# County of Monterey
# Board Policy Manual

| Policy Name | Policy Number | Page |
|---|---|---|
| Civil Rights Complaint Procedures | P-128 | 1 of 11 |
| **Policy Category**<br>Personnel | | |

**I. Purpose**

a. See attached.

**II. Background**

a. See attached.

**III. Policy**

a. See attached.

**IV. Procedure**

a. See attached.

**V. Review Date**

a. This Policy will be reviewed for continuance by July 28, 2030.

**VI. Board Action**

a. Legistar File Number: 20-540, July 28, 2020.

# MONTEREY COUNTY
# CIVIL RIGHTS COMPLAINT PROCEDURES

## OVERVIEW

These procedures provide a process to resolve allegations of violations of the County's civil rights ordinances and policies regarding discrimination, harassment, and retaliation.

The County shall use these procedures in resolving claims of discrimination, harassment, and retaliation filed by County employees, applicants for employment, contractors, or recipients of County services, because of a person's:

- Age (40 or older)
- Ancestry
- Color
- Religious creed (including religious dress and grooming practices)
- Denial of family and medical care leave
- Disability (mental and physical, including HIV and AIDS)
- Marital status
- Medical condition (including cancer and genetic characteristics)
- Genetic information
- Military and veteran status
- National origin (including language use and restrictions)
- Race
- Sex (including pregnancy, childbirth, breastfeeding, and related medical conditions)
- Gender
- Gender identity and gender expression
- Sexual orientation

Or any other classification protected by California or federal law.

The County of Monterey prohibits harassment or retaliation against a person who opposes or complains about prohibited conduct or participates, in any way, in the complaint, investigation, or in other protected activity, such as filing and participating in a whistleblower complaint.

Discrimination complaints may be filed against an elected or appointed official, manager, supervisor, employee, contractor, or agent of the County of Monterey. These procedures do not and cannot apply to persons and entities outside of a contractual relationship with or under legal obligation to the County.

These procedures are not intended to prohibit employees or applicants for employment from filing complaints with the California Department of Fair Employment and Housing (DFEH) (800-884-1684 or www.dfeh.ca.gov) or the United States Equal Employment Opportunity Commission (EEOC) (800-669-4000 or www.eeoc.gov), or to prevent them from pursuing other available judicial remedies.

# GENERAL PROVISIONS

As employees, we share responsibility for bringing to the County's attention conduct that interferes with providing a work environment, or serving Monterey County residents, free of discrimination, harassment, or retaliation. Employees who have experienced or witnessed conduct they believe is contrary to the County's discrimination and harassment policies should take advantage of these complaint procedures.

**Notification of Discriminatory Conduct and Duty to Cooperate**

A person who wishes to make a complaint, or who inquires about a possible civil rights complaint, will be referred to the Civil Rights Ordinance and related policies. The Civil Rights Office's website contains resources that explain the complaint process and available resources.

If a person desires to make a complaint to the Civil Rights Office, the complaint should be made as soon as possible, but no later than 365 days from when the alleged discriminatory conduct occurred, or from the date the complainant had knowledge of the alleged discriminatory conduct.

Managers and supervisors must address potential issues of discrimination once discovered, even in circumstances where they are not the direct manager or supervisor of the victim or the alleged aggressor. Upon learning of any discriminatory conduct directed at an employee, applicant for employment, recipient of County services, or bidder or contractor who seeks to do or does business with the County, a manager or supervisor shall report such conduct immediately to the Civil Rights Office, but no later than 5 days after such allegedly discriminatory conduct is discovered.

All Monterey County employees and contractors have a responsibility to cooperate fully with the investigation of these claims. Records shall be made available to the Civil Rights Office in a timely manner upon request. Failure to cooperate fully with the investigation could subject an employee to disciplinary action. Department Heads shall coordinate with the Civil Rights Office to make employees available during the workday to be interviewed, at no expense – such as requiring the use of accrued time off – to the employee.

**Informal Inquiry or Concern Process**

Any person may approach the Civil Rights Office with a general concern or inquiry regarding a potential civil rights violation. The Civil Rights Office will speak with and counsel the person raising the concern to attempt to resolve the matter at the most appropriate level. The Civil Rights Office may offer some form of alternative dispute resolution, such as mediation, if appropriate.

If the matter is resolved, the Civil Rights Office shall memorialize the parties' understanding as to how the matter was satisfactorily resolved and will close the file.

If the matter is not resolved within 30 days of receiving the inquiry or concern – a timeframe that may be extended if resolution is possible, as determined by the Civil Rights Office with input from the participants – the matter may be closed at the request of the person making the inquiry or concern. However, given the nature of civil rights complaints, the Civil Rights Office cannot

guarantee that the matter will be closed because the County might have a legal obligation to continue this matter as a formal complaint.

# COMPLAINT PROCESS

### The Complaint

The complaint process begins with the filing of a complaint. The Civil Rights Office has complaint forms available but a written complaint is not necessary to commence the process. The complaint should contain as much information as necessary in order to properly evaluate the matter.

The complaint may be filed with the Civil Rights Office, the person's immediate supervisor, any supervisor within or outside of the person's department, a Human Resources Department representative, or with any department head. A person outside of the Civil Rights Office who receives a complaint shall forward it to the Civil Rights Office within 5 days.

A complaint is considered filed on the date it is received by any of the above-described individuals. Therefore, it is very important to consider the 365-day deadline when bringing a complaint to the attention of the County.

If a complaint alleging discrimination, harassment, or retaliation is not filed with the Civil Rights Office, the person receiving the complaint shall report such information to the Civil Rights Office within 5 days.

If a department other than the Civil Rights Office processes a complaint that includes matters both outside of and within the jurisdiction of the Civil Rights Office, the processing department, in addition to providing notice within 5 days of receiving such a complaint, shall also provide the Civil Rights Office with notice of the findings and resolution of the complaint within 15 days of closure of the matter.

The Civil Rights Office may initiate an investigation on its own initiative if there are reasonable grounds to believe that the County's Civil Rights Ordinance and civil rights policies have been violated.

### Intake Interview

Within 15 days of receiving a complaint, the Civil Rights Office shall schedule an intake interview with the complainant to gather information and understand the nature of the complaint. At the intake interview, the Civil Rights Office Representative will discuss with the complainant the rights, responsibilities, and options for resolving the complaint, emphasizing resolution at the most appropriate level.

## Conciliation Efforts

If appropriate in the judgement of the Civil Rights Officer, after completion of the intake interview, the Civil Rights Office shall work with the complainant to attempt to resolve the matter.

This process may include contacting the person charged with discrimination, participating in a form of alternative dispute resolution, and working collaboratively with the parties to find a solution to the complaint.

The goal of the conciliation process is to resolve the matter at the most appropriate level. If the matter is resolved, the Civil Rights Office will document the terms of the resolution and close the file. If the matter cannot be resolved, the Civil Rights Office will document that conciliation was not feasible and the matter will continue through the complaint process.

The Civil Rights Office will strive to complete any conciliation process within 30 days of the intake interview. This timeframe may be extended for a reasonable period if, in the judgment of the Civil Rights Office, resolution is possible within the extended period.

On occasion, conciliation efforts will not be appropriate either because of the special circumstances of the complaint or because it is not legally permissible. In such case, the Civil Rights Office will document that conciliation was not feasible. Other times, even if the matter is resolved, the Civil Rights Office might need to continue with the complaint process because of obligations imposed by law.

## Prima Facie/Apparent Basis Review

If the parties cannot reach a resolution during the conciliation process, the Civil Rights Office shall conduct a preliminary review of the complaint to determine if there is an apparent basis, or prima facie case, of a violation of the Civil Rights Ordinance or civil rights policies.

Apparent basis or prima facie case means that there is sufficient information to require an investigation of the conduct that allegedly violates the Civil Rights Ordinance and related civil rights policies. No apparent basis or no prima facie case means there is insufficient information to support a case of violation of the Civil Rights Ordinance or civil rights polices and an investigation is not required.

To make the apparent basis determination, the Civil Rights Office Representative may gather all necessary information. Such fact gathering may include talking with the complainant, named respondents, and witnesses, requesting and reviewing documents, and gathering any other information necessary to conduct the apparent basis review. However, the purpose of this preliminary inquiry is not to reach ultimate findings of fact but only to determine if there should be an in-depth investigation into the allegations in the complaint.

The Civil Rights Office Representative shall make a written record of the apparent basis or prima facie case determination, which will be completed within 30 days of the determination that conciliation was not feasible.

If the Civil Rights Office finds an apparent basis or prima facie case for the complaint, the Civil Rights Office will conduct a formal investigation to determine if the Civil Rights Ordinance or civil rights policies were violated. The Civil Rights Office will notify the complainant, the named respondents, and the department head of the apparent basis/prima facie determination within 5 days of making the determination. If the Civil Rights Office does not find an apparent basis or prima facie case for the complaint, the Civil Rights Office will take no further action in processing the complaint and will notify the complainant within 5 days of making such determination.

**Investigation**

Following the determination that there is an apparent basis or prima facie case to support a finding that the Civil Rights Ordinance or a civil rights policy was violated, the Civil Rights Officer, or designee, shall conduct a prompt, thorough, and impartial investigation.

The purpose of the investigation is to determine whether facts exist that support the allegations in the complaint that the Civil Rights Ordinance or civil rights policies have been violated.

The investigation may include interviewing witnesses and other identified individuals who have or may have information concerning the allegations. The investigation may also include gathering statements, documents, and any other relevant evidence.

The Civil Rights Office Representative shall prepare a confidential investigation report that will include findings of fact regarding the allegations that were determined should be investigated.

The investigation and the corresponding report should be completed within 90 days of initiating the investigation, if feasible.

**Determination by Civil Rights Officer**

Within 15 days of receiving the investigation report, the Civil Rights Officer, or designee, shall evaluate the findings of fact and supporting evidence, determine whether the respondent violated the County's Civil Rights Ordinance or related policies and notify the parties of the determination.

A cause finding means that, based on the findings of facts set out in the investigation report, the Civil Rights Officer, or designee, determined that it is more likely than not that the respondent engaged in conduct in violation of the County's Civil Rights Ordinance or related policies. A no cause finding means that it is more likely than not that the respondent did not engage in conduct in violation of the County's Civil Rights Ordinance or related policies.

If there was a determination that the Civil Rights Ordinance or related policies were violated, the Civil Rights Officer, or designee, shall issue to the department head recommendations for the prompt and effective resolution of the complaint.

Within 30 days of receiving the Civil Rights Office's recommendations, the department head will inform their appointing authority – either the County Administrative Officer or the Chairperson of the Board of Supervisors – or, in the case of elected officials, the Board of

Supervisors, and the Civil Rights Office what steps their department took to resolve the complaint.

**Conflict or Apparent Conflict of Interests**

If, in the opinion of the Civil Rights Officer, there is an actual or potential conflict of interest in the Civil Rights Office conducting the investigation, the Civil Rights Officer may retain the services of a neutral and impartial external investigator.

## SPECIAL PROVISIONS REGARDING COMPLAINTS FILED BY RECIPIENTS OF COUNTY SERVICES

Complaints filed pursuant to Title VI of the Civil Rights Act will be processed in accordance with these procedures except as follows:

Any recipient of County services who believes they have been subjected to discrimination, harassment, or retaliation has a right to file a complaint. Any such complaint must be filed with the Civil Rights Office within 60 days following the date of the alleged discriminatory action. The law prohibits intimidation or retaliation of any kind. Complaint forms are available online and at the Monterey County Civil Rights Office.

Complainants who require assistance in completing the form can contact the Civil Rights Office at (831) 755-5117 or can visit the Civil Rights Office at the County Government Center.

Complainants may submit their complaint form to the County of Monterey Civil Rights Office or to an external state or federal agency. However, if a person files a complaint with the County of Monterey Civil Rights Office and a federal or state agency simultaneously, the state or federal complaint will supersede the County complaint and the County's complaint procedures will be suspended pending the state or federal agency's findings.

Within 15 days of receipt of a complaint, a Civil Rights Office Representative will meet with the person making the complaint and determine whether the Monterey County Nondiscrimination Policy and federal or state laws apply.

The Civil Rights Office Representative will prepare a summary, including the complaint and the information gathered at the meeting, and send the summary to the department charged with discrimination within 30 days of the meeting.

The department charged with discrimination will prepare a written response to the charge and submit the response to the Civil Rights Office within 30 days of receipt of the summary.

The Civil Rights Office Representative will conduct a preliminary review to gather information to aid in making the apparent basis/prima facie case determination. The Civil Rights Office Representative shall make a written record of the determination of apparent basis for the complaint within 30 days of receipt of the department's response.

If the Civil Rights Office finds cause that the Civil Rights Ordinance, related policies, or federal or state laws were violated, the Civil Rights Office shall issue recommendations for the resolution of the matter. Within 30 days of receiving the Civil Rights Office recommendations, the Department Head will inform the Civil Rights Office and their appointing authority – either the County Administrative Officer or the Chairperson of the Board of Supervisors – or, in the case of elected officials, the Board of Supervisors, what steps their department took to resolve the complaint.

Throughout the process, the Civil Rights Office will attempt to resolve the matter at the most appropriate level. Every effort will be made to obtain a timely resolution of complaints.

# OTHER PROVISIONS

### Ongoing Conciliation Efforts

The Civil Rights Office shall make every effort to resolve a complaint. At any time during the processing of the complaint, the Civil Rights Office may hold conciliation sessions to facilitate a resolution.

### Confidentiality

The Civil Rights Office treats all information received about inquiries, or with the filing, investigation, and resolution of discrimination, harassment, and retaliation complaints as highly sensitive. Employees authorized by the County to receive and investigate complaints are required to maintain confidentiality to the extent possible and permitted by law.

It is expected and anticipated that all parties involved in complaint investigations will observe the same standard of sensitivity. After participating in an investigation, such as an interview, an individual shall abstain from discussing the substance of the interview with anybody other than their union or other representative, or attorney. Any individual who violates this expectation may be subject to discipline by their appointing authority.

Confidentiality is in the best interest of all parties. However, we cannot guarantee absolute confidentiality because the County may release information to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or a court order.

### Withdrawal

A complainant may withdraw a complaint at any time. However, the withdrawal of a complaint does not preclude the County from proceeding with an investigation because of obligations imposed by law.

### Complaints Against Elected or Appointed Officials

Complaints against elected or appointed County officials will be processed in accordance with these procedures except for the following:

Complaints against elected or appointed County officials should be submitted to the Civil Rights Officer. In addition, the County Administrative Officer, or the County Counsel, may also receive complaints against elected or appointed County officials, and shall refer such complaints to the Civil Rights Officer within 5 days, except when the complaints are against the Civil Rights Officer.

The Civil Rights Officer or an independent review officer designated by the Board of Supervisors shall investigate, or authorize and supervise the investigation of, the complaint.

County Counsel and the County Administrative Officer shall be notified within 10 days of the complaint being filed.

The Civil Rights Office shall notify respondents of the outcome of the investigation, if any, after consulting with County Counsel, the County Administrative Officer, and the Board of Supervisors regarding the investigative findings, determination and recommendation.

**Complaints Against the Civil Rights Officer or Civil Rights Office Employees**

Complaints against the Civil Rights Officer or Civil Rights Office employees shall be processed in accordance with these procedures except for the following:

Complaints against the Civil Rights Officer or Civil Rights Office employees should be submitted to the County Administrative Officer or County Counsel. The County Counsel shall process the complaints against the Civil Rights Officer or Civil Rights Office employees unless there is an actual conflict, potential conflict, or appearance of impropriety in so doing, in which case the County Administrative Officer shall process the complaint.

The County Counsel shall notify the Chairperson of the Board of Supervisors within 10 days of the filing of the complaint.

If the complaint involves the Civil Rights Officer, the County Counsel or County Administrative Officer, as appropriate, shall notify respondent of the outcome of the investigation, if any, after the investigation has been completed and the Board of Supervisors has been consulted regarding the investigative findings, determination and recommendations.

**Complaints Against the Administrative Officer or County Counsel**

The Civil Rights Officer shall process complaints against the County Administrative Officer or County Counsel in accordance with these procedures except for the following:

Complaints against the County Administrative Officer or County Counsel should be submitted to the Civil Rights Officer or a member of the Board of Supervisors.

The Civil Rights Officer shall notify the Chairperson of the Board of Supervisors within 10 days of the filing of the complaint.

The Civil Rights Officer shall notify respondents of the outcome of the investigation, if any, after the Civil Rights Officer has completed the investigation and consulted with the Board of Supervisors regarding the investigative findings, determination, and recommendations.

**Complaints Related to Merit System Employees and Public Safety Officers**

Merit System employees may file discrimination complaints with the Civil Rights Office directly, in addition to any remedies or procedures outlined in other personnel standards applicable to Monterey County. The complaint shall be processed in accordance with these procedures.

A Public Safety employee may also file a discrimination complaint with the Civil Rights Office directly. The complaint shall be processed in accordance with these procedures to the extent permitted by applicable law and regulations. Department Heads in County departments that employ peace officers shall direct their internal affairs investigator, management staff, peace officers, and other personnel to cooperate fully with the County's Civil Rights Office, consistent with applicable law and regulations, during discrimination complaint investigations, conciliation meetings, settlement negotiations and/or complaint resolution.

# Monterey County
# Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066
www.co.monterey.ca.us

## Board Order

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor John M. Phillips to:

Review and approve the Civil Rights Complaint Procedures.

PASSED AND ADOPTED on this 28th day of July 2020, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams
NOES: None
ABSENT: None
(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of 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 of Minute Book 82 for the meeting July 28, 2020.

Dated: July 28, 2020
File ID: 20-540
Agenda Item No.: 51

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

_____
Joel G. Pablo, Deputy