discrimination.

All contracts shall include provisions prohibiting discrimination on the basis of actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender

identity, gender expression, or sexual orientation as these terms are defined by California Law, or association with members of classes protected under this Section or in retaliation for opposition to any practices forbidden under this Section, against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operated by that contractor, and shall require such contractor to include a similar provision in all subcontracts.

(3) Requirement Prohibiting Discrimination in the Provision of Benefits.

(a) No contractor of the City with a contract in the amount of ten thousand dollars (\$10,000.00) or more shall discriminate in the provision of health benefits, bereavement leave, family medical leave, moving expenses, pensions or retirement benefits, travel benefits, or membership or membership discounts between:

(i) employees on the basis of an employee's, employee's spouse's, employee's domestic partner's, or dependent's actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation as these terms are defined by California Law;

(ii) employees on the basis of an employee's or dependent's actual or perceived gender identity, including, but not limited to, the employee's or dependent's identification as transgender; or

(iii) employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

(b) For purposes of this Section, an employee health plan is discriminatory if the plan is not consistent with California Law including, but not limited to, Section 1365.5 of the Health and Safety Code and Section 10140 of the Insurance Code.

(4) Certification.

Every contractor shall submit a nondiscrimination certificate in a form acceptable to the City Manager. No contract shall be awarded until the contractor has submitted to the city such certificate. The certificate shall contain the following:

(a) Contractor certifies and represents that, during the performance of the contract, the contractor and any other parties with whom it may subcontract shall adhere to the City's non-discrimination and equal benefits as provided in the Section to assure that applicants and employees are treated equally and are not discriminated against because of their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, national

origin, ancestry, or sexual orientation. Contractor further certifies that it will not maintain any segregated facilities.

(b) Contractor shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of this contract, state that it is an "equal opportunity employer" or that all qualified applicants will receive consideration for employment without regard to their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation.

(c) Contractor shall, if requested to so do by the Contract Administrator, certify that it has not, in the performance of this contract, discriminated against applicants or employees because of their actual or perceived race, color, religion, ancestry, national origin, disability, medical condition, marital status, domestic partner status, sex, gender, gender identity, gender expression, or sexual orientation.

(d) If requested to do so by the Contract Administrator, contractor shall provide the city with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

(e) Contractor agrees to recruit Coachella Valley residents initially and to give them preference, if all other factors are equal, for any new positions which result from the performance of this contract and which are performed within the city. The Contract Administrator may agree to modify requirement where it is in conflict with federal or state laws or regulations

(f) Nothing contained in this contract shall be construed in any manner so as to require or permit any act which is prohibited by law.

(g) The contractor shall include the provisions set forth in paragraphs (a) – (f) of this Subsection (4) of this Section, inclusive, in each of its subcontracts.

(5) Investigation and Monitoring.

All contracts shall include appropriate provisions that will allow the Contract Administrator to review, monitor, and investigate compliance with this Section and to require each contractor to allow and provide full access to all applicable records, rules, regulations, documents, and other pertinent data necessary for the qualitative and quantitative evaluation of each contractor's compliance with the provisions of this Section.

(6) Enforcement and Appeals.

(a) In the event the Contract Administrator determines the Contractor is not in substantial compliance with the provisions of this Section, the Contract Administrator may recommend to the City Manager, the initiation of one or more of the following rights and remedies described in this subsection, in addition to any rights and remedies otherwise provided in the applicable contract or by law or equity:

- (i) Termination of the contract and bar the contractor from bidding on future contracts with the City for two (2) years from the effective date of the contract termination;
    - (ii) Assess liquidated damages in the amounts specified in the contract where it is found the Contractor willfully violated the requirements of this Section; and
    - (iii) Seek recovery of reasonable attorneys' fees and costs incurred for enforcement of this Section.
  - (b) The Contract Administrator shall issue written findings and mail a copy of the findings to the Contractor by first class mail and by any other means provided in the contract.
- (7) Appeals.
- (a) Within five (5) business days of the notice of the Contract Administrator's findings, the Contractor may file a written appeal of the Contract Administrator's determinations to the City Manager.
  - (b) The City Manager shall set the matter for hearing and shall cause a Notice of Hearing to be given to the Contractor and to such other persons as may have identified themselves as interested in the decision and as otherwise required by the California Ralph M. Brown Act.
  - (c) The hearing shall be conducted as an independent reexamination of the matter. The Contractor shall have the burden of proof in all cases, and if the Contractor fails to appear either in person or by counsel, or fails to present or offer any evidence, the City Manager may adopt the decision of the Contractor Administrator or may decide the matter upon the record with or without taking any additional evidence. Any oral or documentary evidence may be received, but the City Manager shall exclude irrelevant, immaterial or unduly repetitious evidence. The City Manager's decision shall be made upon substantial evidence. In other words, if an essential finding is based upon hearsay or secondary evidence, such evidence must be of the type which would be admissible in a court of law as proof of such finding.
  - (d) Upon the hearing of the appeal the City Manager may refer the matter back to the Contract administrator with directions for further consideration, or the City Manager may reverse, affirm, or modify the decision as may appear just and reasonable in light of the evidence presented. The decision of the City Manager shall be supported by written findings and shall include the reasons for the ruling. Notice of the City Manager's decision shall be served on the Contractor, the Contract Administrator, and the City Clerk. The decision shall be final unless City Council agrees to review the matter pursuant to Section 2.06.030 of this Code..
- (8) Exceptions and Waivers.
- (a) The City Manager, with the consent of the Council, may waive the requirements of this Section under the following circumstances:

- (i) Whenever the City Manager finds that there is only one prospective contractor willing to enter into a real property agreement with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;
  - (ii) Where the City Manager certifies in writing to the City Council that the contract or real property agreement is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to or within twenty-four (24) hours of execution of the contract or real property agreement on behalf of the City;
  - (iii) Where the City Attorney certifies in writing to the City Council that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter; provided such certification is made prior to execution of the contract on behalf of the City.
- (b) This Chapter shall not apply where the prospective contractor is a public entity and the City Manager finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.
- (c) This Chapter shall not apply where the City Manager finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.
- (d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the City Manager may waive any or all of the requirements of this Chapter for any contract, real property agreement, or bid package advertised and made available to the public, or any competitive or sealed bids received by the City under the following circumstances:
- (i) Where the City Manager determines that there are no

qualified responsive bidders or prospective contractors who could be certified as being in compliance with the requirements of this Chapter and that the contract or real property agreement is for goods, a service, or a project that is essential to the City or City residents; or

(ii) Where the City Manager determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State, or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(iii) Where the City Manager determines that the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter;

(e) The waiver authority granted to City Manager in this Section shall be subject to the requirements that:

(i) All proposed waivers must set forth the reasons the City Manager officer is requesting the waiver, what steps were taken to find an entity that complies with this Chapter and why the waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be filed in the Office of the City Clerk and a notice of such waiver shall be presented to the City Council on the next available City Council agenda, and

(ii) For any contract or real property agreement subject to approval by the City Council, the City Manager shall include a statement in the approving resolution and related staff report whether any waiver under this Section is proposed for that contract, and

(9) Annual Reports. The City Manager shall conduct an annual comprehensive review of the administrative implementation of the provisions of this Section, including without limitation, the use of the waiver authority under Subsection (9) and the disposition of complaints of contractor non-compliance with any provision of this Section, and shall submit a report to the City Council.

**Section 3.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.



## **City of Palm Springs Administrative Policy Discrimination, Harassment and Retaliation**

### Policy Statement

The City is committed to providing a workplace free of discrimination, harassment and retaliation based on an employee's race, religion, creed, color, national origin, ancestry, veteran status, physical disability, mental disability, medical condition, genetic information, HIV/Aids related conditions, pregnancy, use of leave under FMLA and/or CFRA, marital and domestic partner status, family and parental status, age, sex, gender, gender identity, gender expression, sexual orientation, or any other basis protected by applicable federal, state or local law (hereinafter referred to as "Protected Characteristic"). The City will not tolerate discrimination harassment or retaliation against employees by managers, supervisors or co-workers. Further, the City will not tolerate discrimination, harassment or retaliation against employees by non-employees with whom the City's employees have a business, service or professional relationship.

Any employee that is found to have committed or participated in prohibited discrimination, harassment and/or retaliation will be subject to appropriate discipline, up to and including termination. Further, where such conduct occurs, appropriate action may also be taken to deter any future discrimination, harassment and/or retaliation.

### Statement of Equal Employment Opportunity and Non-Discrimination

The City is an equal opportunity employer and will not discriminate against any qualified employee or applicant for employment based on any employee's or applicant's Protected Characteristic. Equal employment opportunity will be extended to all persons in all aspects of the employer-employee relationship, including recruitment, hiring, training, promotion, transfer, discipline, layoff, recall and termination.

Prohibited employment discrimination is any adverse employment action respecting the compensation, terms, conditions, or privileges of employment taken against any applicant or employee based on any applicant's or employee's Protected Characteristic.

### Discrimination Examples

Prohibited discrimination can take many forms and includes, but is not limited to, the following:

- 1) Basing an employment decision as to a job applicant or employee (e.g., decision to hire, promote, transfer, terminate, etc.) on that applicant's or employee's Protected Characteristic;
- 2) Treating an applicant or employee differently with regard to any aspect of employment based upon a Protected Characteristic;
- 3) Engaging in prohibited harassment, as more specifically defined below; or
- 4) Engaging in prohibited retaliation by taking adverse employment action (e.g., demotion, transfer, discipline, termination) against an employee based on the employee opposing discrimination in the workplace, assisting, supporting, or associating with a member of a

protected group who complains about discrimination, or assisting in an investigation of discrimination.

### Prohibited Harassment

Prohibited harassment is unwanted verbal, visual, or physical conduct based upon a Protected Characteristic wherein: (1) submission to the conduct is made either an explicit or implicit condition of employment; (2) submission to or rejection of the conduct is used as the basis for an employment decision; or (3) the harassment unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

### Harassment Examples

Prohibited harassment may include, but is not limited to, the following unwanted conduct: offensive jokes, slurs, statements, gestures, pictures, drawings, computer images, cartoons, assault, and/or impeding or blocking another's movement or otherwise physically interfering with normal work based upon an employee's Protected Characteristic.

### Prohibited Sexual Harassment

Sexual harassment is a form of prohibited harassment that the City affords particular attention through a specialized complaint procedure set forth in Rule 17 of the City's Personnel Rules. In the event provisions of this Policy contradict those set forth in Rule 17, the terms and procedures of Rule 17 shall govern.

Sexually harassing conduct includes all of the prohibited actions set forth at Section 17.3.1 above, as well as other unwelcome conduct such as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made a term or condition of employment; or (2) submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment. Sexual harassment can occur between members of the same or opposite sex.

Employees are hereby informed that no supervisor, manager, or officer of the City, or other person or entity doing business with the City, is authorized to condition the receipt or denial of any benefit, compensation, or other term or condition of employment on an employee's consent to any sexual demand. To the contrary, all employees are instructed that they must refuse such demands and report them promptly either to their immediate supervisor or the Personnel Officer. Any employee who is found to have obtained any benefit from the City because he or she submitted to an unreported sexual demand may be disciplined appropriately, and may further be subject to reimbursing the City for the value of any benefits received. Any employee making such a demand may also subject to appropriate discipline.

### Sexual Harassment Examples

Sexual harassment can take many forms and includes, but is not limited to:

- 1) Unwanted sexual advances;
- 2) Offering employment benefits in exchange for sexual favors;
- 3) Making or threatening reprisals after a negative response to sexual advances;

- 4) Unwanted visual conduct such as leering, making sexual gestures, displaying of sexually explicit jokes;
- 5) Unwanted verbal sexual advances or propositions;
- 6) Unwanted verbal abuse of a sexual nature, graphic verbal commentary about an individual's body or dress, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations; and
- 7) Unwanted physical conduct such as touching, assault, impeding or blocking movements.

### Prohibited Retaliation

The City prohibits retaliation against any employee because of (1) the employee's opposition to a practice the employee reasonably believes to constitute employment discrimination, harassment or retaliation or (2) because of the employee's participation in an employment discrimination, harassment or retaliation investigation, proceeding, or hearing.

### Examples of Protected Opposition

A complaint about an employment practice constitutes protected opposition only if the employee communicates to the City a reasonable good faith belief that the practice opposed constitutes discrimination, harassment and/or retaliation. Protected opposition to perceived discrimination, harassment or retaliation includes, but is not limited to, threatening to file a discrimination, harassment and/or retaliation complaint with any federal or state agency, union or court, or complaining or protesting about alleged discrimination, harassment and/or retaliation to a supervisor, manager, the Personnel Officer, union official, co-worker or other official. Protected opposition also includes a complaint or protest made on behalf of another employee or made by the employee's representative.

Opposition not made in good faith, or made in a manner which disrupts the workplace, or which constitutes an unlawful activity, or which includes badgering or threatening of employees or supervisors is not protected.

### Examples of Protected Participation

Protected participation includes, but is not limited to, filing a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, hearing or litigation under federal or state discrimination, harassment or retaliation statutes or at other hearings regarding protected employee rights, such as unemployment compensation proceedings. The City also prohibits retaliation against persons closely related to or associated with the employee exercising such rights.

### Procedures for Reporting and Investigating Complaints of Discrimination, Harassment and Retaliation

Any incident of discrimination, harassment or retaliation by City personnel or any other person, should be reported to the employee's immediate supervisor and/or to the Personnel Officer immediately. The complaint should include details of the incident(s), names of individuals involved, and the names of any witnesses. An employee is not required to complain first to his or her supervisor if that person is involved in the reported conduct. Instead, the employee may report the incident to the supervisor of the employee's immediate supervisor or to the Personnel Officer.

All complaints are to be made in good faith with a reasonable belief in their accuracy and a reasonable and good faith belief that prohibited discrimination, harassment or retaliation has occurred.

The procedures herein apply to the prohibited types of discrimination, harassment and retaliation based on an employee's Protected Characteristic. Employees should feel free, without fear of retaliation, to follow the procedures set forth herein or in Rule 17 of the City's Personnel Rules if they believe in good faith that they have been discriminated against, harassed or retaliated against.

Any employee that fails to cooperate with any discrimination, harassment or retaliation investigation may be subject to appropriate discipline, up to and including termination.

#### Supervisor's Responsibility

Supervisors and managers must immediately refer all discrimination, harassment and retaliation complaints to the Personnel Officer. If the Personnel Officer is involved in the reported conduct, the complaint should instead be referred to the City Attorney.

#### Personnel Officer's Responsibility

The Personnel Officer shall have every reported complaint of discrimination, harassment and retaliation investigated, promptly and in a confidential manner, but confidentiality is neither promised nor assured due to the need to thoroughly investigate such claims, including talking to potential witnesses.

#### City Manager's Responsibility

The City Manager or the City Manager's delegate, who shall not be a party to any portion of the complaint, may conduct an informal hearing for the purpose of further investigation of the complaint or shall render a final and binding decision regarding the matter.

#### Employee Failure to Follow Procedure

All employees should note that their failure to follow the City's complaint reporting procedure may result in the defeat of any claim of discrimination, harassment or retaliation, if litigated.

#### Additional Enforcement Information

Discrimination, harassment and/or retaliation because of an employee's Protected Characteristic are illegal. In addition to notifying the City about discrimination, harassment and/or retaliation pursuant to the City's complaint and investigation procedure, affected employees may also direct their complaints to the federal Equal Employment Opportunity Commission ("EEOC") and the California Department of Fair Employment and Housing ("DFEH"), which have authority to conduct investigations and prosecute complaints of discrimination, harassment or retaliation in employment. Time limits for filing complaints with the EEOC and the DFEH vary and those agencies should be contacted directly for specific information. The addresses and telephone numbers (as of the date of this policy) are:

EEOC Los Angeles District Office  
255 E. Temple, 4th Floor  
Los Angeles, CA 90012  
Telephone: (213) 894-1000  
TTY: (213) 894-1121

DFEH San Bernardino District Office  
1845 S. Business Center Drive, Suite 127  
San Bernardino, CA 92408-3426  
Telephone: (909) 383-4373  
TTY: (800) 700-2320