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Title:	FACILITATE A DISCUSSION FOR THE CARSON CITY COUNCIL TO REVIEW RULES SET FORTH BY THE CITY COUNCIL AND THE NEW CITY CHARTER FOR THE PROTECTION OF CITY EMPLOYEES AND INDIVIDUALS FROM DISCRIMINATION, HARASSMENT AND ABUSIVE CONDUCT (CITY COUNCIL)				
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Report to Mayor and City Council

Tuesday, May 14, 2019

Discussion

SUBJECT:

FACILITATE A DISCUSSION FOR THE CARSON CITY COUNCIL TO REVIEW RULES SET FORTH BY THE CITY COUNCIL AND THE NEW CITY CHARTER FOR THE PROTECTION OF CITY EMPLOYEES AND INDIVIDUALS FROM DISCRIMINATION, HARASSMENT AND ABUSIVE CONDUCT (CITY COUNCIL)

I. SUMMARY

This matter was heard during the December 4, 2018 City Council meeting and the City Council gave direction to conduct a public workshop on a number of related ordinances prior to bringing any ordinance forward for introduction. This workshop was directed to occur once the new City Council was seated.

The City Council has an affirmative duty to protect City employees from discrimination, harassment bullying, as well as to create a work environment free from discrimination, abusive conduct, intimidation and harassment.

The City Council adopted Chapter 11 of Article II (Discrimination and Harassment Prevention Policy) of Article II (Administration) of the Carson Municipal Code in February of 2016, which superseded prior code sections. The City Council and appointed officials are

also subject to the Code of Ethics in Section 2450 of Chapter 4 of Article II of the Carson Municipal Code.

The City became a Charter City on January 17, 2019, pursuant to a vote of the residents of Carson. The Charter expressly strengthens the anti-Discrimination and Harassment rules of the City and prohibits nepotism, favoritism and corruption. Last, the Charter affirms and strengthens the Council-City Manager form of government which provides strict rules on Council interaction with City staff.

In this session, the City Council is asked to review the existing rules protecting employees from discrimination, harassment, abusive conduct, nepotism, favoritism and corruption. Once this workshop is held, the City Council will be asked at a future meeting to consider a number of amendments to the Carson Municipal Code (Code of Ethics) to add provisions consistent with the goals of the newly adopted City Charter; adopt an anti-nepotism resolution and policy consistent with the Charter; and, adopt implementation guidelines of the City's Code of Ethics to establish and expand upon good, proper, and expected conduct of elected and appointed officials towards City staff, emphasizing a Council-Manager form of government.

II. RECOMMENDATION

FACILITATE a discussion.

III. ALTERNATIVES

Take another action consistent with applicable law.

IV. BACKGROUND

This matter was heard during the December 4, 2018 City Council meeting, and the City Council gave direction then to conduct a public workshop on a number of harassment-related ordinances prior to bringing any resolution ordinance forward for introduction. This workshop was directed to occur once the new City Council was seated.

The City Council has an affirmative duty to protect City employees from discrimination, harassment bullying, as well as to create a work environment free from discrimination, abusive conduct, intimidation and harassment. Below is a summary of a number of Federal, State and municipal codes related to the issue:

A. Affirmative Duty to Protect City Employees

The City Council has an affirmative duty to protect City employees and create a work environment free from discrimination, bullying, intimidation and harassment.

There are various federal, State and local ordinances that the City Council is required to implement, including Title VII of the federal Civil Rights Code Act of 1964, which had determined that harassment is a form of discrimination. The City Council has an affirmative duty to enforce the Federal Whistleblower Act, which protects employees from

retaliatory actions for voluntarily disclosing information about dishonest or illegal activities.

California has a companion statute, the California Whistleblower Protection Act, which provides civil liability for any person who intentionally threatens or retaliates against an employee. Whistleblowers are a protected class of employees. California Labor Code Section 1102.5 protects workers who report violations. The California Fair Employment and Housing Act prohibits harassment and discrimination in employment because of race, color, religion, sex, gender identity, physical disability, medical condition, age, pregnancy, and/or retaliation for protesting illegal discrimination related to one of these categories.

B. Carson Discrimination and Harassment Prevention Policy

Chapter 11 of Article II of the Carson Municipal Code, Discrimination and Harassment Prevention Policy, was adopted in February of 2016. The ordinance defines harassment as conduct based on a protected category/status, conduct that is unwelcome and workplace harm that creates a hostile work environment or results in tangible employment action (*quid pro quo*). Even if the conduct does not constitute a hostile work environment, it may still be cause for enforcement.

Examples of workplace harassment complaints based on a hostile work environment which are prohibited include, but are not limited to, the following:

- 1) Visual Harassment, such as posters, photographs, letters, notes, emails, cartoons, or drawings related to a person's protected category/ status.
- 2) Verbal Harassment, such as epithets, derogatory comments/statements, vulgar, racist or discriminatory jokes, or slurs based upon a person's protected category/status.
- 3) Physical Harassment, such as an assault, blocking or impeding access or other physical interference, sabotaging work or imposing demeaning work tasks based upon a person's protected category/status.

California also has laws against abusive conduct toward employees. "Abusive conduct" under the newly elected California laws Government Code section §12950.1(g)(2) is defined as conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employee's legitimate business interests. For example, abusive conduct may take the form of, but is not limited to, repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe or egregious.

The City has taken significant steps to combat bullying through its Anti-Bullying Commission (see also, Carson Municipal Code section 2450(E)(3)) and shall continue to maintain a workplace free from any form of abusive conduct.

C. Carson Code of Ethics

The City's Code of Ethics regulates the appropriate behavior of the City Council (Section 2450 of the Carson Municipal Code) to protect employees.

The Code of Ethics is intended to memorialize the trust that the people of Carson place into the hands of their elected and appointed officials to assure fair and equal treatment of all persons, claims and transactions. The Ethics Code requires that all City Council members comply with the laws of the United States, the State of California and the Carson Municipal Code, as well as compliance with all City policies and practices.

The Ethics Code sets forth ethical standards of behavior related to interactions with City staff, including the following:

- 1) *The professional and personal conduct of members must be above reproach and should take steps to avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Council, commissions, boards and committees, the staff or the public.*
- 2) *Members shall respect and adhere to the council-manager structure of the Carson City government. In this structure, the City Council determines the policies of the City with advice, information and analysis provided by the public, commissions, boards, committees and staff.*
- 3) *Individual members shall not interfere with the administrative functions of the City or the professional duties of the City staff, nor shall they impair the ability of staff to implement Council policy decisions.*
- 4) *Members shall support the maintenance of a positive and constructive workplace environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.*

D. Charter Prohibition on Nepotism, Favoritism and Corruption

Section 505 of the new City of Carson Charter provides expressly it “shall be the policy of the City to prohibit and ban nepotism, favoritism and corruption.” Section 505 then provides for strict guidelines and rules governing this behavior. In 1978 the City adopted through SMP 6.15 a policy entitled “Employment of Immediate Family Members Policy.”

Consistent with new Carson Charter Section 505 and its strict rules governing nepotism, favoritism and corruption, the City Council will be asked at a future meeting to consider adoption of a new anti-nepotism City policy.

E. Council-Manager Form of Local Government

The City's Code of Ethics has always emphasized the policy making role of the elected officials and has required officials not to interfere with the administrative functions of the City or the professional duties of City staff (see Carson Municipal Code section 2450(E))

(14)).

The Carson City Charter also further strengthens the role and responsibilities of the city manager in conducting the day to day operations of the City. In the community meetings conducted on the City's charter this was one of the most important issues highlighted and advocated for by the Charter Committee. The Charter Committee unanimously voted and emphasized the importance of clarifying and re-affirming the Council-Manager form of Government. The residents of Carson overwhelmingly voted to uphold the autonomy of the City Manager.

Section 202 of the Charter therefore specifically affirms the form of government for the City shall continue to be a "Council-Manager" form of government. This means "the city council shall establish the policies of the City, and the city manager shall administer the government of the City in accordance with such policies."

Consistent with Section 202, the Charter provides in Section 307 ("Interference in Administrative Service") that:

Except as otherwise provided in this Charter, neither the city council nor any of its members shall interfere with the execution by the city manager of his or her powers and duties, or order, directly or indirectly, the appointment by the city manager or by any of the department heads in the administrative service of the City, of any person to an office or employment, or his or her removal therefrom. Except for the purpose of inquiry, the city council and its members shall deal with the administrative service under the city manager solely through the city manager, and neither the city council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately, directly or indirectly.

The Council will be asked to effectuate the will of the voters by bolstering the language in the Code of Ethics dealing with "Council-Manager" form of government, as Implementation Guidelines for the Code of Ethics. The recommendations in those Guidelines will be based on existing goals, policies and ordinances governing the conduct of City Council Members towards City staff. (Title VII of the Civil Rights Code of 1964, California Labor Code Section 1102.5, Government Code Sections 34851-59, the City of Carson Charter, Sections 307 and 403, and Chapter 11 of Article II, and Section 2450 of Chapter 4 of Article II, of the Carson Municipal Code and other applicable Federal and State laws.) The City Council should periodically review these rules and make adjustments which are necessary.

F. Council Workshop

This City Council Workshop is to review the Federal, State and Carson laws and policies to ensure a workplace free from harassment, discrimination and abusive conduct or bullying for all elected and appointed officials.

The Director of Human Resources has arranged for a professional facilitator, Kandice Sherwood Taylor, to conduct the session with the City Council.

G. Council Rules, Policies and Procedures

Last, the City does not have a central document entitled “Council Rules, Policies and Procedures.” Most California cities have an easy to follow pamphlet typically entitled “Council Rules, Policies and Procedures” dealing with all issues Council related. In Carson things are piecemealed in various Council Policies, Standard Management Practices (SMPs) or in the City’s Municipal Code. The Council has already asked for a review of all SMPs and Council policies, and that review has commenced under the direction of the Assistant City Manager-Administration. The first set of SMPs and other policies to be reviewed will be those that are City Council-related, and Staff recommends that they be merged into one central document entitled “Council Rules and Procedures” and bring same back for council consideration and adoption at a future Council meeting so both the public and elected officials can know what the rules and expectations are.

V. FISCAL IMPACT

None.VI. EXHIBITS

None.

Prepared by: City Manager's Office