


Office of
The City Attorney
City of San Diego

MEMORANDUM

DATE: July 16, 2013
TO: Walt Ekard, Interim Chief Operating Officer
FROM: City Attorney Jan Goldsmith 
SUBJECT: Allegations of Mistreatment of City Employees

As I advised you in yesterday's letter, Government Code § 12940(k) requires an employer "to take all reasonable steps necessary to prevent discrimination and harassment from occurring." The City's awareness that an employee has been subjected to sexually harassing conduct at work triggers its duty to take prompt corrective action that is reasonably calculated to end the harassment. *Swenson v. Potter* (9th Cir. 2001) 271 F.3d 1184

The duty to take "prompt corrective action" requires that the City take temporary steps to address the situation even before the claims are substantiated. This policy balances competing rights of individuals in the workplace to be free from harassment with the right of the accused not to be disciplined without fair procedures and sufficient proof of wrongdoing. *Swenson v. Potter, supra*, 271 F3d at 1188-1189.

In light of these obligations, my letter yesterday requested that you voluntarily agree to a policy that the Mayor will not meet alone with one woman while on City business or in a City building and that this policy be enforced by the San Diego Police Department under the supervision of Chief Lansdowne. Under this policy, the Mayor would not be allowed to direct SDPD officers to leave a room, for example.

Although I have not heard back from you on this, I understand that you are probably swamped with matters. This one, however, is extremely important and cannot wait. We are required by law to take immediate action. Yesterday's letter is enclosed to explain my reasoning.

Yesterday, I spoke with Chief Lansdowne about this request. He was to get back to me before 5:00 p.m., but I did not hear from him.

The importance of this request cannot be minimized. I need to hear back from both you and Chief Lansdowne in writing. If this policy is approved by both of you, it needs to be announced publicly so that women understand they are not permitted to meet alone with Mayor Filner.

If I do not hear back from you in a timely manner, I will place this matter on the closed session agenda for next week.

In addition, I enclose a copy of Council President Todd Gloria's memo dated July 15. These are excellent suggestions in attempting to meet the City's obligation to take steps to prevent harassment. It is also critical that you direct City employees to retain and preserve all documentation that may relate to allegations of harassment by the Mayor.

Thank you for your anticipated cooperation.

JIG:cs

Enclosures

cc: Todd Gloria, Council President (w/enclosures)
William Lansdowne, Chief of Police (w/enclosures)
Paul Cooper, Assistant City Attorney (w/enclosures)
Joe Cordileone, Chief Deputy City Attorney (w/enclosures)