

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Ordinance No. 3537, Adopted ---)
An Ordinance Amending Title 2,)
Chapter 2.80 of the Monterey)
County Code, Establishing Policy)
and Procedures for the)
Investigation and Resolution of)
Discrimination Complaints. . .)

Ordinance No. 3537, being an Ordinance amending Title 2,
Chapter 2.80 of the Monterey County Code, Establishing
Policy and Procedures for the Investigation and Resolution
of Discrimination Complaints, is hereby adopted and ordered
published, upon motion of Supervisor Strasser Kauffman, seconded
by Supervisor Shipnuck, and carried by the following vote:

PASSED AND ADOPTED this 30th day of April, 1991, by the
following vote, to-wit:

AYES: Supervisors Del Piero, Shipnuck, Perkins, Karas & Strasser
Kauffman.

NOES: None.

ABSENT: None.

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors at the
County of Monterey, State of California, hereby certify that the
foregoing is a true copy of an original order of said Board of
Supervisors duly made and entered in the minutes thereof at page
of Minute Book 65, on April, 30, 1991

Dated:
April. 30, 1991

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors.
County of Monterey,
State of California.

By _____[signed]

ORDINANCE No. 3537

AN ORDINANCE AMENDING TITLE 2, CHAPTER 2.80 OF THE MONTEREY COUNTY CODE, ESTABLISHING POLICY AND PROCEDURES FOR THE INVESTIGATION AND RESOLUTION OF DISCRIMINATION COMPLAINTS.

Section 1. Title 2 of the Monterey County Code, Chapter 2.80, is hereby amended in its entirety as follows:

Chapter 2.80

PROCEDURES FOR INVESTIGATION AND RESOLUTION OF DISCRIMINATION COMPLAINTS

Sections:

2.80.010 Purpose.

2.80.020 Definitions.

2.80.030 Obligation to Provide Information and Guidance Regarding the Filing of a Discrimination Complaint.

2.80.040 Obligation to Report Incidents of Sexual Harassment or Violent Harassment.

2.80.050 Discrimination Complaints.

2.80.060 Time Period For Reporting or Filing Complaint.

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2.80.080 Board of Supervisors Review and Hearing.

2.80.090 Confidentiality.

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2.80.110 Interference With Investigation of Discrimination Complaint; Abuse of Discrimination Complaint Procedure by Providing False Information.

2.80.120 Conflicting Ordinances and Titles.

2.80.130 Implementation; Periodic Review of Ordinance and Complaint Procedures.

2.80.140 Severability.

2.80.010 PURPOSE.

A. The County of Monterey is committed to meeting its legal obligations to provide "due process" and "equal protection" to all County employees, applicants for County employment and/or promotion, bidders and contractors who seek to do business with the County or its agencies, and recipients of County services, when any such individual has a complaint involving allegations of discrimination; and

B. While it is not the intent of this ordinance to create new or additional law, it is the Board of Supervisors' firm intent that the County its officers, employees and agents shall comply with all existing federal, state and local laws and regulations which require equal opportunity and non-discrimination, in all their dealings with each other and with the public. To this end, the Board of Supervisors interprets its existing laws, resolutions and policies as being instruments by which to implement and assure compliance with existing federal-and state law and regulations; and

C. The Board of Supervisors desires to provide an open and empathetic channel of communication through which County officers and employees, applicants for employment and/or promotion and others who do business with or receive specific services from the County of Monterey can discuss, express and obtain guidance in confidence with respect to issues of discrimination in all of its forms; and

D. The Board of Supervisors has an appointed Affirmative Action Officer who is charged with the responsibility for enforcing federal, state and local law, regulations and anti-discrimination policies, for providing appropriate counseling and for investigation and resolution of complaints of discrimination in all its forms; and

E. The Board of Supervisors intends that each Monterey County official, employee and agent should be individually responsible for maintaining a non-hostile and harassment free work environment. To this end, the Board is committed to the use of education and training for its employees on a regular and continuing basis as a means by which to prevent discrimination in the workplace. Appropriate training shall be devised and effectively implemented by the Affirmative Action Officer. Each Appointing Authority shall hereafter be deemed responsible for ensuring that all departmental managers and supervisors are properly acquainted with all of the relevant County policies and procedures, and that they are held accountable for seeing that such policies and procedures are implemented faithfully and uniformly within each department; and

F. The Board of Supervisors firmly believes that the interests of the County and all affected parties are best served when complaints of discrimination are effectively handled at the lowest possible level in an expeditious manner, so as to provide for early resolution of all discrimination complaints, and to

take immediate corrective action, when warranted, at the department level.

2.80.020 DEFINITIONS.

A. As used in this ordinance, "**Appointing Authority**" is the person (or group of persons) lawfully authorized to make appointments or to remove persons from positions in the County service.

B. As used in this ordinance, "**Manager**" means a person in the County service below the rank of Appointing Authority, who makes and/or implements policy and to whom supervisors report.

C. As used in this ordinance, "**Supervisor**" means a person in the County service below the rank of Manager, who implements policy as directed and who supervises the work of employees.

D. As used in this ordinance, "**Employee**" means any person occupying a position in the County service, including appointive County officers and Appointing Authorities. The term also includes County volunteers and persons who are appointed to the County's boards, commissions and other appointive County groups.

E. As used in this ordinance, "**Applicant**" means a person who has applied to the County of Monterey for appointment to a position in the County service, or for promotion or transfer from one County position to another County position.

F. As used in this ordinance, "**Elected Official**" means a Monterey County official who is elected to the public office he/she holds by the registered voters of the County of Monterey.

G. As used in this ordinance, "**Appointed Official**" means a Monterey County official who is appointed to the position he/she holds by the Monterey County Board of Supervisors or the County Administrative Officer.

H. As used in this ordinance, "**Bidder**" means person(s) and/or individual(s) who actively seek to do business with the County of Monterey by means of contract or purchase order, or in response to a Request For Proposal.

I. As used in this ordinance, "**Contractor**" means person(s) and/or individual(s) who have a business relationship with the County of Monterey, pursuant to contract or purchase order.

J. As used in this ordinance, "**Agent**" means a contractor who, within the course and scope of a business relationship with the County of Monterey, acts on behalf of the County of Monterey.

K. As used in this ordinance, "**Recipients of County Services**" includes those members of the public who have official contact with the County of Monterey in order to receive services from the County, including such things as permits, licenses, approvals, funds, users of County facilities (e.g., parks, libraries), etc., which are received by the recipient pursuant to individual application, separate from and in addition to those services generally received by the taxpayers of the County.

L. As used in this ordinance, "**Discrimination**" and "**Discriminatory Treatment**" mean the illegal denial of equal employment opportunity, harassment, disparate treatment, favoritism, subjection to unfair or unequal working conditions, and/or other discriminatory practice(s) by any Monterey County official, employee or agent, due to an individual's race, color, ethnic group, national origin, ancestry, religious creed, sex, sexual preference, age, veteran's status, cancer-related medical condition, physical handicap (including AIDS) or disability. The terms also includes any act of retaliation.

M. As used in this ordinance, "**Favoritism**" is the unequal or preferential (disparate) treatment of one individual over another/others, when motivated by discrimination, instead of being based on the respective qualifications of the persons involved.

N. As used in this ordinance, "**Harassment**" is a form of illegal discrimination which may include such acts as sexual harassment, coercion, abusive treatment, hazing, taunting, baiting, intimidation and/or favoritism.

O. As used in this ordinance, "**Sexual Harassment**" is a form of illegal discrimination in the workplace based on gender and characterized by unwelcome sexual advances, requests for sexual favors, and/or other visual, verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct is unwelcome or has the purpose or effect of unreasonably interfering with an individual's work performance or creating an

intimidating, hostile, or offensive work environment. The term also includes retaliation when based upon the termination of a prior intimate relationship. The work environment extends to non-work places and non-work hours when the harasser continues the behavior outside the normal workplace.

P. As used in this ordinance, "**Violent Harassment**" includes rape, attempted rape, sexual assault, assault, fondling and other forms of sexual battery and/or threats of violence when such occur within the context of discrimination against those persons covered by or subject to this ordinance.

Q. As used in this ordinance, "**Retaliation**" is the harassment, intimidation or denial of rights or privileges on the basis that the person either initiated or took part in the investigation of a discrimination complaint and/or the filing of a discrimination complaint with the EEOC, DFEH or the courts.

R. As used in this ordinance, the "**Determination**" made after the investigation by the Affirmative Action Officer of a formal complaint will be of two types: "**Cause**" and "**No Cause**". "Cause" means that based on the evidence gathered during the investigation, the Affirmative Action Officer has concluded by a preponderance of the evidence that there is reasonable cause to believe that discrimination of the type complained of did in fact occur. "No Cause" means just the opposite.

S. As used in this ordinance, "**Respondent**" means the individual and/or entity who allegedly discriminated against the complainant(s) through act and/or omission. Such respondents may include person(s), department(s) or the County itself, depending upon the alleged facts and circumstances of the particular discrimination complaint. Respondents may be added or deleted, depending upon the actual facts produced during the investigation.

2.80.030. OBLIGATION TO PROVIDE INFORMATION AND GUIDANCE REGARDING THE FILING OF A DISCRIMINATION COMPLAINT.

A. Each department official, manager and supervisor shall promptly inform any person who alleges discriminatory treatment of her/his right to file a formal complaint with the Affirmative Action Officer, and to be assisted in the complaint process by a person of her/his choice. In the event the complaint cannot be resolved informally at the departmental level to the satisfaction of the complainant, it is the responsibility of

each appointing authority to immediately refer the complainant to the Affirmative Action Officer for assistance, including the possible filing of a formal discrimination complaint. Departments shall make and keep an appropriate written record of such referral and of any action(s) taken by the department.

B. The Affirmative Action Officer shall counsel all persons complaining of discrimination regarding their rights, responsibilities and options for resolving their complaint, including the person's right to be assisted in the complaint process by a person of her/his choice. The Affirmative Action Officer shall advise complainants as to which County offices may have jurisdiction to take action in the matter. The Affirmative Action Officer shall also advise each complainant of her/his right to file formal charges of discrimination with the United States Equal Employment Opportunity Commission (EEOC) and/or the California Department of Fair Employment and Housing (DFEH), as may be appropriate under the circumstances, during the initial counseling session.

2.80.040. OBLIGATION TO REPORT INCIDENTS OF SEXUAL HARASSMENT OR VIOLENT HARASSMENT.

A. It shall be the obligation of any elected or appointed County official who learns of any act(s) of sexual harassment or violent harassment directed against any County employee, applicant for County employment and/or promotion, bidder or contractor who seeks to do or does business with the County, or recipient of County services, to report such information within two (2) working days to the County Administrative Officer, the Affirmative Action Officer and the County Counsel. Nothing contained herein shall restrict the right of an individual to file a complaint with the appropriate law enforcement agency and/or the District Attorney's Office.

B. It shall be the obligation of any manager, supervisor, employee and/or agent who has knowledge of any act(s) of sexual harassment or violent harassment directed against any County employee, applicant for County employment and/or promotion, bidder or contractor who seeks to do or does business with the County, or recipient of County services, to report such information within two (2) working days to her/his department head or to the Affirmative Action Officer.

2.80.050. DISCRIMINATION COMPLAINTS.

A. Any County officer, employee, applicant for County employment and/or promotion, bidder, contractor or recipient of County services, who has cause to believe that he/she has been discriminated or retaliated against, may file a complaint with respect thereto.

B. Illustrative examples of actions which may become the subject of a discrimination complaint include, but are not limited to:

1. any methods and procedures used in the recruitment, testing, selection, promotion, training, reclassification, evaluation, salary administration, transfer, duty assignments, discipline and discharge of employees which may be considered discriminatory;
2. any harassment (verbal and/or physical) due to a person's race, color, ethnic group, national origin, ancestry, religious creed, sex, marital status, age (40 and over), sexual preference, veteran's status, physical handicap (including AIDS) or disability and medical condition (cancer-related);
3. refusal by any department, agency or office of the County to provide reasonable accommodation(s) to those who have a medical condition (cancer-related), disability (including pregnancy related), physical handicap (including AIDS or HIV infection) or others who have rights protected by the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973; and
4. sexually suggestive or obscene writings, drawings or pictures which are offensive to other employees; sexually derogatory comments, remarks, questions, leering or gestures, sexual jokes; unwelcome touching, patting, fondling, pinching, impeding or blocking movement; threats of physical abuse; continuing expressions of sexual interest after being informed that the interest is unwelcome; request for sexual favors, accompanied by reprisal (or threat thereof) following a negative response; coercive sexual behavior used to control, influence or affect the career, salary and/or working environment of another employee; offering favors or employment benefits in exchange for sexual favors; actual or attempted rape, sexual assault or battery.
5. retaliatory behavior such as harassment, intimidation, or denial of rights or privileges on the basis that the person either initiated or took part in the investigation of a

discrimination complaint, and/or the filing of a discrimination complaint with the DFEH, EEOC or the courts.

C. The County shall take such appropriate action(s) as appears necessary to protect the health, safety and well being of sexual harassment and violent harassment victims. Victims who are injured, traumatized or emotionally upset shall be made aware, either within the department or by the Affirmative Action Officer (or by the County's Risk Manager, upon referral) of such available benefits as workers' compensation (if applicable), medical treatment, counseling, administrative leave and/or temporary transfers, as appear necessary or helpful.

D. All victims of violent harassment shall be specifically advised, by the department or by the Affirmative Action Officer, of their right to file criminal charges with the proper law enforcement agency and/or the Monterey County District Attorney. Should criminal charges result, the requirements of the criminal case shall, to the extent necessary, take precedence over the procedure(s) set forth in or pursuant to this ordinance. Failure on the part of law enforcement authorities to successfully prosecute or to initiate criminal legal action shall not deter the County from taking appropriate administrative and/or disciplinary action.

E. Neither an appointing authority nor the Affirmative Action Officer may require a victim of violent harassment or sexual harassment to file a written complaint before an investigation and/or appropriate corrective action is initiated. However, such victim shall be advised that he/she may be required to provide a detailed written statement, signed affidavit and/or testimony at a later date.

2.80.060. TIME PERIOD FOR REPORTING OR FILING COMPLAINT.

A. An informal complaint alleging discrimination can be reported or filed by a County employee with her/his department within fifteen (15) working days after the alleged discriminatory event or behavior occurred. An informal complaint made with the department later than fifteen (15) working days after the alleged discrimination took place shall be referred directly by the department to the Affirmative Action Officer for appropriate action.

B. A formal complaint alleging discrimination (including unresolved discrimination complaints initially made to a

department) shall be filed with the Affirmative Action Officer within three hundred (300) calendar days after the alleged incident(s) took place or the complainant first had knowledge of the alleged discriminatory act(s), so that the Affirmative Action Officer can effectively investigate allegation(s), resolve the problem(s) and eliminate discriminatory policies and/or practices in an efficient, timely manner.

2.80.070. DISCRIMINATION COMPLAINT INVESTIGATIONS.

A. Discrimination complaints shall be filed and investigated in accordance with the procedures promulgated by the County Administrative Officer pursuant to this policy. Departments shall make records and employees available to the Affirmative Action Officer upon request during working hours, but shall comply with all applicable confidentiality and privacy laws relating to records.

B. A County employee (and anyone assisting her/him, if that person is likewise a County employee) shall be permitted a reasonable amount of County work time to prepare and process her/his discrimination complaint pursuant to this ordinance. The respondent shall also be permitted a reasonable amount of County work time to prepare any needed response, to prepare for and to attend any meetings and hearings deemed necessary by the department head and/or the Affirmative Action Officer.

C. During the Affirmative Action Officer's investigation of a formal discrimination complaint, the burden of proof shall be on the complainant or person initiating the investigation, up to the point in time when, in the professional opinion of the Affirmative Action Officer, a prima facie case of discrimination has been made out. Thereafter, the burden of going forward shifts to the respondent, to provide information sufficient to cause the Affirmative Action Officer to conclude that no discriminatory act took place and/or that the act and/or omission complained of was not a pretext for discrimination. Any person named as respondent shall be given the opportunity to respond to any and all allegations made against her/him, and to provide evidence which shall be considered during the investigation.

D. Findings of fact shall be based on the oral and/or demonstrative evidence which is produced during the investigation from all relevant and reliable sources of information including, but not limited to, that which is

provided by the complainant, respondent, any witnesses and the affected department(s).

E. Both the findings of fact and the determination shall be based on a preponderance of the evidence standard of proof.

F. The complainant, respondent and the affected department(s) shall be kept appropriately advised of the progress of the investigation, and written responses to both the complainant and department heads shall be provided by the Affirmative Action Officer at the conclusion of the investigation. The respondent shall be orally advised of the outcome of the investigation, if he/she so requests.

2.80.080. BOARD OF SUPERVISORS REVIEW AND HEARING.

A. If a person complaining of discrimination disagrees with the results of the Affirmative Action Officer's investigation, the person may request a hearing by the Board of Supervisors. The Board of Supervisors will meet in closed session to review the Affirmative Action Officer's investigation report's findings, determination and recommendations. The Board's decision shall be final and binding in the matter. The Affirmative Action Officer, County Administrative Officer (or designee), and affected department head(s) will be available to provide information and respond. The complainant and the person assisting her/him may likewise appear, provide information and respond.

B. In the event that the discrimination complaint is made by or against an elected public official, pursuant to the Ralph M. Brown Act as set forth in Government Code Section 54957, the Board of Supervisors shall meet in open session to review the Affirmative Action Officer's findings and recommendations.

2.80.090. CONFIDENTIALITY.

A. The Affirmative Action Officer shall handle all information, correspondence, data, documents and testimony gathered during her/his investigation of a complaint with strictest confidentiality, pursuant (inter alia) to the laws regarding individual rights to privacy and confidentiality of records. Only the County Counsel or her/his designee may have access to the complaint file and any related information obtained during the investigation. The Affirmative Action Officer shall make every effort to protect and keep confidential the identities of

the complainant, respondent and all witnesses, except as otherwise required by law. Details of any testimony or written statements provided by investigation participants shall be kept confidential, protected and filed in a secured office or storage area.

B. All participants in discrimination complaint investigations shall be advised by the Affirmative Action Officer that they may be required to provide sworn statements and/or testimony in administrative and judicial proceedings.

2.80.100. DISCIPLINARY ACTION.

A. Appropriate disciplinary action, based upon the facts found as the result of each investigation completed pursuant to this ordinance, up to and including termination of employment, shall be taken against any non-elected County employee who is found to have discriminated and/or retaliated against any person entitled to file a complaint pursuant to this ordinance. Such disciplinary action shall be consistent with the County's policies on the imposition of disciplinary action.

B. Appropriate disciplinary action, based upon the facts found as the result of each investigation completed pursuant to this ordinance, shall be taken to the extent authorized or permitted by applicable law and regulation, against any County elected official who is found to have discriminated and/or retaliated against any person entitled to file a complaint pursuant to this ordinance.

C. All County officials, managers, supervisors and employees shall be accountable for the proper monitoring and enforcement of the provisions of this ordinance and the discrimination complaint procedure promulgated pursuant thereto.

2.80.110. INTERFERENCE WITH INVESTIGATION OF DISCRIMINATION COMPLAINT; ABUSE OF DISCRIMINATION COMPLAINT PROCEDURE BY PROVIDING FALSE INFORMATION.

A. It shall be a violation of this ordinance for any person to attempt to subvert this ordinance or the procedures promulgated pursuant hereto, or to interfere with the performance of the Affirmative Action Officer's duties by obstructing a discrimination complaint investigation.

B. It shall likewise be a violation of this ordinance for any person to willfully and deliberately provide false or misleading information regarding a discrimination complaint to the Affirmative Action Officer, or to deliberately exploit these procedures with malice to harm the County of Monterey or any of its officers, managers, employees and/or agents.

2.80.120. CONFLICTING ORDINANCES AND TITLES.

All other ordinances and Titles of the County of Monterey that are in conflict with this ordinance are hereby repealed to the extent of such conflict.

2.80.130. IMPLEMENTATION; PERIODIC REVIEW OF ORDINANCE AND COMPLAINT PROCEDURES.

A. Within two (2) months from the date of passage of this ordinance the Affirmative Action Officer, with the input of the Deputy County Administrative Officer-Personnel and County Counsel, shall devise a detailed written training plan by which to assure that all of the County's officials, officers, managers and employees are knowledgeable regarding the contents of this ordinance and the guidelines and procedures which implement it.

B. The plan shall also provide for the proper training of new employees, and for training on an annual basis for department heads and on at least a biannual basis for other County employees, as well as timely notification of new developments regarding the rights and duties of County officers, managers and employees in the various areas of discrimination law. Initial training shall be completed within six (6) months from the effective date of this amended ordinance, and shall include the County's boards, committees and agencies.

C. Copies of this ordinance and the written guidelines and procedures, as well as appropriate forms for implementation, shall be distributed to all County departments and agencies, with instructions to disseminate, post and include these in any departmental or agency policy manual. Copies will be made available to interested groups or persons.

D. This ordinance and the written guidelines and procedures promulgated pursuant hereto shall be reviewed by the Affirmative Action Officer, with the advice and input of appropriate County commissions and agencies, at least every two (2) years to assure that they are in compliance with current law and regulations.

E. Each County department or office which employs peace officers or which is covered by State Merit System Services shall prepare its own discrimination complaint procedure in accordance herewith, in coordination with the County's Affirmative Action Officer and as closely paralleling the County's general discrimination complaint procedure as applicable law and regulation will permit. Such procedures shall be subject to the approval of the County Administrative Officer, and shall be adopted by each affected department within forty-five (45) days from the date this ordinance is adopted.

2.80.140. SEVERABILITY.

If any section, subsection, paragraph, sentence, clause or phrase of this chapter is for any reason, held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any of the remaining portions of this chapter, it being hereby expressly declared that this chapter and each section, subsection, paragraph, sentence, clause and phrase thereof would have been adopted irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED AND ADOPTED this 30th day of April, 1991, by the following vote, upon motion of Supervisor Strasser Kauffman, seconded by Supervisor Shipnuck:

AYES: Supervisors Del Piero, Shipnuck, Perkins, Karas & Strasser Kauffman.

NOES: None.

ABSENT None.

_____ [signed]
Chairman

ATTEST:

ERNEST K. MORISHITA, Clerk
of the Board of Supervisors

By _____ [signed]
Deputy

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**SECTION 18. DISCIPLINARY ACTION AGAINST APPOINTED COUNTY
OFFICIALS AND EMPLOYEES**

**SECTION 19. TRAINING, DISSEMINATION AND POSTING OF
DISCRIMINATION COMPLAINT PROCEDURE**

DISCRIMINATION COMPLAINT PROCEDURES

INTRODUCTION.

SECTION 1. PURPOSE.

A. The following procedures are set forth pursuant to Ordinance No. 3537, which amends Title 2 of the Monterey County Code, Chapter 2.80, for the express purpose of providing an appropriate and available means for raising, investigating and resolving, to the fullest extent, possible issues of discrimination which affects any County employee, applicant for County employment and/or promotion, bidders and contractors who seek to do business with the County or its agencies, and recipients of County services.

B. As set forth in the Title 2 of the Monterey County Code, Section 2.80.010.B, these procedures are not intended to create substantive law. Instead, they are created for the purpose of providing "due process" and "equal protection" for County officers, employees and agents, as well as those who seek to do business with the County or receive County services when such persons have a complaint involving allegations of discrimination.

SECTION 2. DEFINITIONS.

A. As used in these procedures, "**Appointing Authority**" is the person (or group of persons) lawfully authorized to make appointments or to remove persons from positions in the County service. An appointing authority is most often also the department head or agency head, although the terms are not synonymous.

B. As used in these procedures, "**Manager**" means a person in the County service below the rank of Appointing Authority, who makes and/or implements policy and to whom supervisors report.

C. As used in these procedures, "**Supervisor**" means a person in the county service below the rank of Manager, who implements policy as directed and who supervises the work of employees.

D. As used in these procedures, "**Employee**" means any person occupying a position in the County service, including appointive County officers and Appointing Authorities. The term also includes County volunteers and persons who are appointed to the County's commissions, boards and other appointive County groups.

E. As used in these procedures, "**Applicant**" means a person who has applied to the County of Monterey for appointment to a position in the County service, or for promotion or transfer from one County position to another County position.

F. As used in these procedures, "**Elected Official**" means a Monterey County official who is elected to the office he/she holds by the registered voters of the County of Monterey.

G. As used in these procedures, "**Appointed Official**", means a Monterey County official who is appointed to the position he/she holds by the Monterey County Board of Supervisors or the County Administrative Officer.

H. As used in these procedures, "**Agent**" means a contractor who, within the course and scope of a business relationship with the County of Monterey, act on behalf of the County of Monterey.

I. As used in these procedures, "**Bidder**" means person(s) and/or individual(s) who actively seek to do business with the County of Monterey by means of contract or purchase order, or in response to a Request For Proposal.

J. As used in these procedures, "**Contractor**" means person(s) and/or individual(s) who have a business relationship with the County of Monterey, pursuant to contract or purchase order.

K. As used in these procedures, "**Recipients of County Services**" includes those members of the public who have official contact with the County of Monterey in order to receive services from the County, including such things as permits, licenses, approvals, funds, use of County facilities (e.g., parks, library), etc., which are received by the recipient pursuant to individual application, separate from and in addition to those services generally received by the taxpayers of the County.

L. As used in these procedures, "**Discrimination**" means the illegal denial of equal opportunity, harassment, disparate treatment, favoritism, subjection to unfair or unequal working conditions, and/or other discriminatory practice(s) due to an individual's race, color, ethnic group, national origin, ancestry, religious creed, sex, sexual preference, age (40 and above), veteran's status, medical condition (cancer-related), physical handicap (including AIDS) or disability, which causes harm as a direct or indirect result of the illegal act(s) and/or omission(s) of any Monterey County official, employee or agent.

M. As used in these procedures, "**Harassment**" is a form of illegal discrimination which may include such acts as sexual harassment, coercion, abusive treatment, hazing, taunting, baiting, intimidation, extortion and/or favoritism.

N. As used in these procedures, "**Favoritism**" is the unequal or preferential (disparate) treatment of one individual over another/others, when motivated by discrimination, instead of being based on the respective qualifications of the persons involved.

O. As used in these procedures, "**Sexual Harassment**" is a form of illegal discrimination in the workplace based on gender and characterized by unwelcome sexual advances, requests for sexual favors, and/or other visual, verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; (3) such conduct is unwelcome or has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; or (4) retaliation, when based upon the termination of a prior intimate relationship. The work environment extends to non-work places and non-work hours when the harasser continues the behavior.

P. As used in these procedures, "**Violent Harassment**" includes rape, attempted rape, sexual assault, assault, fondling and other forms of sexual battery and/or threats of violence when such occur within the context of discrimination against those persons covered by or subject to these procedures.

Q. As used in these procedures, "**Retaliation**" means the harassment, intimidation or denial of any rights or privileges on the basis that the person either initiated or took part in the investigation of a discrimination complaint and/or the filing of a discrimination complaint with the EEOC, DFEH or the courts.

R. As used in these procedures, the "**Determination**" made after the investigation by the Affirmative Action Officer of a formal complaint will be of two types: "**Cause**" and "**No Cause**". "Cause" means that based on the evidence gathered during the investigation, the Affirmative Action Officer has concluded by a preponderance of the evidence that there is reasonable cause to

believe that discrimination of the type complained of did in fact occur. "No Cause" means just the opposite.

S. As used in these procedures, "**Respondent**" means the individual and/or entity who allegedly discriminated against the complainant(s) through act and/or omission. Such respondents may include persons(s), department(s) or the County itself, depending upon the alleged facts and circumstances of the particular discrimination complaint. Respondents may be added or deleted, depending upon the actual facts produced during the investigation.

PART I. GENERAL PROVISIONS REGARDING DISCRIMINATION COMPLAINTS.

Discrimination complaints shall be filed, investigated and resolved in accordance with the applicable procedure(s) set forth herein. Discrimination complaints may be filed against any elected or appointed official, manager, supervisor, employee, contractor or agent of the County of Monterey.

SECTION 3. DISCRIMINATION COMPLAINTS.

A. Any Person Covered By These Procedures May File A Discrimination or Retaliation Complaint. Any person who has cause to believe that he/she has been discriminated against by any elected or appointed County official, employee or agent of the County may file a complaint with respect thereto.

1. It is a violation of federal and state law for any County official, employee or agent to retaliate against any person for filing a complaint of discrimination or for participating in the investigation of such complaint. Any County employee, agent, applicant for employment or for promotion, bidder, contractor, or recipient of County services who is harassed, intimidated or denied any rights or privileges on the basis that such person either initiated or took part in the investigation of a discrimination complaint may file a complaint with respect thereto.

B. Illustrative Examples of actions which may be the subject of a discrimination complaint include, but are not limited to:

1. any methods and procedures used in the recruitment, testing, selection, promotion, training, reclassification, evaluation, salary administration, transfer, duty assignments,

discipline and discharge of employees which may be considered discriminatory;

2. any harassment due to a person's race, color, ethnic group, national origin, ancestry, religious creed, sex, marital status, age (40 and above), sexual preference, veteran's status, physical handicap (including AIDS) or disability, and medical condition (cancer-related);

3. refusal by any department, agency or office of the County to provide reasonable accommodations to those who have a medical condition (cancer related), disability (including pregnancy related), physical handicap (including AIDS or HIV infection) or others who have rights protected by the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973;

4. sexually suggestive or obscene writings, drawings or pictures which are offensive to other employees; sexually derogatory comments, remarks, questions, leering or gestures, sexual jokes; unwelcome touching, patting, fondling, pinching, impeding or blocking movement; threats of physical abuse; continuing to express sexual interest after being informed that the interest is unwelcome; request for sexual favors accompanied by reprisal (or threat thereof) following a negative response; coercive sexual behavior used to control, influence or affect the career, salary and/or working environment of another employee; offering favors or employment benefits in exchange for sexual favors; actual or attempted rape or sexual assault;

5. any harassment, intimidation or denial or rights or privileges on the basis that the person either initiated or took part in the investigation of a discrimination complaint, and/or the filing of a discrimination complaint with the DFEH, EECC or the courts; and

6. any violation of County or departmental policies relating to equal employment, affirmative action, discrimination and/or retaliation, including the operation of the County's consent decrees or Affirmative Action Plan.

C. Department Must Promptly Inform Employee of Right to File Formal Discrimination Complaint With Affirmative Action Officer. Department officials, managers and supervisors are obligated to promptly inform any person who alleges discriminatory treatment or behavior of her/his right to file a formal complaint with the Affirmative Action Officer, and the right to be assisted in the complaint process by a person of her his choice. In the event an

informal complaint cannot be resolved at the department level to the satisfaction of the complainant, it is the responsibility of the department head or county official to immediately refer the complainant to the Affirmative Action Officer for further assistance, and to determine whether the complaining employee desires to file a formal discrimination complaint.

D. Use of Work Time to Prepare and Process Discrimination Complaint. A County employee (and/or her/his representative, if that person is likewise a County employee) shall be entitled to a reasonable amount of County work time to prepare and process a discrimination complaint under these procedures, or to respond to a discrimination complaint. Such time includes both the preparation for and attendance at meetings and/or hearings which are deemed necessary by County officials, the department head and/or the Affirmative Action officer, or which are invoked pursuant to these procedures.

1. Similarly, a respondent who is a County employee shall be permitted a reasonable amount of County work time to prepare all responses, prepare for and attend meetings, interviews and hearings, when such are deemed necessary by the department head and/or Affirmative Action Officer with respect to a discrimination complaint in which the individual has been identified as a respondent.

2. The "reasonable amount of County work time" actually necessary will vary, depending on the nature and complexity of the issue(s) involved in the discrimination complaint.

a. "Reasonable work time" includes all time actually spent in meetings, reviews and hearings required by the Affirmative Action Officer, and/or any other County officer or official in connection with the processing of a discrimination complaint through to completion, as set forth in these procedures.

b. "Reasonable work time" for preparation and processing of a discrimination complaint is generally defined in terms of hours, rather than days, weeks or months.

3. A complainant and/or representative, and a representative must each arrange in advance with her/his respective supervisor for mutually agreeable work time(s), which shall not be unreasonably withheld. With respect to any question of reasonability, the Affirmative Action Officer shall be consulted

by the supervisor, manager or department; and the decision of the affirmative Action Officer shall be final and binding.

E. Departments Shall Keep Records of Discrimination Complaints; But Such Records Shall Not Be Part of Employee's Personnel File Unless Disciplinary Action is Taken Against Employee.

Departments shall make and keep appropriate records of such referrals and of any actions taken by the department to resolve discrimination complaints, as set forth herein below. However, all such records shall be separate and apart from a County employee's personnel file, unless disciplinary action is taken against the employee as the result of the complaint and investigation. In any event, the record of the complaint investigation shall not be a part of any employee's personnel file.

SECTION 4. COMPLAINTS AGAINST AN ELECTED OFFICIAL.

A. Where to File Discrimination Complaint Against Elected County Official. The Affirmative Action Officer shall conduct an investigation into allegations of discrimination made by any person against any County elected official. A complaint of discrimination against a Monterey County elected official may be submitted to the County Administrative Officer, County Counsel, County Affirmative Action Officer, the Clerk of the Board, Board of Supervisors Chair or any department head. County officials, management staff and agents who receive complaints against an elected official which allege discrimination in any of its forms must immediately submit such complaint to the Affirmative Action Officer.

B. Notification Requirements. The Affirmative Action Officer shall notify the County Administrative Officer and county Counsel within two (2) working days of any complaints filed against any County elected official. The County elected official who is the subject of the complaint shall likewise be notified of the fact that a discrimination complaint has been filed.

C. Investigation of Discrimination Complaint Against Elected County Official. The Affirmative Action Officer shall conduct an investigation into the stated allegations in accordance with procedures set forth herein.

1. Elected officials shall have all rights and responsibilities set forth in this procedure for department heads, except for such as may constitute a violation of applicable law or regulation.

2. Elected officials and their staff shall cooperate fully with the Affirmative Action Officer, County Administrative Officer (or her/his designee) and County Counsel during the investigation, and during any efforts to resolve the complaint to the satisfaction of all parties, reach a negotiated settlement of the matter, and/or implement a corrective action plan. The elected official shall be afforded full opportunity to respond and to provide information regarding the allegations of discrimination in the complaint during the course of the Affirmative Action Officer's investigation.

3. An elected official who is the subject of any complaint investigation shall be notified of the outcome of the investigation within five (5) working days after the Affirmative Action Officer has completed the investigation and consulted with the County Counsel and the County Administrative Officer regarding the investigation's findings, determination and recommendations.

4. The complainant shall be advised and notified in accordance with Section 10.H, herein below.

D. Resolution of Discrimination Complaint; Corrective Action Plan. The Affirmative Action Officer shall meet with the complainant in an effort to achieve a reasonable and fair resolution of the complaint, pursuant to the time frames set forth in Section 10, herein below. The Affirmative Action Officer, when warranted by the investigation's findings, determination and recommendations, shall develop a proposed corrective action plan and draft a complaint settlement agreement in consultation with the County Counsel and County Administrative Officer. These shall form the basis for subsequent discussion with any elected official who is the subject of a discrimination complaint.

E. Unresolved Discrimination Complaint; Action by Board of Supervisors. If the complaint cannot be resolved and/or settled through subsequent discussions with the respondent elected official, against whom there is a "for cause" finding made by the Affirmative Action Officer, the Board of Supervisors shall be formally notified by the Affirmative Action Officer or the County Administrative officer, pursuant to the provisions of Section 13, herein below.

1. The specific allegations, findings, determination and recommendations shall be discussed with the Board of Supervisors in open session, pursuant to the Ralph M. Brown Act (see

Government Code Section 54957). The Board shall take such appropriate action as may be within its authority, to correct any problems and resolve the complaint.

F. Criminal Conduct, "Malfeasance", or "Willful or Corrupt Misconduct" by Elected County Official: Advice by Affirmative Action Officer to Complainant. Should it be determined as the result of the investigation that the elected official's acts appear to be criminal conduct, or to constitute "malfeasance" and/or "willful or corrupt misconduct," the Affirmative Action Officer shall advise the complainant of her/his right to file a report with the District Attorney, the California Attorney General and/or the Monterey County Grand Jury, in addition to any allegations filed by the complainant with any federal or state civil rights enforcement agency.

1. Whenever the elected official's act(s) appear to constitute "willful or corrupt misconduct in the office", as defined by Government Code Section 3060, the Affirmative Action Officer must submit a copy of the report, determinations and findings in the name of the County to the Monterey County Grand Jury for investigation and appropriate action. The District Attorney, County Administrative Officer and County Counsel shall be consulted before the Affirmative Action Officer takes such action.

SECTION 5. COMPLAINTS AGAINST AFFIRMATIVE ACTION OFFICER.

A. Where to File Discrimination Complaint Against County Affirmative Action Officer. Persons who desire to file a discrimination complaint against the County's Affirmative Action officer may submit such to the County Administrative Officer, the County Counsel, the Clerk of the Board, Board of Supervisors Chairman, or any department head.

1. Any County elected or appointed official, manager, supervisor, employee and/or agent who receives a complaint against the Affirmative Action Officer alleging discrimination must immediately submit it to the County Administrative Officer or the County Counsel.

2. The County Administrative Officer shall determine how the complaint shall be processed and investigated, after consultation with County Counsel. The general format for complaint investigations set forth in Section 10, herein below, shall be followed, including time frames.

3. The Affirmative Action Officer shall be afforded the same rights and privileges as any other appointed County official.

4. Complaints against County Affirmative Action employees shall be referred to the Affirmative Action Officer for processing, investigation and appropriate action in accordance with the procedures set forth herein.

PART II. DEPARTMENTAL PROCEDURES FOR INVESTIGATION AND RESOLUTION OF INFORMAL DISCRIMINATION COMPLAINTS.

Several different ways to file or report an informal discrimination complaint with the County employee's department have been provided, so that the employee may utilize the way which provides the greatest level of comfort for the employee, under the existing facts and circumstances. One way is for the employee to report the complaint to her/his supervisor or manager; another is to report it to the department head; and the third is to go directly to the Affirmative Action Officer with the informal complaint.

SECTION 6. INFORMAL DEPARTMENTAL COMPLAINT PROCEDURE FOR COUNTY EMPLOYEES.

A. Purpose. This Section provides informal procedures for the early resolution of complaints, so that immediate corrective action can be taken at the department level, when warranted. Many discrimination complaints can be informally resolved, to the mutual satisfaction of all parties, within the County department in which

they arise. When possible, it is in the best interests of all concerned that the matter be promptly and completely resolved at the lowest level of the department. Among other things, when prompt resolution is achieved at lowest possible level, the least damage to the working relationships of those involved results; and that is normally beneficial to all concerned.

1. Each County department and agency shall, with the exceptions set forth in Sections 7, 8 and 9, adhere to the procedure(s) set forth in this Section when investigating its employee's informal complaint of discrimination:

B. Time Period For Initial Filing or Reporting of Informal Discrimination Complaint by County Employee With the Employee's Department. An informal complaint alleging discrimination may be presented orally or in writing by any employee to his immediate

supervisor or division manager in the department within fifteen (15) working days after the alleged discriminatory event or behavior occurred. An oral complaint shall be reduced to writing by the employee if not resolved at the initial stage -- with the assistance of the department, if need be.

1. Initial Filing or Reporting Beyond Time Period. Informal complaints made by a County employee to her/his department more than fifteen (15) working days after the event or behavior shall be promptly referred directly by the department to the Affirmative Action Officer for investigation and appropriate action.

2. Filing Informal Discrimination Complaint Directly With Affirmative Action Officer. Title 2 of the Monterey County Code, Section 2.80.010.F states the Board of Supervisors' belief that the interests of the County and of all affected parties are best served when complaints of discrimination are effectively handled at the lowest possible level in an expeditious manner, so as to provide for early resolution (including appropriate corrective action by the department).

a. However, a County employee may nevertheless elect to file her/his discrimination complaint initially with the County's Affirmative Action Officer directly. The County employee and the Affirmative Action Officer shall then mutually agree whether the complaint shall be handled as a formal or an informal complaint.

C. Information and Guidance Required To Be Given Employee at Time Informal Complaint is Initially Presented. At the time of the initial presentation of the informal complaint, the supervisor or manager to whom the complaint is made shall inform the employee of the available complaint procedures, all available procedural options, including the employee's right to immediately file a formal complaint with the Affirmative Action Officer, and the right to be assisted in the complaint process by a person of her/his choice.

1. In particular, each employee who presents an informal discrimination complaint shall be specifically informed by the department that he/she retains the right to file the complaint directly with the Affirmative Action Officer. If the employee inquires, the department shall inform the employee that he/she retains the right to file charges of discrimination with the appropriate federal & state agencies.

2. Nothing contained anywhere in these procedures shall restrict the right of an employee to file a complaint of discrimination with the County Affirmative Action Officer, U.S Equal Employment Opportunity Commission (EEOC), California Department of Fair Employment and Housing (DFEE), pursuant to applicable law and regulations.

D. Informal Complaint Investigation and Resolution Procedure. When presented, the informal complaint shall be immediately investigated and resolved within ten (10) working days by the department on an informal basis, if that is possible, by the use of the following procedures. The Affirmative Action Officer shall be consulted, if her/his involvement or assistance appears either necessary or helpful.

1. The Affirmative Action Officer and the department head shall be notified by the person receiving the complaint of all discrimination complaints which proceed beyond the immediate supervisor level.

2. The employee shall be notified of the department's decision, which shall be documented as appropriate, and the employee shall be advised of her/his right to take the matter to the next level or file a formal complaint with the Affirmative Action Officer if the issues are not resolved to her/his satisfaction

3. Advancement of Unresolved Informal Complaint to Next Level Within Department. If the informal complaint is not satisfactorily resolved, the employee shall have five (5) working days to present her/his written complaint to the next higher level manager in the department. This manager shall have ten (10) working days to investigate and resolve the complaint.

a. This manager shall provide a written response to the complainant which outlines findings, determination, and any administrative action taken (or to be taken), and restates the employee's rights with respect to proceeding further with the discrimination complaint.

4. Advancement of Unresolved Complaint For Department Head Review. If the employee remains dissatisfied at this step, he/she may submit a written complaint to the department head within five (5) working days of receipt of the manager's written response. Such complaint shall be immediately reviewed, any new/additional information investigated, and a written decision (including administrative action) prepared within fifteen (15)

working days by the department head and delivered to both the employee and affected departmental manager(s).

5. Informal County Employee Complaints Submitted Directly to the Department Head. Informal employee complaints submitted directly to the department head shall be promptly investigated and a decision (including any administrative action taken or to be taken) rendered within twenty (20) working days after receipt of the complaint. The employee shall be notified of the department's decision in writing, and advised of her/his right to file a formal charge with the Affirmative Action Officer if the issues are not resolved to her/his satisfaction.

E. An Informal Complaint is Superseded by a Formal Complaint Filed with the Affirmative Action Officer. If an employee who files an informal complaint under the procedures contained in this Section, subsequently files a formal complaint regarding the same issue(s) with the Affirmative Action Officer, federal or state agency, the processing of the informal complaint by the department under the procedures in this Section may be terminated at once, without resolution.

F. Departments to Keep Records of Complaints. Each department shall keep records of each incident of alleged discrimination and any associated complaint(s) for a period of at least three (3) years from the date of first report. Information about administrative and/or disciplinary action and records associated with any discrimination complaints shall be made available to the Affirmative Action Officer.

G. Appropriate Level of Disciplinary Action. The corrective action taken by an appointing authority as the result of an employee's complaint of discrimination shall include appropriate disciplinary action, and shall be sufficient to make any recurrence of discrimination unlikely and to correct, where possible, any harm suffered by the victim(s). All discipline administered shall be consistent, fair and comply with basic principles of progressive discipline.

H. Department May Request Affirmative Action Officer Assistance, or Refer Informal Complaint to Affirmative Action Officer. Nothing contained herein shall prevent the department from (1) requesting the assistance of the Affirmative Action Officer to help resolve an informal discrimination complaint; or (2) referring, at any stage, an informal complaint of discrimination to the Affirmative Action Officer for completion of investigation and resolution.

SECTION 7. INVESTIGATION OF DISCRIMINATION COMPLAINTS BY RECIPIENTS OF COUNTY SERVICES, BY BIDDERS AND CONTRACTORS.

A. Filing of Discrimination Complaints by Non-County Employees. Recipients of county services, bidders and/or contractors shall file any discrimination complaint directly with the Affirmative Action Officer. The affected department head shall be notified of such complaints from the public. If such complaint is filed by a non-County employee with a County department, it shall be promptly referred to the Affirmative Action Officer for investigation and resolution, pursuant to Part III, hereinbelow.

SECTION 8. INVESTIGATION OF DISCRIMINATION COMPLAINTS AGAINST PUBLIC SAFETY OFFICERS.

A. Each Department Employing Peace Officers Shall Establish a Legally Valid Procedure For Investigating Discrimination Complaints. Each department or office of the County which employs peace officers shall establish a procedure which complies with the Public Safety Officers' Procedural Bill of Rights (Government Code Section 3300, et seq.) and other applicable law and regulations, to investigate fully and thoroughly complaints of discrimination against the peace officers which they employ.

1. The Affirmative Action Officer shall coordinate these procedures among the affected County departments, so that to the extent possible, uniformity of procedure is established. A copy of the procedure, as well as any subsequent modifications thereto, shall be furnished immediately upon completion to the Clerk to the Board of Supervisors, County Administrative Officer, County Counsel and Affirmative Action Officer, and shall be posted and made available to County employees and/or the general public upon request.

B. Use of Department's Procedure Does Not Preclude the Filing of Discrimination Complaint with Federal or State

Agency. Use of a County department's Is discrimination complaint procedure shall not preclude the use by the complainant of other available procedures as, e.g., through the U.S. Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), or the California Department of Fair Employment and Housing (DFEH).

C. Record Retention. Each discrimination complaint against a County peace officer, and any reports or findings relating thereto, shall be retained for a period of at least five (5) years from the date the allegation was first made.

D. Discrimination of Internal Affairs Investigator by Each Department Employing Peace Officers. Each department or office of the County which employs peace officers shall designate an internal affairs investigator to be responsible for investigation and resolution of each complaint of alleged discrimination made against peace officers in the department, in accordance with the established departmental policy and applicable law and regulations.

E. Cooperation Between Department and Affirmative Action Officer During and After Complaint Investigation. Appointing authorities in County departments which employ peace officers shall direct their internal affairs investigator, management staff, peace officers and other personnel to cooperate fully with the County's Affirmative Action Officer, to the extent permitted by applicable law and regulations, during discrimination complaint investigations, conciliation meetings, settlement agreement negotiations and/or complaint resolution.

F. Incorporation of Policy in Departmental Manual; Dissemination of Policy. Each department or agency of the County which employs peace officers shall incorporate this policy in its departmental policy manual, and shall post and/or disseminate it as appropriate.

G. Affirmative Action Officer Dissatisfaction with Internal Affairs Investigation of Discrimination Complaint. If the Affirmative Action Officer is dissatisfied with the investigative results of a complaint against any public safety officer, the Affirmative Action Officer may, after consultation with the County Administrative Officer and the County Counsel, file a report with the District Attorney, the California Attorney General and/or the Grand Jury in order that they may conduct an investigation, make appropriate recommendations and/or take appropriate action with respect to the discrimination complaint.

H. Filing Informal Discrimination Complaint Directly with Affirmative Action Officer. Notwithstanding Title 2 of the Monterey County Code, Section 2.80.010.F, a County employee may nevertheless elect to file her/his discrimination complaint initially with the County's Affirmative Action Officer directly.

The County employee and the Affirmative Action Officer shall then mutually agree whether the complaint shall be handled as a formal or an informal complaint.

SECTION 9. INVESTIGATION OF DISCRIMINATION COMPLAINTS AGAINST MERIT SYSTEM EMPLOYEES.

A. Each Department Covered by Merit System to Establish a Procedure For Investigating Discrimination Complaints. Each County department covered by Merit System Services shall establish a procedure which is in accordance with Local Agency Personnel Standards (LAPS) to investigate discrimination complaints against persons whom they employ. A written description of such procedures shall be filed with the Clerk to the Board of Supervisors, County Administrative Officer, County Counsel and Affirmative Action Officer, and shall be made available to County employees and the general public upon request.

B. Use of Department's Procedure Does Not Preclude the Filing of Discrimination complaint with Federal or State Agency. Use of a County department's discrimination complaint procedure shall not preclude the use by the complainant of other procedures available, e.g., through the U.S. Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance Programs (OFCCP), or the California Department of Fair Employment and Housing (DFEH) Use of such alternative procedures, however, may be grounds for prompt termination of the Department's investigation.

C. Coordination of Department Investigation with Affirmative Action Officer. Departments utilizing a LAPS-compatible procedure to investigate and resolve discrimination complaints shall keep the Affirmative Action Officer fully advised of the investigative status of such complaints, and shall cooperate fully with the Affirmative Action Officer during complaint investigations, conciliation meetings, settlement agreement negotiations and in all phases of the complaint resolution.

D. Filing Informal Discrimination Complaint Directly with Affirmative Action Officer. Notwithstanding Title 2 of the Monterey County Code, Section 2.80.010.F, a County employee may nevertheless elect to file her/his discrimination complaint initially with the County's Affirmative Action Officer directly. The County employee and the Affirmative Action Officer shall then mutually agree whether the complaint shall be handled as a formal or an informal complaint.

PART III . FORMAL DISCRIMINATION COMPLAINT INVESTIGATIONS BY THE AFFIRMATIVE ACTION OFFICER.

The Affirmative Action Officer is authorized to conduct all discrimination complaint investigations. The Affirmative Action Officer may initiate an investigation on her/his own if there are reasonable grounds to believe that discriminatory events and/or behavior may have occurred or the County's EEO/Affirmative Action or non-discrimination policies have been violated. All department heads are required to, and shall, cooperate fully with investigations conducted by the Affirmative Action Officer.

SECTION 10. AFFIRMATIVE ACTION OFFICER INVESTIGATIONS.

A. Filing a Formal Discrimination Complaint with the Affirmative Action Officer. A formal complaint alleging discrimination may be filed with the Affirmative Action Officer not later than three hundred (300) calendar days after the alleged discriminatory incident(s) took place or the complainant first had knowledge of the alleged discriminatory act(s), so that the Affirmative Action Officer can effectively investigate the allegation(s) made, resolve the problem(s) and eliminate discriminatory policies and/or practices in an efficient, timely manner.

1. Completion of Form; Written Complaint. Persons filing charges of discrimination may be required to complete an official county discrimination complaint form or provide a written complaint. Discrimination complaints must be specific in detail in the allegations made, and must contain name(s), place(s) and date(s) of incidents, and the department(s) involved, and must specify the exact harm actually suffered by the complainant and/or other protected persons.

2. Notification of Department Head by Affirmative Action Officer. The Department Head of the respondent department will be notified by the Affirmative Action Officer within ten (10) working days from the date of receipt of a complaint(s) by the Affirmative Action Officer. In the event the appointing authority is the respondent, the County Administrative Officer and County Counsel will also be notified.

B. Required Advice and Guidance. The Affirmative Action Officer is required, during the initial counseling session, to counsel all persons complaining to her/him of discrimination

about their rights, responsibilities and options for resolving the problem alleged. This shall include advice as to the right of each complainant to file charges of discrimination with the United States Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH), as may be appropriate under the circumstances, and the written name and address of the nearest regional office for each agency.

C. Notification to the Affected Department(s). The Department head will receive sufficient relevant information from the Affirmative Action Officer regarding the discrimination complaint so that the department can provide relevant, necessary information during the investigation.

D. Departments Shall Make Records Available to Affirmative Action Officer, But Shall Comply With Privacy Rights and Confidentiality of Records Laws. Department heads shall make all requested files, documents, information, and data available in a timely manner. Nothing contained herein shall relieve any department of its responsibilities to comply with applicable federal, state or local laws and regulations protecting individual rights of privacy and confidentiality of records.

1. Department heads shall coordinate with the Affirmative Action Officer to make employees available during the work day to be interviewed, at no expense (i.e., required use of sick leave, vacation time) to the employee.

E. Time For Completion of Discrimination Complaint Investigation by Affirmative Action Officer. The complaint investigation will be completed by the Affirmative Action officer within forty (40) working days from receipt of the formal complaint, except in extenuating circumstances as determined by that Officer. When not completed within such time frame, the Affirmative Action Officer shall promptly inform the complainant in writing of the status, including the projected completion date.

F. Periodic Status Reports to Parties. During the investigation, both the complainant and the respondent will receive such periodic oral report(s) on the status of the complaint investigation as the Affirmative Action Officer deems appropriate, in order to keep each of the parties adequately apprised of the investigation's progress.

G. Affirmative Action Officer's Report. Upon the completion of the investigation, which shall be impartially conducted, the

Affirmative Action Officer shall prepare a written report detailing: (1) the allegations investigated; (2) the findings of fact, which must be based on the evidence produced by the investigation; (3) the determination by the Affirmative Action Officer as to whether discrimination was found as alleged, which must be based upon the findings of fact; and (4) the Affirmative Action Officer's recommendations for resolution of the complaint.

1. During the investigation of a formal complaint, the burden of proof shall be on the complainant or person initiating the investigation, up to the point in time when, in the professional opinion of the Affirmative Action Officer, a prima facie case of discrimination has been established. Thereafter, the burden shifts to the respondent to provide information which is sufficient to cause the Affirmative Action Officer to conclude that no discriminatory act took place and/or that the act and/or omission complained of was not a pretext for discrimination.

2. Findings of fact shall be based on the oral and demonstrative evidence which is produced during the investigation from all relevant and reliable sources of information including, but not limited to, that which is provided by the complainant, respondent, any witnesses and the affected department(s).

3. Both the findings of fact and the determination shall be based on a preponderance of the evidence standard of proof.

4. In discrimination complaints alleging harassment, the behavior must be sufficiently severe and/or pervasive to cause a reasonable person to consider the workplace environment to be hostile in character, in order to reach a "for cause" determination.

H. Written Response to Complainant. Upon completion of the investigation, the complainant shall receive a written response from the Affirmative Action Officer regarding the results of the investigation when the investigation is completed. The written response shall summarize the findings, determination, and the final disposition of the complaint, subject to the limitations of applicable law, regulations and County policy regarding the privacy rights of all persons and the confidentiality of documents.

I. Written Response to Department Heads, Who Must Implement Affirmative Action Officer Recommendations. Upon completion of

the investigation, the affected department head(s) shall receive a written response from the Affirmative Action Officer, summarizing the findings, and determination, and detailing the recommendations contained in the Affirmative Action Officer's report. The response shall be in sufficient detail that the department head can devise and implement an appropriate and effective plan for all necessary corrective action, including any appropriate disciplinary action.

1. Except as otherwise provided, either herein or by applicable law and regulations, department heads are required to and shall implement all recommendations made by the Affirmative Action Officer as the result of the complaint investigation.

a. If a department head disagrees with the recommendations contained in the Affirmative Action Officer's written response, the department head may request a review hearing by the Board of Supervisors as set forth in Section 12, hereinbelow.

J. Response to Respondent. The respondent shall be orally advised by the Affirmative Action Officer of the investigation's findings and determination, after the investigation is concluded, if he/she so requests.

K. Affirmative Action Officer May Terminate Complaint Investigation When complainant Files Allegations With Federal or State Agency. The Affirmative Action Officer may terminate her/his complaint investigation if the complainant files, causes to be filed or permits the filing on her/his behalf, of any discrimination complaint with any federal or state agency or court, when such a complaint is directly related to the allegations under investigation by the County's Affirmative Action Officer. The Affirmative Action Officer shall provide a written notification to all directly involved parties if the investigation is terminated, but need not provide a report, findings, conclusions and/or recommendations.

SECTION 11. NEGOTIATED SETTLEMENTS/CONCILIATION.

A. Affirmative Action Officer Obligation to Resolve and/or Settle Discrimination Complaints. The Affirmative Action Officer is directed to make every legitimate effort to resolve the discrimination complaint and/or negotiate a settlement between the complainant and the department in question. The Affirmative Action Officer may hold conciliation sessions in an effort to facilitate a resolution which satisfies all directly

involved parties and protects the integrity of the County's EEO/Affirmative Action and anti-discrimination policies.

B. Withdrawal of Complaint by Complainant. The complainant may withdraw her/his complaint at any time during the investigation. However, such withdrawal must be written, dated and signed in the presence of the Affirmative Action Officer and at least one other witness who is mutually agreed to by the complainant and the Affirmative Action Officer. The withdrawal of the complaint terminates the investigation.

SECTION 12. REVIEW OF FINDINGS, DETERMINATIONS AND RECOMMENDATIONS.

A. Disagreement With Results of Affirmative Action Officer Investigation; Requesting Review of Findings/

Determinations and Recommendations. The department head and/or the complainant may individually request review of the investigation report's findings, determination and/or recommendations, if either disagrees with the results of the written response provided by the Affirmative Action Officer.

1. A review request must be submitted to the Affirmative Action Officer within ten (10) working days of receipt of the results of the investigation. This review will be jointly conducted by the Affirmative Action Officer and the Deputy County Administrative Officer Personnel (or their designees). All materials from the investigation shall be made available to the Deputy County Administrative Officer-Personnel, for this purpose.

a. Each party may give oral presentation and may provide any additional information and documents which he/she wishes to have considered.

b. At the review, the complainant may have a representative assist with her/his presentation. The other party shall be advised of the review, and shall be allowed to respond and provide additional information and/or documents for consideration.

c. Reviews shall be promptly scheduled, and held within ten (10) working days of request, whenever possible. Reviews shall be private and opposing parties shall not be present in the same session.

2. At the conclusion of the review, any changes in findings, determination and/or recommendations jointly agreed to by the Affirmative Action Officer and Deputy County Administrative Officer-Personnel shall be made to the investigation report and to the written responses made to the complainant and/or the department head.

a. Each party shall be notified in writing of the completion of the review by the Affirmative Action Officer and Deputy County Administrative Officer Personnel, including any changes made to the investigation report's findings, determination and/or recommendations.

3. A hearing before the Board of Supervisors may be requested, as provided herein below, if any party continues to disagree with the results of the investigation after reviewing the report's findings of fact, determinations and recommendations with the Affirmative Action Officer and Deputy County Administrative Officer-Personnel.

4. In the event the Affirmative Action Officer or the County Administrative Officer (or her/his designee) is specifically named as a respondent or a witness, he/she will not be a part of the investigative or review team. Under these circumstances the County Administrative Officer-Personnel's role (or that of the designee) will be that of any other appointed department head.

5. If no agreement can be reached at the conclusion of the review between the Affirmative Action Officer and the Deputy County Administrative Officer-Personnel, the matter shall be scheduled for a review hearing before the Board of Supervisors for determination of the matter.

SECTION 13. BOARD OF SUPERVISORS' REVIEW HEARING.

A. Time Limit For Hearing Request. In order to obtain a review hearing, a request must be submitted in writing to the Clerk of the Board of Supervisors within ten (10) working days after notification of completion of the review process set forth in Section 12.A.2.a.

B. Provision of Copy of Affirmative Action Officer's Investigation Report. Upon the filing of a timely request for review hearing, both the complainant and the respondent department head (or elected official) will be provided with a copy of the Affirmative Action Officer's investigation report,

including any modification(s) made during the review process set forth in Section 12.

1. However, within the discretion of the Affirmative Action Officer, the copy of the report may be subject to the provisions of Section 17, unless good cause is thereafter shown to the satisfaction of the Board of Supervisors as to why the identity of any specific witness(es) is necessary to the review process.

C. Review Hearing by the Board. The Board of Supervisors will meet in closed session to review the findings, determination and recommendations contained in the investigation report. The Affirmative Action Officer, County Administrative Officer (or designee) and respondent department heads will be available to provide information and/or testimony, and to respond. The complainant and any person assisting her/him shall have the right to be present and may testify.

1. However, in the event that the discrimination complaint is made by or against an elected public official, pursuant to the Ralph M. Brown Act as set forth in Government Code Section 54957, the Board of Supervisors shall meet in open session to review the Affirmative Action officer's findings and recommendations.

D. Records. Any records and minutes of this hearing shall be confidential and become a part of the discrimination complaint investigation file.

E. Board Decision Shall Be Final and Binding. The decision of the Board as to findings, determination and/or recommendations shall be final and binding on all parties, and shall form the basis for the complaint resolution and be incorporated into the final report prepared by the Affirmative Action Officer.

F. Completion of Board Review. The Board shall hold its hearing, complete its review and make its determination in the matter, whenever possible, within forty-five (45) working days of the date the request was received by the Clerk of the Board.

SECTION 14. REOPENING CLOSED INVESTIGATIONS.

A. When Discrimination Complaint Investigation May Be Reopened. The Affirmative Action Officer may reopen a closed, terminated or completed discrimination complaint investigation at her/his discretion, or at the request of any party thereto, the County

Counsel, County Administrative Officer (or her/his designee), or the Affirmative Action Advisory Commission.

1. Such request must be made in writing within three hundred (300) days after the investigation was closed.

2. The requesting party must provide a reasonable justification for the request.

PART IV. HARASSMENT, SEXUAL HARASSMENT AND/OR VIOLENT HARASSMENT.

Each elected and/or appointed official, manager, supervisor, employee and/or agent shall be responsible for protecting those persons within her/his jurisdiction from discriminatory treatment. Each department head shall establish appropriate policies, procedures and maintain a work environment within the department which discourages and eliminates discrimination in all of its forms, including harassment, sexual harassment, and retaliation.

SECTION 15. GENERAL OBLIGATIONS AND RESPONSIBILITIES OF DEPARTMENT HEADS, MANAGERS, SUPERVISORS, EMPLOYEES AND AGENTS.

A. Responsibility For Maintenance of Discrimination Free and Non-Hostile Work Environment. In order to maintain a discrimination-free work environment, immediate corrective action shall be taken by each official, manager and supervisor as soon as he/she has knowledge that anyone within her/his jurisdiction is subject to discrimination. The corrective action taken (including any subsequent disciplinary action) must be sufficient to protect the victim, prevent all further acts of discrimination or retaliation, and deter any further discriminatory events or behavior in the workplace.

B. Obligation to Report Incidents of Sexual Harassment or Violent Harassment. It shall be the obligation of every elected or appointed County official who learns of any act(s) of sexual harassment or violent harassment directed against any County employee, applicant for County employment and/or promotion, bidder or contractor who seeks to do or does business with the County, or recipient of County services, to report such information within two (2) working days to the County Administrative Officer, the Affirmative Action Officer and the County Counsel.

1. It shall be the obligation of every manager, supervisor, employee and/or agent who has knowledge of any act(s) of sexual harassment or violent harassment directed against any County employee, applicant for County employment and/or promotion, bidder or contractor who seeks to do or does business with the County, or recipient of County services, to report such information within two (2) working days to her/his department head or to the Affirmative Action Officer. Nothing contained herein shall restrict the right of an individual to file a complaint with the appropriate police agency and/or the District Attorney's Office.

C. Temporary Transfer or Removal of Alleged Violent Harasser From the Workplace. Upon receipt of such report, an alleged violent harasser must be immediately transferred elsewhere within the department or otherwise removed from the workplace by the appointing authority, in accordance with the provisions of an applicable Memorandum of Understanding or the County's Personnel Resolution, until such time as the incident(s) and allegation(s) are investigated and appropriate corrective action initiated.

D. Counseling and Guidance for Victims of Violent Harassment. The County shall take such appropriate action(s) as appear necessary to protect the health, safety and well being of violent harassment victims. Victims who are injured, traumatized or emotionally upset shall be made aware of such available benefits as medical treatment, counseling, administrative leave and/or temporary transfers, as appears necessary or helpful. Additionally, all victims of violent harassment shall be specifically advised of their right to file criminal charges with the proper police agency and/or the Monterey County District Attorney. Should criminal charges result, the requirements of the criminal case (including the investigation thereof by any law enforcement agency) shall, to the extent necessary, take precedence over the procedure(s) set forth in this procedure.

E. Written Complaint Not a Precondition to Investigation of Violent Harassment Complaint. Neither an appointing authority nor the Affirmative Action Officer may require a victim of violent harassment to file a written complaint before an investigation and/or appropriate corrective action is initiated. However, a victim shall be advised that he/she may be required to provide a detailed written statement, signed affidavit and/or testimony at a later date.

PART IV. GENERALLY APPLICABLE MISCELLANEOUS PROVISIONS.

It is a violation of federal and state law and regulation, and of County policy for any County official, manager, supervisor, employee or agent to retaliate against any person for filing a discrimination complaint or participating in related investigations.

SECTION 16. RETALIATION; SUBVERSION.

A. Retaliation is Illegal. No County employee or agent, applicant for County employment and/ or promotion, bidder or contractor seeking to do or doing business with the County, recipient of County services, or member of the public may be harassed, intimidated or denied any right(s) or privilege(s) for participating in the investigation of a charge of discrimination, and/or the filing of a discrimination complaint with the EEOC, DFEH or the courts.

1. It is the responsibility of each County elected and appointed official, manager and supervisor to monitor and enforce this section.

B. Interference With Investigation of Discrimination Complaint. No person shall attempt to subvert these procedures or to interfere with the Affirmative Action Officer during the performance of that Officer's duties or to obstruct an ongoing discrimination or harassment complaint investigation.

C. Providing False or Misleading Information During Complaint Investigation. It shall be a violation for any person to willfully and deliberately provide false or misleading information to the Affirmative Action Officer, or to deliberately exploit these procedures with malice to harm the County of Monterey or any of its officials, employees and/or agents. The Affirmative Action Officer shall dismiss any discrimination complaint charges which are determined to be false and in violation of this section.

1. Appropriate disciplinary action shall be taken in each such confirmed violation of this section.

SECTION 17. CONFIDENTIALITY.

A. All Information Gathered During Discrimination Complaint Investigation Shall Be Confidential To the Extent Provided by Law. The Affirmative Action Officer shall handle all

information, correspondence, data, documents and testimony gathered during the investigation of a discrimination complaint with strictest confidentiality. Only the County Counsel (or her/his designee) may have access to a complaint file and any related information discovered during the investigation.

1. The Affirmative Action Officer will make every effort to protect and keep confidential the identities of the complainant, respondent and all witnesses, except as otherwise required by law. Details of any testimony or written statements provided by investigation participants shall be kept confidential, protected and filed in a secured office or storage area.

2. All documents, tapes and other material which constitute a part of a discrimination complaint investigation file shall be maintained for a period of at least three (3) years from the date of the final report. Records involving public safety officers and/or any other categories of County employees for whom special record keeping legal requirements exist shall be maintained in accordance with the applicable provisions of law or regulations.

B. Advisement Regarding Sworn Statements and/or obligation to Testify in Subsequent Proceedings. All participants in discrimination complaint investigations will be advised by the Affirmative Action Officer that they may be required to provide either sworn statements or testimony, or both, in administrative or judicial proceedings.

C. Use of Noms de Plume, Etc. The Affirmative Action Officer may use noms de plume, alphabet letters or numbers to identify witnesses/participants in the discrimination investigation report and/or summary responses, as he/she deems necessary.

D. Disclosure of Information. The Affirmative Action Officer will decide after consultation with, and upon the advice of the County Counsel (or her/his designee) and the County Administrative officer whether and/or when information, if any, is to be made available to the public or the news media, at such time the Board of Supervisors shall be notified. Neither the complainant's name nor any specific details of a complaint may be made public or available to the news media without the written consent of the complainant, except as required by applicable federal and state law and/or regulations.

1. Department heads will receive a written response summarizing the results of the investigation, as provided in Section 10 hereinabove; however, detailed information about the identities and statements of participants will not be available except at the discretion of the Affirmative Action Officer after consultation with the County Counsel (or her/his designee).

E. Provision of Information to Federal and State Agencies Conducting Discrimination Investigation. The Affirmative Action Officer will make available any legally and properly requested information to the United States Equal Employment Opportunity Commission, California Department of Fair Employment and Housing, the courts or other government agencies having proper jurisdiction.

SECTION 18. DISCIPLINARY ACTION AGAINST APPOINTED COUNTY OFFICIALS AND EMPLOYEES.

A. Any appointed County official or employee who is determined to have discriminated or retaliated against any person in violation of any federal, state or local laws or regulations which protect civil and human rights, shall be subject to disciplinary action, up to and including termination from County employment, in accordance with the applicable provisions of the County's Personnel Resolution and/or any memorandum of understanding, any other applicable County policies, and/or federal and state law and regulations.

B. Disciplinary action shall be fair and consistent, with due regard for the particular facts of each case.

1. At a minimum, any such County official (including an elected County official) or employee shall receive a written reprimand.

2. Disciplinary action against a County elected official, based on a discrimination complaint investigation, may be taken to the extent authorized or permitted by applicable law and regulation.

3. No disciplinary action based on a discrimination complaint investigation may be taken until after the investigation report is completed and final, including the completion of any review process provided for hereinabove.

4. No one shall be subject to disciplinary action until he/she has been accorded the due process required by federal and state

law, County policy and/or any applicable collective bargaining agreement with an employee bargaining unit.

SECTION 19. TRAINING, DISSEMINATION AND POSTING OF DISCRIMINATION COMPLAINT PROCEDURE.

The Board of Supervisors has clearly stated its intention that each Monterey County official (both elected and appointed), officer, employee and agent should be individually responsible and held accountable for maintaining a non-hostile and harassment-free work environment. To this end, the Board has reaffirmed its commitment to preventing discrimination in all of its forms, in part through the use of education and training for its officials and employees on a regular and continuing basis. In order to assist in accomplishing this ongoing task:

A. Distribution. This written procedure shall be distributed to all departments with the instructions to disseminate it to all County employees, post it conspicuously in the department's workplace, and include in any departmental policy manual.

1. Copies of these procedures, as well as appropriate forms for implementation which shall be developed and distributed by the Affirmative Action Officer, and shall be made available to interested groups and persons.

2. Both copies and forms shall be distributed to all County departments and agencies, so that an adequate supply is kept on hand by each department and agency.

B. Training. The Affirmative Action Officer shall devise and implement a detailed written training plan by which to assure that all the County's officers, managers and employees are appropriately trained regarding the details of Title 2 of the Monterey County Code, Chapter 2.80, and with these procedures and guidelines which implement it, as well as with the County policies, federal and state laws and regulations which prohibit discrimination in all its forms.

1. The plan shall place appropriate emphasis on the training of department heads, managers and supervisors in the effective handling, counseling and the reporting of informal discrimination complaints.

2. At a minimum, the plan shall provide for training of department heads on an annual basis, and provide training for other County employees on at least a biannual basis.

3. The plan shall also provide for the proper training of new County employees, and for periodic training and notification of new developments regarding the rights and duties of County officers, managers and employees in the various areas of discrimination law.

C. Periodic Review. These procedures shall be reviewed not less than once every, two (2) years by the Affirmative Action Officer, with the advice and input of appropriate County commissions and agencies, to assure that they are in compliance with current law and regulations.

D. These administrative discrimination complaint procedures implement Ordinance 3537, which amends Title 2, Chapter 2.80 of the Monterey County Code.

Approved and adopted, effective May 1, 1991.

_____ [signed]
Ernest K. Moristita, County
Administrative Officer

APPROVED AS TO FORM:

_____ [signed]
Ralph R. Kuchler
County Counsel

APPROVED AS TO CONTENT:

_____ [signed]
Byron Warfield-Graham
Affirmative Action Officer