

November 22, 2017

Adeola Egbeyemi
Staff Services Analyst
Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758

RE: DFEH Charge No. 794009-307597
EEOC Charge No. 37A-2018-0111-C
Kalasho / City of El Cajon

Dear Ms. Egbeyemi:

This firm serves as the City Attorney for the City of El Cajon (the "City") and represents it in the above-referenced matter. This letter provides the City's responses as well as responses on behalf of Bill Wells and Gary Kendrick, to the questions in your letter dated October 13, 2017. Please note, that Mr. Wells and Mr. Kendrick are also providing separate responses independent of the following.

1. **State the legal name of your business and any other name(s) under which you do or have done business in California.**

City of El Cajon

2. **State your business address.**

200 Civic Center Way
El Cajon, CA 92020

3. **State type of legal business entity.**

California Charter City and Municipal Corporation

4. **Does your company have a current contract(s) for the provisions of goods, services or public works with the State of California or receive federal funds? If so, name the awarding agency.**

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Yes. The City receives Community Development Block Grants and HOME funding from the federal government.

SUPPLEMENTAL QUESTIONS

- 1. Identify the person or persons designated to represent the company in this matter. Provide telephone contact number, email address, and mailing address for your representatives.**

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- 2. Provide a statement of the employer's position with regard to the allegations contained in the complaint.**

Please see the City's Position statement attached hereto.

- 3. Provide copies of documents that support the employer's position regarding the allegations contained in the complaint.**

Please see exhibits attached hereto and noted throughout this response.

- 4. Provide copies of Ben Kalasho's personnel file.**

Mr. Kalasho ("Complainant") is an elected official and a member of the City Council; he is not, and never has been, an employee of the City. Therefore, the City does not maintain a personnel file for Complainant.

Harassment

- 1. State what information was provided by Ben Kalasho pertaining to the complaint of verbal racial harassment and clarify to whom it was provided and when.**

In the Complaint of Employment Discrimination ("Complaint"), Complainant sets forth that he did not report the harassment to anyone at the City. The City had no knowledge of the alleged harassment until it received the documents from the Department of Fair Employment and Housing ("DFEH").

2. Provide a copy of any written complaint submitted to the City of El Cajon by Ben Kalasho concerning the harassment.

In the Complaint, Complainant sets forth that he did not report the verbal harassment to anyone. Accordingly, a written complaint does not exist.

3. Describe your organization's policy and procedures for processing employee complaints. Submit a copy of any written complaint procedures relevant to Ben Kalasho and the issues raised in the complaint.

The City maintains a complaint procedure for its employees, which are set forth in the City's General and Sexual Harassment Policy. (See Exhibit A). Under this policy there is both an informal complaint procedure and a formal complaint procedure. Under the informal complaint procedure, an employee is encouraged (when possible) to confront and inform the harasser of their offensive behavior. Under the formal complaint procedure, employees may make an oral or written complaint to several persons, including any supervisor, a department director, and the Director of Human Resources. The Human Resources Department will investigate the complaint. The policy also sets forth that employees have the right to file a complaint with the DFEH and provides contact information for the DFEH in San Diego. It also provides instructions on how to file a complaint with the DFEH and states that employees are protected from retaliation for filing a complaint.

The City's General and Sexual Harassment Policy does not apply to Complainant because he is not a City employee. As a public official, elected by the voters in the City of El Cajon, the Complainant is not entitled to the protections found in the procedures in the City's policies for processing complaints.

4. Provide copies of all notes and documents compiled by respondent concerning the alleged harassment, and provide a copy of your final investigative report.

According to the Complaint, Complainant did not report the alleged discrimination / harassment to anyone at the City. As such, the City did not investigate the alleged harassment, nor does it have an investigative report.

5. Provide a list of all persons who worked under the supervision of Bill Wells for the last two years. For each person listed, state their position(s) date(s) of employment, whether still employed, and provide their last known address and home and work telephone numbers.

City employees do not work under the supervision of Bill Wells because Mr. Wells is the mayor of the City and, like the Complainant, is an elected official.

6. Provide copies of any reprimands or warnings issued to Bill Wells and Gary Kendrick for the last three years.

The City does not discipline elected officials, such as Mr. Wells and Mr. Kendrick, because they are not employees. Mr. Wells and Mr. Kendrick are not subject to the City's control. They also are not subject to the Personnel Rules set forth in the City's Municipal Code.

7. State whether the City of El Cajon had, prior to Ben Kalasho's charge, been informed of any other complaints of harassment by Bill Wells and Gary Kendrick.

The City has not received any complaints of harassment against Mr. Wells or Mr. Kendrick.

8. List the job title and provide a copy of any written job description for Bill Wells and Gary Kendrick.

Mr. Wells is currently the mayor of the City. He is up for reelection in 2018. There is not a written job description for the position of mayor.

Mr. Kendrick is currently a member of the City council. He is up for reelection in 2018. There is not a written job description for the position of City councilmember.

9. If no written job description exists, describe the duties and supervisory responsibilities.

Mayor: The mayor shall be the presiding officer of the city council. The mayor shall preserve strict order and decorum at all regular, adjourned regular and special meetings of the city council. The mayor shall state every question coming before the council, announce the decision of the council on all subjects, and decide all questions of order. However, such decisions on order shall be subject to an appeal to the city council, in which event a majority vote of the city council shall govern and conclusively determine such question of order. The mayor shall

sign all ordinances and resolutions. (See El Cajon Mun. Code § 2.08.030, Exhibit B).

Councilmember: The City Council exercises the powers given in a council-manager system of government. Its five members are elected for overlapping four-year terms with elections held in November of the even-numbered years.

10. Provide a description of your policy on harassment. Provide a copy of any written policy, and explain what steps have been taken to implement it.

A copy of the City's General and Sexual Harassment Policy is attached hereto as Exhibit A. City staff provides this policy to all new employees. City employees also have access to the policy at all times via the City's intranet. Supervisory employees as well as elected officials attend training every two (2) years as mandated by California Government Code sections 12950.1 and 53237.

11. Explain the present status of Bill Wells and Gary Kendrick listed in the complaint.

Mr. Wells is currently the mayor of the City. He is up for reelection by the voters in the City of El Cajon in 2018. Mr. Kendrick is currently a member of the City council. He is also up reelection in 2018 and must be reelected by the voters residing in District 1 of the newly established districts in the City. The Complainant is also a resident of District 1 but is not up for reelection in 2018; his term expires in 2020. If Complainant desires to continue to be a member of the City Council beyond 2020 he will need to run for the seat held by Mr. Kendrick, as a Councilmember, run against Mr. Wells, as the Mayor in 2018, or move to one of the other three districts up for election in 2020.

12. Explain any action(s) that have been taken or were taken to protect Ben Kalasho from retaliation from filing the harassment complaint for objecting to the alleged harassment.

According to the Complaint, Complainant did not report the alleged discrimination / harassment to anyone at the City. As such, the City did not take any actions to protect Complainant from retaliation as it lacked knowledge of the allegations. Prior to the receipt of the Complaint, Mr. Wells, however, was preparing an item to bring before the entire City Council for a vote to censure the Complainant based on allegations that the Complainant has, and continues to, violate City Council adopted policies related to conduct during City Council meetings (i.e., the use of personal electronic devices, such as a mobile phone, while the City Council is conducting its meetings). Upon receipt of the Complaint, however, it was recommended to Mr. Wells that he delay any such actions until such time as the instant matter being conducted by the Department is concluded.

Further, Complainant is not subject to the City's Personnel Rules because he is not a City employee. (See El Cajon Mun. Code Ch. 2.72, located here: http://qcode.us/codes/elcajon/view.php?topic=2-2_72). Accordingly, the City cannot take adverse employment actions (i.e. suspension, discipline, or reprimands) against Complainant. Other than joining other members of the City Council in voting to censure the Complainant, Mr. Wells and Mr. Kendrick also lack authority to take any adverse employment actions against Complainant.

13. Explain how your organization communicates the policy statement prohibiting harassment to new employees.

City staff provides the City's General and Sexual Harassment Policy to all new employees. City employees also have access to the policy at all times via the City's intranet. Supervisory employees as well as elected officials attend training every two years as mandated by California Government Code sections 12950.1 and 53237.

14. Identify employees who worked with the charging party during the relevant period. Include: Name, Position National original; Last known address and telephone number.

As a member of the City Council, Complainant works with the other councilmembers as well as the mayor. However, these persons are not employees of the City for purposes of the Fair Employment and Housing Act or under Title VII of the Civil Rights Act of 1964.

While Complainant has also had contact with many of the City's personnel during the relevant period, as a councilmember, and mostly during City Council meetings, which are generally open to the public, under the City of El Cajon Municipal Code it is a violation for any of the members of the City Council, including the Complainant, to deal with any City Personnel under the control of the City Manager, except for purposes of inquiry. (Sec. El Cajon Municipal Code section 2.04.120, Exhibit C.).

15. Ben Kalasho asserts that he is the only Council Member asked to have his agenda topics approved prior to being placed on the agenda and not being called to speak up or be introduced at public events. Please respond to these allegations and provide documentation which supports your position.

These allegations are false. Complainant does not have to get his agenda items approved. Instead, he must follow the requisite procedures applicable to all councilmembers. Councilmembers are permitted to place any item, without limitation as to the number of items, on any agenda, for discussion purposes only. If, after discussion, a councilmember wishes the City Council to place the item on a future agenda for decision-making purposes, that action requires a three-vote majority to do so. This process applies to all

City councilmembers. This process has been in place for many years (pre-dating Complainant's tenure). Specifically, Complainant has placed seven (7) items on the City Council Agenda from January 10 through June 13, 2017. Attached hereto are true and correct copies of agenda items that were placed on the agenda by Complainant. (See Exhibit D). These agenda items were solely initiated by Complainant. They were not co-authored by another councilmember; nor was any approval required prior to them being placed on the Agenda.

Further, on October 10, 2017, the City Council held a formal Public Forum to encourage both councilmembers and the public to initiate new ideas for discussion and decision-making for the betterment of the community. In preparation for this meeting, several councilmembers and Mayor Wells submitted ideas. Complainant declined to submit any proposals.

The City also denies that Complainant is not being asked to speak in public. As is true in many communities, in the City, it is common for the Mayor to speak alone on behalf of the City and City Council, if he is present. When there is an opportunity for other councilmembers to speak, all members are offered that opportunity, which they may accept or decline.

In fact, Complainant has spoken at two recent public events on behalf of the City. The first was on April 25, 2017, when the City's premier community center, the Ronald Regan Community Center, had completed a significant remodeling and had a ribbon cutting ceremony. This was a major City event and was well-attended by members of the public. There, Mayor Wells spoke and then invited Complainant to speak. None of the other councilmembers spoke even though they were present. Likewise, on October 18, 2017, Complainant and Councilmember Kendrick attended the grand opening of the Golden Corral Restaurant. On behalf of the City, the Mayor, and the City Council, Complainant spoke and presented a City proclamation to the restaurant. Complainant acknowledged Councilmember Kendrick's presence, but did not invite him to speak.

- 16. List (by name) all employees who filed an internal or external complaint of discrimination the past three years and copy of each employee's complaint. For each employee listed provide their starting and ending dates of employment. If employee was terminated, state reasons for termination and date of termination.**

Christine Greer, Complaint is attached hereto as Exhibit E. Ms. Greer has been employed by the City since December 14, 2009 and remains employed by the City.

SUPPLEMENTAL QUESTION 2
CITY'S POSITION STATEMENT

In the Complaint filed on October 13, 2017 Ben Kalasho (hereinafter "Complainant") alleges that the City of El Cajon (hereinafter "City") discriminated against him and harassed him based on his national origin in violation of the Fair Employment and Housing Act. Specifically, Complainant alleges that the City's mayor and a fellow City councilmember made discriminatory comments regarding Complainant's national origin.

As explained in greater detail below, neither the Fair Employment and Housing Act, Cal. Gov't Code § 12900 *et. seq* ("FEHA") nor Title VII of the Civil Rights Act of 1964 ("Title VII") protect Complainant from harassment as asserted in the charge. In order to recover under the discrimination in employment provisions of the FEHA or Title VII, the aggrieved plaintiff must be an employee. (42 U.S.C.A. § 2000e(f); Cal. Gov't Code § 12920). Complainant is not an employee of the City but is a City councilmember – an elected official. The Complainant, therefore, lacks standing and the Complaint should be dismissed. In any event, even if Complainant is protected by the FEHA or Title VII, he cannot establish the requisite elements of harassment because the alleged conduct did not create an abusive working environment and Complainant has not suffered any damages. For these reasons as well, the Complaint of Employment Discrimination ("Complaint") must be dismissed.

Before addressing the substantive issues raised in the Complaint, some preliminary items should be highlighted. First, the information provided below is based on the City's current understanding of the available evidence. The City reserves the right to submit additional relevant information, should any be revealed during its continuing investigation of this matter.

Second, the City's submission of information during the course of the Agency's investigation in no way constitutes a waiver of any available defenses or objections that it may seek to raise at a later time in this or any other proceeding.

Finally, in accordance with applicable law, the information provided by the City during the course of the Agency's investigation shall be treated as sensitive, kept confidential, and not disclosed to any third parties, except as required by law.

I. FACTUAL BACKGROUND

The City currently employs approximately 550 full-time and part-time employees. As a full service City, El Cajon hires staff into a variety of departments which attract experienced personnel with a background in Professional/Administrative roles, Police, Fire, Community Development, Recreation, Engineering and Public Works (Fleet, Facilities, Streets, Parks, and Storm Water/Wastewater divisions).

The City enjoys low turnover and receives a strong response for open recruitments, with large applicant pools for most vacant positions. The City offers fair pay, exceptional benefits, and a safe, productive working environment, supported and reinforced by the City's Administrative Procedures, as well as labor contracts (Memorandums of Understanding) entered into by the City and various bargaining units.

The City is an equal opportunity employer (EOE).

Complainant was elected to the City Council on November 8, 2016. He has held no other position with the City. He is up for re-election in 2020.

The City maintains personnel rules which are codified in the City's Municipal Code. (El Cajon Mun. Code Ch. 2.72, located here: http://qcode.us/codes/elcajon/view.php?topic=2-2_72). However, as an elected official, Complainant is not subject to the Personnel Rules and he cannot be disciplined by the City.

II. RESPONSE TO COMPLAINT

A. Complainant is not an Employee under the FEHA or Title VII and is Not Protected from Harassment Under Those Statutes.

It is well-established that the anti-discrimination in employment provisions in the FEHA and Title VII protect only employees. Title VII provides that, "[t]he term 'employee' means an individual employed by an employer, except that **the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof**, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office." 42 U.S.C.A. § 2000e(f) (emphasis added). Complainant is an elected official and so is explicitly excluded from protection under Title VII.

While there does not appear to be any California law directly addressing whether an elected official is an employee for purposes of the FEHA, the Department of Fair Employment and Housing ("DFEH"), which was created by the FEHA (Cal. Gov. Code § 12901), defines an employee as "[a]ny individual under the direction and control of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written." (Cal. Code Regs., tit. 2, § 7286.5, subd. (b).) Further, because the antidiscrimination objectives and relevant wording of Title VII are similar to those of the FEHA, California courts often look to federal decisions interpreting these statutes for assistance in interpreting the FEHA. *Estrada v. City of Los Angeles*, 218 Cal. App. 4th 143, 150 (2013). In determining whether a hired party is an employee under the general common law of agency, courts consider the hiring party's right to control the manner and means by which the product is accomplished. *Cnty. for Creative Non-*

Violence v. Reid, 490 U.S. 730, 751 (1989).¹ In *Rabkin v. Dean*, 856 F. Supp. 543, 549 (N.D. Cal. 1994), the plaintiff was an elected official and brought an action against the City of Berkeley as well as Berkeley City councilmembers. The court explained that:

As an elected official, Plaintiff does not have an "employer." She cannot be hired, fired or disciplined. No one supervises the quality or quantity of her work. As Plaintiff's brief demonstrates, the only power Defendants have over her is the power to fix her salary. *Id.*

As in *Rabkin*, Complainant is not subject to the direction and control of the City and he is not subject to the City's disciplinary rules or procedures. Complainant cannot be disciplined by the City. In fact, the City cannot subject him to any adverse employment actions. Instead, his tenure as an elected official is in the hands of the electorate. Further, the City does not supervise his work or maintain any control over the product of his work. Therefore, Complainant does not have an employment relationship with the City. The same is true with regards to Complainant's relationship with Mr. Wells and Mr. Kendrick. Neither control Complainant's work. Nor can they discipline Complainant or take any adverse employment action against Complainant, other than to join in a censure of Complainant, which carries no punitive measures that would cause the loss of any property or liberty interest of Complainant.

Further, elected officials are not considered employees under the Brown Act. Government Code section 54957 excludes elected officials from the definition of "employee." Section 54957 grants an exception to the Brown Act's requirement of holding open sessions for personnel matters. The public entity may discuss personnel matters involving employees in a closed session unless the employee requests an open session. However, section 54957(b)(4) states that an employee "shall not include any elected official."

From 1976 through 1993, the definition of "employee" only excluded "persons appointed to an office by the legislative body of a local agency," except for specific nonelective positions. The Attorney General found that despite this apparent different treatment of appointed and elected officials, the legislature meant to treat all officials as excluded from the definition of "employee." (59 Cal. Opp. Atty. Gen. 226.)

Furthermore, California Government Code section 36501 provides that the government of a general law city is vested in (a) a city council of at least five members, and (f) any

¹ Elected officials are not considered employees under several other statutes including, but not limited to, the Fair Labor Standards Act (29 U.S. Code § 203(c)(2)), the Age Discrimination in Employment Act (29 U.S.C. §630(f)), and the California Unemployment Insurance Code (Cal. Unemp. Ins. Code § 1375.7).

subordinate officers or employees provided by law. It can be seen that the Government Code distinguishes between elected City Councilmembers and employees.

In order to recover under the discrimination in employment provisions of the FEHA or under Title VII, the aggrieved plaintiff must be an employee. In significant ways that define an employment relationship with a public agency, Complainant is not a City employee. He performs his duties as Councilmember on a limited part-time basis. He does not hold any tenured or permanent status and is not subject to the evaluation processes applicable to employees. He is an elected official and holds his position until another candidate replaces him. Because Complainant is not an employee, he has no standing under the applicable laws and the Complaint must be dismissed in its entirety.

B. Even if Complainant is Covered Under the Law, He Cannot Establish the Elements of a *Prima Facie* Claim of Harassment.

The elements of racial harassment are: (1) the charging party belongs to a protected group; (2) the charging party was subject to intentional and unwelcome conduct of a racial nature; (3) the harassment complained of was based on race or national origin; (4) the harassment complained of was sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment; and (5) the harassment complained of was the legal cause of damages to charging party. *Etter v. Veriflo Corp.*, 67 Cal. App. 4th 457, 460 (1998), *as modified on denial of reh'g* (Nov. 16, 1998).

“When the workplace is permeated with discriminatory intimidation, ridicule and insult that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment,’ the law is violated.” *Kelly-Zurian v. Wohl Shoe Co., Inc.*, 22 Cal.App.4th 397, 409 (1994) (internal citation omitted). “[N]ot every utterance of a racial slur in the workplace violates the FEHA or Title VII. As the United States Supreme Court has recognized in the context of sexual harassment: ‘[N]ot all workplace conduct that may be described as “harassment” affects a “term, condition, or privilege” of employment within the meaning of Title VII. For sexual harassment to be actionable, it must be sufficiently severe or pervasive “to alter the conditions of [the victim’s] employment and create an abusive working environment.” ’ . . . ‘Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond Title VII’s purview. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim’s employment, and there is no Title VII violation.’ . . . California courts have adopted the same standard in evaluating claims under the FEHA.” *Aguilar v. Avis Rent A Car System, Inc.*, 21 Cal.4th 121, 129–30 (1999) (internal citations omitted).

Complainant cannot establish the requisite elements for a claim of harassment because the harassment was not sufficiently pervasive so as to alter the conditions of his employment.

Complainant, Mr. Wells, and Mr. Kendrick share the workplace, if any, in only a limited fashion, since their positions are only part-time. While each of the councilmembers, except for Mr. Wells, share a room with small desks where each can sit and review materials, review mail, make telephone calls or otherwise communicate with their constituents, each on their own time, use of such space is only for convenience and is not a requisite for holding office. The only time the three of them are together is when in the presence of the remaining members of the City Council, in open and public meetings or settings. There is no evidence of any harassment while the Complainant was using his assigned desk in the common room for the four councilmembers, at the same time as Mr. Kendrick; nor is there any evidence of any harassment during these open and public meetings or settings – political disagreements, yes; opposing viewpoints, yes; but evidence of discrimination based on ethnicity, race, or religion, no. Complainant cites very few instances of the alleged harassment – noting only a few “comments” that were made over the course of a year. Even if the allegations are true (which they are not), the actions by Mr. Wells and Mr. Kendrick did not create an abusive working environment. While they continue to deny making such comments, Mr. Wells, and Mr. Kendrick, along with the City, believe that similar comments were, in fact, made by a candidate opposing the Complainant in the November 2016 municipal election won by Mr. Kalasho resulting in his position as a Councilmember in El Cajon. However, those comments have never been attributable to the City, Mr. Wells, or Mr. Kendrick.

Further, Complainant has not suffered any damages. While Complainant asserts that he was subject to differential treatment, this does not amount to tangible damages that can be recovered. He receives the same salary and benefits allowed under California law and the City’s charter as any other councilmember. Whether he is selected for any extra-jurisdictional appointments to regional boards that provide additional compensation has nothing to do with discrimination and there is no evidence to the contrary. Such appointments are often made on the basis of availability of councilmembers to participate, interest in the subject matter, or experience in having served on such regional boards in the past. Accordingly, Complainant cannot establish several of the requisite elements for a claim or harassment. For these reasons, the Complaint should be dismissed.

CONCLUSION

Complainant’s allegations lack merit. Complainant is not an employee for purposes of the FEHA and Title VII. He has no standing to assert claims under these laws which are intended to protect employees. Accordingly, the Complaint must be dismissed for this reason alone. Even if the Complainant is considered an employee, he cannot establish the requisite elements for harassment. He has not suffered from an abusive working environment; nor can he establish that he has been damaged from the alleged conduct. Therefore, the City respectfully requests that the Complaint is dismissed in its entirety.

Respondents' Responses to Questions and Position Statement
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While the City disagrees with all of Complainant's allegations, it intends to fully cooperate in this investigation. Please do not hesitate to contact me should you need any additional information.

Sincerely,



Gena Burns
McDougal Love Boehmer Foley Canlas & Lyon
Attorneys for the City of El Cajon, and Respondents
Bill Wells and Gary Kendrick

Exhibit A

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT:

GENERAL AND SEXUAL HARASSMENT POLICY

**POLICY
A-16**

REFERENCE: Title VII of the Civil Rights Act of 1964, Section 703, California Fair Employment and Housing Act Equal Employment Opportunity Commission's Guidelines; Government Code § 12940, 12950, 12921, 11135; Americans With Disabilities Act, 1990, Labor Code § 1102.1

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Revised 5/3/94
Revised 3/25/03

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PURPOSE:

To reaffirm the City's commitment to maintaining a workplace free from all forms of discrimination and harassment, including sexual harassment; to define harassment and to establish a procedure for investigation and resolving complaints of harassment.

BACKGROUND:

Harassment, including sexual harassment, is a form of discrimination, is in violation of an individual's civil rights and is illegal. Harassment impedes equal employment opportunity and productive working relationships.

POLICY:

It is the policy of the City of El Cajon that no officer, employee or person providing services pursuant to a contract shall engage in discrimination, including harassment, based on an employee's or applicant's actual or perceived race, religion, color, national origin, ancestry, disability, medical condition, marital status, sex, age, or sexual orientation. This policy applies to all terms and conditions of employment including, but not limited to: hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, training opportunities, use of Family Care & Medical Leave and Pregnancy Disability Leave.

Any retaliation against an employee or applicant for employment because of filing a harassment charge, making a harassment complaint or participating in a harassment investigation is prohibited.

Any officer or employee engaging in discriminatory, harassing or retaliatory behavior shall be subject to disciplinary action up to and including termination.

GENERAL HARASSMENT

Harassment is defined as unsolicited and unwelcome behavior based on a protected class such as race, religion, color, sex, national origin, creed, disability, age, or sexual orientation which can be, but is not limited to, written, verbal, visual or physical behaviors. These behaviors can be directed at a specific employee or the employee's family member(s). These behaviors can also be directed at one individual but offend another. Or, these behaviors may not be directed at any individual in the workplace, but their presence is offensive to one or more co-workers. Such behaviors include:

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT:

GENERAL AND SEXUAL HARASSMENT POLICY

**POLICY
A-16**

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1. Verbal harassment, e.g., epithets, derogatory comments, slurs, jokes or degrading words used to describe an individual or a protected class;
2. Physical harassment, e.g., assault, unwanted touching, impeding or blocking movement, or any physical interference with normal work or movement;
3. Visual forms of harassment, the display or circulation of offensive or derogatory visual or written material, e.g., derogatory posters, cartoons or drawings, computer graphics or electronic media transmissions;
4. Excluding or ostracizing an employee based on race, religion, color, sex, creed, disability, age and/or sexual orientation.

SEXUAL HARASSMENT

Sexual harassment is a violation of Section 703 of Title VII of the Federal Civil Rights Act of 1964 and the State of California Government Code Section 12940. Sexual harassing conduct can occur between people of the same or different genders. Unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made explicitly or implicitly as a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or
3. Such conduct affects or has the potential to affect an individual's work performance or creates an intimidating, hostile, or offensive working environment. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his or her immediate surroundings. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening and whether the conduct unreasonably interferes with an individual's work.

**CITY OF EL CAJON
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3 of 6

Romantic or sexual relationships between supervisors and subordinates are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

By definition, sexual harassment is not within the course and scope of an individual's employment with the City of El Cajon.

For the purpose of further clarification, sexual harassment includes but is not limited to:

1. Sexually suggestive or obscene letters, notes, or invitations;
2. Sexually derogatory comments, such as sexual jokes, remarks, questions, teasing, leering, or gestures, verbal abuse, threats or intimidation of a sexual nature, or sexist, patronizing or ridiculing statements;
3. Kissing, patting, pinching, lingering or intimate touches, grabbing, massaging, staring, whistling or sexual gestures, unnecessarily brushing against or blocking movement;
4. Sexually suggestive objects, such as pictures, cartoons, posters, graffiti, reading materials, computer graphics or electronic media transmissions;
5. Continuing to express sexual interest after being informed that the interest is unwelcome;
6. Requesting sexual favors as a condition of employment;
7. Engaging in implicit or explicit coercive sexual behavior which is used to control, influence or affect the career, salary and/or work environment of another employee;
8. Engaging in harassment of an employee due to their sexual orientation.

PROHIBITED SUPERVISORY OR MANAGERIAL BEHAVIOR

No supervisor, manager, or other authority figure may condition any employment, employee benefit or continued employment on any applicant's or employee's acquiescence to any of the behavior defined above.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT:
GENERAL AND SEXUAL HARASSMENT POLICY

POLICY
A-16

REFERENCE: Title VII of the Civil Rights Act of 1964, Section 703, California Fair Employment and Housing Act Equal Employment Opportunity Commission's Guidelines; Government Code § 12940, 12950, 12921, 11135; Americans With Disabilities Act, 1990, Labor Code § 1102.1

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Revised 5/3/94
Revised 3/25/03

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No supervisor, manager, or other authority figure may retaliate against any applicant, or employee, because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing conducted by an authorized investigator.

No person shall destroy evidence relevant to an investigation of harassment discrimination.

BEHAVIOR PROHIBITED BY ALL PERSONS

No supervisor, manager, or any other person shall create a hostile or offensive work environment for any other person by engaging in any discriminatory harassment or by tolerating it on the part of any employee.

No supervisor, manager, or any other person shall assist any individual in doing any act which constitutes discriminatory harassment against any employee.

OBLIGATIONS OF ALL EMPLOYEES

All employees shall report any conduct, which fits the definition of discriminatory harassment, to their immediate supervisor or appropriate authority figure. This includes conduct of non-employees, such as sales representatives or service vendors or harassing conduct toward such contractors.

All persons shall report to their supervisor, manager or the Director of Human Resources any instances of discriminatory harassment which they have directly observed, whether or not reported by the employee who is the object of the harassment.

All employees shall cooperate with any investigation of any alleged act of discriminatory harassment conducted by the City or its agents.

INFORMAL COMPLAINT PROCEDURE

Any employee who believes he/she has been harassed is encouraged, whenever possible, to confront and inform the harasser that his/her behavior is offensive and, if continued, will lead to a formal complaint.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT:

GENERAL AND SEXUAL HARASSMENT POLICY

**POLICY
A-16**

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Revised 3/25/03

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An employee also has the right to file a complaint of discrimination with the California Department of Fair Employment and Housing whether or not they have filed a complaint with the City. Complaints must be made within (1) one year of the harassment. To file a complaint, either call (619) 643-2681 or file a complaint in person at 350 W. Ash Street, Suite 950, San Diego. The complainant, as well as other employees who support the complainant, are protected against any retaliatory action stemming from the complaint. Those employees involved in any retaliatory events will be subject to disciplinary action.

FORMAL COMPLAINT PROCEDURE

Step 1. Any employee, applicant or person providing services pursuant to a contract for employment who believes he/she has been harassed may make a complaint orally or in writing to any of the following:

- a. immediate supervisor
- b. any supervisor or manager within or outside of the department
- c. department director
- d. Director of Human Resources or designee

Any supervisor or department director who has received a harassment complaint shall notify the Director of Human Resources or designee immediately.

Upon notification of a harassment complaint, the Director of Human Resources shall:

Step 2. Authorize the investigation of the complaint and supervise and/or conduct the investigation of the complaint. The investigation shall include interviews with the complainant, the accused harasser and any other persons the Director of Human Resources has reason to believe have relevant knowledge concerning the complaint. This may include possible victims of similar conduct. All parties to the investigation shall maintain confidentiality at all times.

Step 3. Review factual information gathered from the investigation to determine whether the alleged conduct constitutes harassment, giving consideration to all factual information and the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct and the context in which the alleged incident(s) occurred.

**CITY OF EL CAJON
CITY COUNCIL POLICY**

SUBJECT:

GENERAL AND SEXUAL HARASSMENT POLICY

**POLICY
A-16**

REFERENCE: Title VII of the Civil Rights Act of 1964, Section 703, California Fair Employment and Housing Act Equal Employment Opportunity Commission's Guidelines; Government Code § 12940, 12950, 12921, 11135; Americans With Disabilities Act, 1990, Labor Code § 1102.1

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Revised 3/25/03

**PAGE
6 of 6**

Step 4. Report the results of the investigation and the determination as to whether harassment occurred to appropriate persons including the City Manager, complainant, alleged harasser, supervisor and department director.

Step 5. If it is determined that harassment has occurred:

- a. recommend to the City Manager prompt and effective remedial action which may include dismissal of the harasser. Any recommendations for disciplinary action shall be commensurate with the severity of the offense and all appropriate procedural due process protections shall be provided. The nature of the specific action shall not be communicated to the complainant; but, the complainant shall be informed that appropriate action was taken;
- b. take reasonable steps to protect the victim and other potential victims from further harassment;
- c. take reasonable steps to protect the victim from any retaliation as a result of communicating the complaint;
- d. if appropriate, take action to remedy the victim's loss, if any, which resulted from the harassment.

Step 6. If an employee who is disciplined under this procedure has appeal rights, said appeal rights may be exercised.

Dissemination of Policy

This policy shall be posted permanently at all shared or common work areas frequented by employees and distributed to all new hires as part of employee orientation conducted by the Human Resources Department. All City employees shall receive copies whenever the policy is revised.

All questions regarding this policy and/or the complaint procedure shall be directed to the Director of Human Resources or designee.

Exhibit B

El Cajon Municipal Code

[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Title 2 ADMINISTRATION AND PERSONNEL](#)[Chapter 2.08 MAYOR](#)**2.08.030 Duties.**

The mayor shall be the presiding officer of the city council. The mayor shall preserve strict order and decorum at all regular, adjourned regular and special meetings of the city council. The mayor shall state every question coming before the council, announce the decision of the council on all subjects, and decide all questions of order. However, such decisions on order shall be subject to an appeal to the city council, in which event a majority vote of the city council shall govern and conclusively determine such question of order. The mayor shall sign all ordinances and resolutions. (Ord. 4292 § 1, 1991: prior code § 2-5.)

View the [mobile version](#).

Exhibit C

El Cajon Municipal Code

[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Title 2 ADMINISTRATION AND PERSONNEL](#)[Chapter 2.04 CITY MANAGER](#)**2.04.120 Relationship to city council generally.**

Neither the city council nor any of its committees or members shall direct, request or attempt to influence, either directly or indirectly, the appointment of any person to office or employment by the city manager, or in any manner interfere with the city manager or prevent him or her from exercising his or her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager, either publicly or privately. (Ord. 4554, 1997; prior code § 2-28.)

View the [mobile version](#).

Exhibit D

City Clerk Date Stamp

City of El Cajon Agenda Report

MEETING: 1/10/17

ITEM NO: _____



TO: Mayor Wells, Mayor Pro Tem McClellan,
Councilmembers Goble and Kendrick
FROM: Councilmember Kalasho

SUBJECT: Signage Allowances for New Businesses

RECOMMENDATION: That the City Council direct the City Manager to bring this issue back to the City Council for formal consideration of initiating an amendment to the Municipal Code for the purposes of allowing a longer period of time for additional signage for new businesses.

BACKGROUND:

Currently, the City of El Cajon permits additional signage for up to thirty days for new businesses. Several businesses in town have indicated to me that this time period is not sufficient to properly establish a new business' image and clientele. I agree with this concern and believe the Council should consider amending the sign regulations of the Municipal Code to establish a longer period of time for new businesses to have additional signage, perhaps up to one year.

I believe this will not only greatly assist new businesses in town successfully establishing themselves, but will demonstrate the City's pro-business stance to the entire community.

Therefore, I recommend that the City Council direct the City Manager to bring this issue back to the City Council for formal consideration of initiating this amendment to the Municipal Code.

FISCAL IMPACT:

N/A

SUBMITTED BY:

Ben Kalasho
COUNCILMEMBER

City Clerk Date Stamp

City of El Cajon Agenda Report

MEETING: 1/10/17

ITEM NO: _____



TO: Mayor Wells, Mayor Pro Tem McClellan,
Councilmembers Goble and Kendrick

FROM: Councilmember Kalasho

SUBJECT: Consideration of a Comprehensive City Homeless Program

RECOMMENDATION: That the City Council direct the City Manager and City Attorney to address the items outlined in the staff report, conduct research into their viability, cost, administration and related issues and report back to the City Council for possible action.

BACKGROUND:

Homelessness continues to be a significant problem not only in El Cajon, but throughout the state and nation. Many strategies have been attempted in other communities, some of which have proven to be successful. The City has already initiated several of these strategies, such as the employing of homeless via the PBID's Clean and Safe Program in downtown, the recent ordinance regarding public nudity, previous direction to staff regarding consideration of stronger anti-panhandling ordinance and the Police Department's Homeless Outreach Team (HOT) program (in conjunction with the Sheriff's Department) which has received some recent positive media attention and is now being implemented.

I believe that more can be done. I view the key of any future program addressing homeless issues in El Cajon as needing to be comprehensive in nature and not just taking a regulatory approach, but also offering greater assistance to this population, especially concerning work programs.

I have met with the City Manager, City Attorney and Police Chief to discuss this issue. There are potentially many different aspects to such a program beyond those already mentioned above, including such things as:

- Job program involving landscape maintenance, graffiti clean-up and general handy work
- Mental health and drug abuse assistance
- Greater outreach to the homeless community
- Greater restriction on use of shopping carts
- Working with the shop owner community to either create further restrictions, beyond our current Deemed Approved Ordinance, or perhaps a voluntary program, regarding the types of liquor sold in stores in town

- Remove panhandlers from the center medians where they pose a real traffic hazard to both themselves and motorists
- Other related issues

Such a comprehensive program would obviously include issues such as administration and funding, as well as communication with our business community to possibly assist this effort.

Therefore, I recommend that the City Council direct the City Manager and City Attorney to address these issues, conduct research into their viability, cost, administration and any related issues and report back to the City Council for possible action.

FISCAL IMPACT:

Unknown at this time.

SUBMITTED BY:

Ben Kalasho
COUNCILMEMBER

City Clerk Date Stamp

City of El Cajon Agenda Report

MEETING: 2/14/17

ITEM NO: _____



TO: Mayor Wells, Mayor Pro Tem McClellan,
Councilmembers Goble and Kendrick

FROM: Councilmember Kalasho

SUBJECT: El Cajon Elves

RECOMMENDATION: That the City Council direct the City Manager to bring this issue back to the City Council for formal discussion and decision.

BACKGROUND:

For many years our neighbor to the north has had the wonderful Santee Santa's program, which seeks to provide food and toys to families during the holiday time. I would like the City Council to consider a similar concept, but unique to El Cajon, called El Cajon Elves.

We, fortunately, already have many great programs in town that provide food and toys to families, similar to Santee Santa's. However, I feel an unmet need in El Cajon is support for our seniors. I propose that the El Cajon Elves program, which I envision the City assisting with startup, but would become a primarily private non-profit effort, would focus on providing seniors in our community with clothes, blankets and similar useful winter items.

I am recommending that the City Council direct the City Manager to bring this item back to the City Council for formal discussion and decision-making in the near future. There would be little in the way of staff work necessary for this type of effort. Attached are some ideas for discussion.

FISCAL IMPACT:

Possible City donation, to be determined.

SUBMITTED BY:

Ben Kalasho
COUNCILMEMBER

City Clerk Date Stamp

City of El Cajon Agenda Report

MEETING: 6/13/17

ITEM NO: _____



TO: Mayor Wells, Mayor Pro Tem McClellan,
Councilmembers Goble and Kendrick

FROM: Councilmember Kalasho

SUBJECT: PROPOSAL TO FUND NEIGHBORHOOD WATCH SIGNS

RECOMMENDATION: That the City Council directs the City Manager to bring this item back to the City Council at a future meeting for further discussion and a decision.

BACKGROUND:

The City of El Cajon supports and assists creating Neighborhood Watch groups throughout the community for the purposes of enhancing neighborhood safety. Once a neighborhood decides to participate in the program, one of the first steps is to acquire a sign to be placed on the street. At present, residents must pay for the sign (\$75) themselves. While this amount is not particularly expensive, I believe it would be a show of good faith and support to our neighborhoods for the City to provide these signs at no cost to the residents when the Neighborhood Watch group is initially set up. The County Sheriff's Department already provides this service to the unincorporated area.

According to staff, the City normally has less than ten new groups per year established, so the total cost to the City would be less than \$750 per year. I propose that the City Council direct the City Manager to bring this item back to the Council at a future meeting for further discussion and a decision.

FISCAL IMPACT:

Less than \$750 per year.

SUBMITTED BY:

Ben Kalasho
COUNCILMEMBER

City Clerk Date Stamp

City of El Cajon Agenda Report

MEETING: 4/11/17

ITEM NO: _____



TO: Mayor Wells, Mayor Pro Tem McClellan,
Councilmembers Goble and Kendrick

FROM: Councilmember Kalasho

SUBJECT: Pledge of Allegiance

RECOMMENDATION: That the City Council directs the City Manager to place this item on a future agenda for discussion and decision.

BACKGROUND:

The Pledge is an obligation of fidelity and obedience to government in consideration for protection that government gives. A sense of patriotism and to show pride and loyalty towards the country. I would recommend that the council alternate in leading the Pledge of Allegiance to our Flag and have found no Policy giving exclusivity to the Mayor beyond merely tradition. If, at the very least, other council members do not wish to lead, at least I do and would be honored to do so at turn.

FISCAL IMPACT:

Not applicable.

SUBMITTED BY:

Ben Kalasho
COUNCILMEMBER

City Clerk Date Stamp

City of El Cajon Agenda Report

MEETING: 3/14/17

ITEM NO: _____



TO: Mayor Wells, Mayor Pro Tem McClellan,
Councilmembers Goble and Kendrick

FROM: Councilmember Kalasho

SUBJECT: DISCUSSION REGARDING OFFERING FREE WI-FI DURING CITY
EVENTS

RECOMMENDATION: That the City Council direct the City Manager to place this item on an upcoming agenda for further discussion and decision-making.

BACKGROUND:

Cox Communication is prepared to work with the City to provide free Wi-Fi hot spots during our major public events, such as America On Main Street, Hauntfest, Mother Goose Parade and St. Patrick's Day Half-Marathon. This would enable attendees to directly connect to an event website for information regarding the day's schedule and location of activities. Staff already has all this information prior to the events on our website, so this would be a matter of having staff work with Cox to make sure the Wi-Fi is properly directing attendees to the correct webpage.

A few signs indicating the availability of this Wi-Fi would likely be placed around the event so attendees know of it, and the hot spot would end once the event was concluded.

I believe this would be a great way of improving our guest's event experience and would be easy to do.

FISCAL IMPACT:

Minimal.

PREPARED BY:

Ben Kalasho
COUNCILMEMBER

Exhibit E

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: THE CITY OF EL CAJON, RICHARD GONSALVES, and DOES 1 through 20
(AVISO AL DEMANDADO):

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/08/2016 at 03:47:48 PM

Clerk of the Superior Court
By Bryant Schmelzel, Deputy Clerk

YOU ARE BEING SUED BY PLAINTIFF: CHRISTINE GREER
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court, County of San Diego
330 West Broadway
San Diego, CA 92101
Central Courthouse

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Daniel M. Gilleon (SBN 195200); James C. Mitchell (SBN 87151) 619.702.8623 619.702.6337
The Gilleon Law Firm
1320 Columbia Street, Suite 200
San Diego, CA 92101

DATE: 08/09/2016

(Fecha)

Clerk, by
(Secretario)

B. Schmelzel

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): CITY OF EL CAJON
- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☒ CCP 416.90 (authorized person)
☐ other (specify):
4. ☒ by personal delivery on (date): 08/09/2016



37-2016-00027133-CU-0E-CTL

RECEIVED
CLERK
OFFICE OF
JANICE
2016 AUG - 9 PM 1:52
Deputy
(Adjunto)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Daniel M. Gilleon (SBN 195200) James C. Mitchell (SBN 87151) Gilleon Law Firm 1320 Columbia Street, Suite 200 San Diego, CA 92101 TELEPHONE NO.: 619.702.8623 FAX NO.: 619.702.6337		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 08/08/2016 at 03:47:46 PM Clerk of the Superior Court By Bryant Schmelzel, Deputy Clerk
ATTORNEY FOR (Name): Plaintiff Christine Greer		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Hall of Justice		
CASE NAME: Greer v. City of El Cajon, et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	37-2016-00027133-CU-0E-CTL JUDGE: Judge Gregory W Pollack DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 4
5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 08, 2016

James C. Mitchell (SBN 87151)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

08/08/2016 at 03:47:46 PM

Clerk of the Superior Court
By Bryant Schmelzel, Deputy Clerk

1 Daniel M. Gilleon (SBN 195200)
James C. Mitchell (SBN 87151)
2 The Gilleon Law Firm
1320 Columbia Street, Suite 200
3 San Diego, CA 92101
Tel: 619.702.8623
4 Fax: 619.702.6337

5 Attorneys for Plaintiff Christine Greer

6
7
8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
(Central Courthouse)
9

10
11 **CHRISTINE GREER,**

12 **Plaintiff,**

13 **vs.**

14 **THE CITY OF EL CAJON;**
15 **RICHARD GONSALVES; and**
16 **DOES 1 through 20,**

17 **Defendants.**

CASE NO.: 37-2016-00027133-CU-OE-CTL

COMPLAINT FOR:

1. **Discrimination/Harassment**
(Hostile Work Environment);
2. **Failure To Prevent**
Discrimination/Harassment;
3. **Retaliation; and**
4. **Failure To Prevent Retaliation**

18
19
20 Plaintiff Christine Greer alleges:

21 **GENERAL ALLEGATIONS**

22 1. Plaintiff, Christine Greer ("Greer" or "Officer Greer"), is an adult residing in the
23 County of San Diego, California. Except for a four year period when she served as an armed guard
24 at a nuclear power plant, Officer Greer has been a sworn peace officer since 1995, after graduating
25 from the Police Academy. Defendant Richard Gonsalves attended the Police Academy at the same
26 time as Officer Greer, which is how they first met. Officer Greer is currently employed by the El
27 Cajon Police Department ("ECPD"), where she has served as a sworn patrol officer since 2009.

28 ///

1 2. Defendant, The City of El Cajon (the "City"), is a government entity. ECPD is a
2 small police department within the City that employs a little over 100 officers, and is contained in
3 a single, relatively small building that results in its patrol officers working in each other's immediate
4 presence.

5 3. Defendant, Richard Gonsalves ("Gonsalves" or "Officer Gonsalves"), is an adult
6 residing in the County of San Diego, California. Gonsalves remains employed as a patrol officer by
7 the ECPD even though he committed egregious violations of the Penal Code (e.g., §653 and §314),
8 sexual harassment law (e.g., Gov. Code 12940), and City and ECPD policies by, for example,
9 sexting Officer Greer with a lewd, obscene, and indecent photograph of his somewhat-erect penis.

10 4. The true names and capacities, whether individual or otherwise, of defendants Does
11 1 through 20 are unknown to Greer who, therefore, sues them by such fictitious names pursuant to
12 CCP § 474. Greer is informed and believes that each of the Doe defendants is responsible in some
13 manner for the acts of omissions alleged in this complaint or caused her damages.

14 5. At all material times, all of the defendants were agents and employees of the other
15 defendants and, when doing the acts alleged in this complaint, they acted within the course and scope
16 of such agency and employment.

17 6. In addition to the lewd and obscene sexting described in paragraph 3, Officer
18 Gonsalves sexually harassed Officer Greer by, for example, texting her the following crude
19 messages, all while holding the position of Officer Greer's immediate supervisor.

- 20 a. *Uhm....3 some?*
21 b. *U will never meet a more discreet or uncomplicated fuck buddy*
22 c. *Ur too hot! U make everybody think about sex*
23 d. *Dang it! Laura¹ and I have a condo and were going to have u guys come over*
24 *for a naked foam party.*
25 e. *Viejas bowl. Drunk. Get ur hot asses here now!*
26
27

28 ¹ "Laura" is SDPD Officer Laura Thorn Smith, who has participated in Gonsalves' malicious retaliation and
intimidation, not only of Officer Greer, but also of Greer's wife, the other target for Gonsalves' eyed "3 some."

1 f. *I'm drunk and I want u!*

2 g. *Both of u!*

3 7. Gonsalves committed the sexual harassment, partially described in paragraphs 3 and
4 6, even though he knew Officer Greer was a sexual assault survivor who suffered from PTSD.
5 Gonsalves knew that, as a very young officer at the Escondido Police Department, Greer had
6 experienced a horrific sexual assault when another older officer, Ron Collins, began masturbating
7 in the passenger seat of a parked patrol car while Officer Greer was in the driver's seat. Gonsalves
8 knew that Collins had pulled Officer Greer's hand toward him to touch his penis. Gonsalves also
9 knew that, later, Officer Greer had been forced to draw her service weapon on Collins when he had
10 reacted violently after being forced to resign from the Escondido Police Department. Gonsalves also
11 knew, because Officer Greer had told him, that because of the retaliation she faced by Collins and
12 others, she never wanted to file another sexual harassment complaint.

13 8. Nonetheless, as a result of Gonsalves' egregious conduct described in paragraphs 3
14 and 6, Officer Greer filed a lawsuit against Gonsalves and the City, which was settled in November
15 2015 ("settlement"). Although Gonsalves faced discipline, including a demotion, the City did not
16 terminate him. This lawsuit seeks damages stemming from the ongoing harassment and retaliation
17 Officer Greer has suffered ever since January 2016, when the ECPD made the incomprehensible
18 decision to force Officer Greer to work with Gonsalves in her immediate presence.

19 9. The fact Officer Greer has to encounter Gonsalves on a repeated basis is alone
20 sufficient to create a severe and pervasive, hostile environment that can be attributed to her gender
21 and sexual orientation, as well as the protected activity of her past complaints. When a sergeant texts
22 his female subordinate a graphic photograph of his penis and offers to be her (and her wife's) "fuck
23 buddy," that sergeant should be fired. He should be prosecuted. The City did neither. Instead, they
24 unleashed this failed supervisor to torment the young female officer who has been so sorely abused
25 in the past.

26 10. The City's failure to prevent harassment and retaliation was underscored by
27 Gonsalves' recent, brazen attempt to intimidate Officer Greer by following her down a hallway at
28 ///

1 the ECPD building, knowing she was fearful of him--an incident the City failed to adequately
2 investigate, much less take measures to correct.

3 11. Similarly, the City failed to adequately investigate or correct the vile conduct of at
4 least one officer, perhaps Gonsalves himself, who spat on Officer Greer's locker, leaving a
5 disgusting spectacle for other officers to see. The fact other officers speak about Greer behind her
6 back, such as a recent comment by one male officer who chastised another male officer for even
7 riding with Officer Greer, demonstrates the City's breach of its mandatory duty to prevent
8 harassment and retaliation. Other malicious conduct includes intimidation by Gonsalves himself,
9 and by others at his urging, such as SDPD Officer, Laura Thorn Smith's, malicious conduct in,
10 among other things, physically intimidating Greer's wife during a running event, and Gonsalves' and
11 Thorn Smith's glaring at Officer Greer and her wife when they have encountered them in public.

12 12. Greer exhausted her administrative remedies by filing a complaint with the DFEH
13 and obtaining a right to sue letter, on August 5, 2016.

14 **FIRST CAUSE OF ACTION**
15 **(Discrimination/Harassment — Hostile Work Environment,**
16 **Government Code § 12940 Against All Defendants)**

16 13. Greer realleges paragraphs 1 through 12.

17 14. The conduct and omissions by Gonsalves, the City and Does 1 through 20, as
18 described in paragraphs 9 through 11, which occurred in the context of paragraphs 3, 6, and 7,
19 amounted to gender (sexual) and sexual orientation discrimination/harassment, and created a hostile
20 work environment that violated the Fair Employment and Housing Act, Government Code § 12940
21 ("FEHA"). This conduct adversely affected Officer Greer's employment conditions, reputation as
22 a police officer, and opportunities for promotion and special assignments within.

23 15. Moreover, defendants' wrongful conduct was a substantial factor in bringing about
24 damages for severe emotional and mental distress, e.g. the aggravation of pre-existing PTSD caused
25 by the Collins assault and Gonsalves' past (pre-settlement) conduct, which made Officer Greer
26 unusually susceptible to harm. Greer also suffered economic damages for medical/psychological
27 expenses, and lost wages and benefits, past and future.

28 16. Greer is entitled to recover attorney's fees and costs under FEHA.

1 17. Greer is also entitled to recover punitive damages against Gonsalves. Gonsalves'
2 conduct described in paragraphs 9 through 11, which occurred in the context of paragraphs 3, 6, and
3 7, was willful, mean-spirited, and done in conscious disregard of Greer's rights, safety and mental
4 well-being, constituting "malice" as defined by Civ. Code §3294.

**SECOND CAUSE OF ACTION
(Failure To Prevent Harassment,
Government Code § 12940(k) Against Defendant City)**

7 18. Greer realleges paragraphs 1 through 17.

8 19. The City had the mandatory duty under Government Code § 12940(k) to take all
9 reasonable steps necessary to prevent the above discrimination, harassment and hostile work
10 environment.

11 20. The City failed to take reasonable measures to prevent such conduct from continuing.
12 Instead, they permitted, condoned and acquiesced in the wrongful conduct, all in violation of
13 Government Code § 12940(k).

21. The defendants' wrongful conduct was a substantial factor in bringing about non-economic damages for mental and emotional distress, as alleged above, and economic damages for medical/psychological expenses, and lost wages and benefits, past and future.

17 22. Greer is entitled to recover attorney's fees and costs under FEHA.

THIRD CAUSE OF ACTION
(Adverse Employment Action — Retaliation,
Government Code § 12940(h) Against Defendant City)

20 23. Greer realleges paragraphs 1 through 22.

21 24. Greer opposed Gonsalves', the City's and Does 1 through 20's acts of discrimination
22 and harassment by, among other things, filing the lawsuit mentioned in paragraph 8, and by post-
23 settlement reporting of what she reasonably believed was other discriminatory conduct to her
24 supervisors.

25 25. The City retaliated against Greer by refusing to promote her to sergeant, and by
26 sabotaging her ability to test adequately in February 2016.

27 26. The defendants' wrongful conduct was a substantial factor in bringing about damages
28 for past and future lost wages and benefits, and general damages consisting of mental distress.

1 27. Greer is entitled to recover attorney's fees and costs under FEHA.

2 **FOURTH CAUSE OF ACTION**
3 **(Failure To Prevent Retaliation, Government Code § 12940(k)**
4 **Against Defendant City)**

4 28. Greer realleges paragraphs 1 through 27.

5 29. The City failed to take reasonable steps to prevent the retaliation against Greer, a
6 violation of Government Code § 12940(k).

7 30. The defendants' wrongful conduct was a substantial factor in bringing about damages
8 for past and future lost wages and benefits, and general damages consisting of mental distress.

9 31. Greer is entitled to recover attorney's fees and costs under FEHA.

10 **REQUEST FOR RELIEF**

11 THEREFORE, plaintiff Christine Greer requests a judgment against defendants Richard
12 Gonsalves, City of El Cajon, and Does 1 to 20 for:

- 13 a. Past and future economic and non-economic damages;
14 b. Punitive damages (against the individual defendants identified in the first cause of
15 action only);
16 c. Attorneys' fees and costs under Government Code § 12965;
17 d. Costs of suit; and
18 e. Any other proper relief.

19
20 Date: August 5, 2016

The Gilleon Law Firm

Daniel M. Gilleon, Attorneys for
Plaintiff Christine Greer