

Town of Enfield Sexual Harassment Prevention Policy
Policy #904- Revised December 12, 2018

The Town of Enfield (the "Town") is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of employee misconduct and workplace discrimination. The Town has and hereby reaffirms and adopts a zero-tolerance policy for any form of sexual harassment, and all employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of the Town's commitment to a discrimination-free work environment and augments, and does not replace or supersede existing policies. Whenever any Town policy is construed under applicable state or federal law, this policy shall be read in harmony therewith, including (but not limited to) New York State Labor Law § 201-g.

Policy:

1. Town Policy applies to all employees, applicants for employment, interns, whether paid or unpaid, all seasonal and temporary employees, all elected or appointed officials, and volunteers, contractors, subcontractors, all Non-Employees (as defined below) and others conducting business with Town (hereafter individually and collectively an "Employee or Contractor"). For purposes of this Policy, a "Non-Employee" is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services to the Town or in the Town's workplace, and protected Non-Employees include persons commonly referred to as independent contractors, temporary assigned workers, and temporary workers, and also includes persons providing equipment repair, cleaning services, or any other services provided pursuant to a contract with the employer.

2. Sexual harassment will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and disciplinary action, up to and including termination.

3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse employment action including being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. The Town has a zero-tolerance policy for such retaliation against anyone who, in good faith complains or provides information about suspected sexual harassment. Any Employee or Contractor who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. Any Employee or Contractor, and any other person, present or working in the workplace who believes they have been subject to such retaliation should inform the Town Supervisor or Town Clerk, or any Departmental manager or supervisor of the same. Any Employee or Contractor, and any other person, who believes they have been a victim of such retaliation may also seek compensation in other available forums, as explained below in the section on Legal Protections.

4. Sexual harassment is offensive, is a violation of Town policies, is unlawful, and subjects the Town to liability for harm to victims of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who knowingly allow such behavior to continue, will be penalized for such misconduct.

5. The Town will conduct a prompt, thorough and confidential investigation that ensures due process for all parties whenever the Town receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. Effective corrective action will be taken

whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigations of sexual harassment.

6. All employees are encouraged to report any harassment or behaviors that violate this policy. Town will provide all employees a complaint form for employees to report harassment and file complaints.

7. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or hear about to the Town Supervisor.

8. This policy applies to employees, each Employee or Contractor, all Non-Employees, and all such persons shall follow and uphold this policy. This policy must be posted prominently in all work locations and shall be provided to employees upon hiring.

What Is “Sexual Harassment”: Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes unwelcome conduct which is either of a sexual nature or that is directed at an individual because of that individual’s sex. This includes conduct directed at an individual’s sexual orientation, gender identity, and transgender status, when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.

A sexually harassing hostile work environment consists of words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements, or sexually discriminatory remarks, made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient’s job performance. Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors.

This can include hiring, promotion, continued employment or the offer, provision of, denial, or tying of any other terms, conditions or privileges of employment to improper conduct or behaviors violative of this policy, including encouraging the non-reporting of incidents. This is also called “quid pro quo” harassment.

Examples of sexual harassment: The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical assaults of a sexual nature, such as:
 - Touching, pinching, patting, grabbing, brushing against another employee’s body or poking another employees’ body;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:

- Requests for sexual favors accompanied by implied or overt threats concerning the victim's job performance evaluation, a promotion, or other job benefits or detriments;
 - Subtle or obvious pressure for unwelcome sexual activities.
 - Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are may be perceived as sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cellphones and sharing such displays while in the workplace.
 - Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or transgender status, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, name-calling.

Who can be a target of sexual harassment: Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, Non-Employees, and the general public against sexual harassment. A perpetrator of sexual harassment can be a superior, a subordinate, a co-worker, or anyone in the workplace, including an independent contractor, contract worker, vendor, client, customer, or visitor.

Where can sexual harassment occur: Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer-sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises or not during work hours.

What is "Retaliation": Unlawful retaliation can be any action, more than trivial, that keeps a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation. Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- Filed a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of the harassment;
- Complained that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Reporting Sexual Harassment

Preventing sexual harassment is everyone's responsibility. The Town cannot prevent or remedy sexual harassment unless it knows about it. Any employee, all Employees or Contractors, all Non-Employees, and anyone else who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to the Town Supervisor, Town Clerk, or other departmental manager. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to the Town Supervisor, Town Clerk, or other departmental manager. All departmental managers and public officers who are advised about any complaint or improper conduct violating this policy shall promptly report all information and deliver all documents to the Town Supervisor.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all persons are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf. Any person who believes they have been a victim of sexual harassment may also seek compensation in other available forums, as explained below in the section on Legal Protections.

Supervisory Responsibilities: All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, *are required* to report such suspected sexual harassment to the Town Supervisor. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

Complaints and Investigations of Sexual Harassment: *All* complaints or information about suspected sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, and should be completed within 30 days. The investigation will be confidential to the extent possible. All persons involved, including victims, witnesses and alleged perpetrators will be accorded due process to protect their rights to a fair and impartial investigation. Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. Employees who participate in any investigation will not be retaliated against.

Investigations will be done in accordance with the following steps:

- Upon receipt of complaint, the Town Supervisor will present the complaint to the Threat Assessment Team, who will conduct an immediate review of the allegations and take any interim actions, as appropriate. If the complaint is oral, the complainant will be encouraged to complete the "Complaint Form" in writing. If he or she refuses, the Town Supervisor will prepare (or cause to be prepared) a Complaint Form based on the oral reporting.
- If documents, emails or phone records are relevant to the allegations, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;

- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - A list of all documents reviewed, along with a detailed summary of relevant documents;
 - A list of names of those interviewed, along with a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents, reported or unreported; and
 - The final resolution of the complaint, together with any corrective actions action(s).
- Keep the written documentation and associated documents in the employer's records.
- Promptly notify the individual who complained and the individual(s) who responded of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who complained of their right to file a complaint or charge externally as outlined below.

Legal Protections and External Remedies: Sexual harassment is not only prohibited by the Town but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at Town, employees may also choose to pursue legal remedies with the following governmental entities at any time (some general rules apply to complaint filings, and some general guidance as to such timelines and requirements is provided. Such information is subject to exceptions and amendments, and the provision of this information is not legal advice. All persons should consult with a qualified advisor or attorney for updated and accurate analysis or advice in respect of these rules and timelines):

- **New York State Division of Human Rights (DHR):** The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 *et seq.*, applies to employers in New York State with regard to sexual harassment, and protects employees, unpaid interns and Non-Employees. A complaint alleging violation of the Human Rights Law may be filed either with DHR or in New York State Supreme Court. Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged discrimination. An individual may not file with DHR if they have already filed an HRL complaint in state court.

Contact DHR at (888) 392-3644 or visit www.dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400

- **Civil Rights Act of 1964 and the United States Equal Employment Opportunity Commission (EEOC):** The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e *et seq.*). An individual can file a complaint with the EEOC any time **within 300 days** from the harassment. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties.

Federal courts may award remedies if discrimination is found to have occurred. If an employee believes that he/she has been discriminated against at work, he/she can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820(TTY)), visiting their website at www.eeoc.gov or via email at info@eeoc.gov If an individual filed an administrative complaint with DHR, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

- **Local Protections:** Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

In Tompkins County, complaints may also be filed at the Tompkins County Office of Human Rights, at 120 West Martin Luther King, Jr./State Street, Ithaca, New York 14850, (607) 277-4080, (607) 277-4106 (fax).

- **Contact the Local Police Department:** If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department, Sheriff's Office, or the State Police.

In all cases, complainants and those subjected to sexual harassment should consult with qualified advisors and legal counsel of their choice. Additionally, compliance with this policy does not prevent any person from being subjected to civil or criminal legal action or responsibility. Finally, the adoption of this policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

RESOLUTION #2018-59 Adoption of 2018 Sexual Harassment Policy and Complaint Form

WHEREAS New York State has updated requirements for Sexual Harassment policies and procedures for employers within the State, and;

WHEREAS, the Town of Enfield has explored various policies and determined that a policy based on the New York State model policy is appropriate for our needs, therefore be it

RESOLVED, the Town of Enfield hereby adopts a new Sexual Harassment policy and Complaint Form prepared by Attorney Guy Krogh, with changes made, to replace policy #904-Sexual Harassment, in the Town of Enfield Employee Handbook, effective immediately.

Resolution #2018-60 Threat Assessment Committee

WHEREAS a Threat Assessment Committee is needed to investigate complaint of Sexual Harassment and other threat assessments, now therefore be it

RESOLVED, a Threat Assessment Committee will be formed consisting of the Town Supervisor, one Town Board member and the Town Justice to address Town of Enfield sexual harassment complaints and other threat assessments as determined by the Town Board.