



CITY OF MARLBOROUGH

SEXUAL HARASSMENT: POLICY AND PROCEDURES

I. Policy

A. Introduction

The City of Marlborough (the "City") depends upon a work environment of tolerance and respect for the achievement of its goals. The City is committed to providing a working environment that is free of all forms of abuse or harassment. Sexual harassment is unlawful of employees occurring in the workplace or in other settings related to their employment and will not be tolerated by the City.

Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by the employees.

Because the City takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and where it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate, including termination of employment.

It is important to note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.

B. Definition of Sexual Harassment

In Massachusetts, the legal definition for sexual harassment is this: "sexual harassment" means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

- a. submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or,
- b. such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a work place environment that is hostile, offensive, intimidating, or humiliating to male, female or employees who do not identify as gender binary, may also constitute sexual harassment. Sexual harassment may involve individuals of the same or different genders, or those who do not identify as gender binary.

The complainant does not have to be the person at whom the unwelcome sexual conduct is directed. The complainant, regardless of gender, may be a witness to or otherwise personally offended by such conduct. The alleged harasser may be anyone including a supervisor, a manager, a co-worker, or a non-employee, such as a recipient of public services or a vendor.

Sexual harassment does not refer to purely voluntary social activities. It refers to behavior, which is not welcomed by the employee, which is personally offensive to him or her, and which undermines morale and/or interferes with the ability of the employee to work effectively.

Examples of workplace sexual harassment include, but are not limited to:

- Gender based bullying, including bullying based on transgender or non-gender binary status;
- Attempts to coerce an unwilling person into a sexual relationship;
- Repeatedly subjecting a person to unwelcome sexual or romantic attention;
- Punishing a person's refusal to comply with a request for sexual conduct; and
- Conditioning a benefit on submitting to sexual advances.

While it is not possible to list all the circumstances that may constitute sexual harassment, under this policy, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances, flirtations or propositions – whether they involve physical touching or not;
- Sexual “kidding” epithets, jokes, written or oral references to sexual conduct;
- Gossip regarding one's sex life;
- Comment on an individual's body or an individual's sexual activity, deficiencies, or prowess;
- Unwelcome leering or staring at a person;
- Sexual gestures and suggestive or insulting sounds such as whistling, or comments with sexual content or meaning;
- Uninvited sexual contact, such as touching, hugging, and purposely brushing against the body, patting or pinching;
- Indecent exposure;
- Inquiries into one's sexual experiences;
- Discussion of one's sexual activities;
- Sexual emails;
- Sexting or sexual messages or images posted on social media, including but not limited to instant messages, Facebook posts, Tweets, Snapchat, Instagram, or blog entries; and

- Posting or distributing sexually suggestive objects, pictures, cartoons or other materials;

C. Retaliation

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by the City.

Individual Responsibilities:

Each individual of the City is personally responsible for:

- ensuring that his/her conduct does not sexually harass any other employee or person with whom the employee comes in contact on the job, such as an outside vendor;
- cooperating in any investigation of alleged sexual harassment by providing any information he/she possesses concerning the matter being investigated;
- actively participating in efforts to prevent and eliminate sexual harassment and to maintain a working environment free from such discrimination; and
- ensuring that an employee who files a sexual harassment claim or cooperates in an investigation may do so without fear of retaliation or reprisal.

D. The Policy

It is, therefore, against the policy of the City for any individual, to harass another individual sexually, that is, by making unwelcome sexual advances, requests for sexual favors, or other uninvited verbal or physical conduct of a sexual nature when:

- submission to such conduct is made either implicitly or explicitly a term or condition of an employee's employment;
- submission to, or rejection of, such conduct by an individual is made the basis for employment decisions affecting the employee;
- such conduct has the purpose or effect of interfering with an individual's work performance; or
- a hostile or intimidating work environment is created for the employee, or
- such conduct has the purpose or effect of interfering with an individual's work performance.

E. Non-Employee Conduct

During the course of their employment, employees may interact with people who are not employed by the City. Employees are encouraged to report all conduct they believe to be sexual harassment, whether or not such conduct is directed at them, including the conduct of non-employees. While the ability of the City to impose sanctions on a non-employee is limited, the City will follow the same process to the extent practicable. Upon a determination that sexual harassment by a non-employee has occurred, the City will take all action reasonably necessary and practicable to prevent the recurrence of sexual harassment.

F. Employees working off site

All of the protections and provisions set forth in this policy apply regardless of whether the employee is working at their regular job site or an alternative site within the scope of their employment.

G. Interns and Contractors

All of the protections and provisions set forth in this policy apply to interns and contractors.

H Social Media/Electronic Communication

Many employees engage in social media and electronic communication (including emails, texts and desktop wallpaper) in a manner that is consistent with the City's policies and procedures, including this policy. Social media and improper electronic communication that rise to the level of harassment or other unprofessional or improper conduct as defined in this policy is prohibited at all times. An employee who is subject of harassment as defined in this policy through social media or electronic communication should report such harassment.

II. Violation of Policy

Any individual violating this policy will be subject to appropriate discipline, up to and including termination of employment.

III. PROCEDURES FOR COMPLAINTS

A. Complaint

The City has designated a Sexual Harassment Grievance Officer. The current Sexual Harassment Grievance Officer is Christine Purple, Human Resources Director. She can be reached at City of Marlborough, 140 Main Street, Marlborough, MA 01752, cpurple@marlborough-ma.gov and her telephone number is (508) 460-3705. If you would prefer, you may contact Jason Grossfield, Esq., City Solicitor, who has been designated as the Alternate Sexual Harassment Grievance Officer. He can be reached at City of Marlborough, 140 Main Street, Marlborough, MA 01752, jgrossfield@marlborough-ma.gov and his telephone number is (508) 460 3771.

If any individual believes he, she or they have been subjected to sexual harassment, the individual should initiate a complaint by contacting the Sexual Harassment Grievance Officer or the Alternate Grievance Officer as soon as possible. The individual should file the complaint promptly following any incident of alleged harassment. The individual should be aware that the longer the period between the event giving rise to the complaint and the filing, the more difficult it may be for the Sexual Harassment Grievance Officer to investigate what occurred. The individual will be requested to write out his, her or their complaint to document the charge.

If an employee prefers to discuss a possible sexual harassment problem with his, her or their supervisor, the employee may always do so, but employees do not have to go through the regular chain of supervision when reporting sexual harassment and may go directly to the Grievance Officer or the Alternate Grievance Officer.

Department Heads and supervisors are required to promptly report any knowledge or awareness of an instance of sexual harassment to the Sexual Harassment Grievance Officer or the Alternate Grievance Officer. A Department Head or supervisor who witnesses or otherwise has direct knowledge regarding an occurrence of harassment and fails to report such knowledge may be subject

to disciplinary action, up to and including termination, particularly if the Department Head or supervisor has engaged in a pattern of overlooking harassment or retaliation.

B. Investigation

On receiving the complaint, the Sexual Harassment Grievance Officer or the Alternate Sexual Harassment Grievance Officer will promptly have a preliminary investigation made into the matter. The investigation will be conducted by the Grievance Officer in such a way as to maintain confidentiality to the extent practicable under the circumstances.

All parties, including the complainant and the individual alleged to have engaged in wrongdoing, shall be (i) provided with an explanation of the investigatory procedures; (ii) advised of the importance of confidentiality; (iii) reminded of the applicable limits of confidentiality; (iv) reminded of the prohibition on retaliation; and (v) provided with contact information for any relevant external resources.

The investigation will include a private interview with the person filing the complaint and with witnesses. The grievance officer will also interview the person alleged to have committed sexual harassment. If after the completion of this preliminary investigation it is determined that there is reasonable cause for finding a violation of this policy, the City will notify the complainant and the subject employee of the finding orally. The subject employee will be requested to respond to the complaint. Additional investigation will be made to the extent appropriate in each case. This process will be confidential to the extent consistent with an effective investigation, subject to the business needs of the City.

C. Decision and Disciplinary Action

After the response of the subject employee has been made, and any further investigation that may be warranted has been carried out, the City will make a final decision. If upon investigation, the City finds that the subject individual's conduct is in violation of this policy, the City will take action to address the conduct. Such action may range from a verbal warning to termination from employment and may include other forms of disciplinary action deemed appropriate under the circumstances.

At the conclusion of the investigation, the individual making the complaint and the individual against whom the allegation was made shall be advised as to the outcome of the investigation. Both will be reminded that retaliation for making the complaint is prohibited.

The complainant will be notified of the disposition of the investigation.

IV. STATE AND FEDERAL AGENCIES

In addition to the above, if you believe you have been subjected to sexual harassment, you may file a formal complaint with either or both government agencies set forth below. Using our complaint process does not prohibit you from filing a complaint with these agencies.

The Massachusetts Commission Against Discrimination ("MCAD"), located at One Ashburton Place, Boston, MA 02108 (Headquarters), with Branch Offices at: 484 Main St, Room 320, Worcester, Ma 01608; 436 Dwight Street, Springfield, MA 01103; and 28 Union St, Suite 206, New Bedford, Ma 02740. The U.S. Equal Employment Opportunity Commission ("EEOC") is located at JFK Federal Office Building, Government Center, Room 475, Boston, MA 02203. The MCAD and EEOC may be contacted

at the above addresses. A complaint to the MCAD or EEOC may be filed within 300 days of the last date of discrimination.

V. ACKNOWLEDGMENT OF RECEIPT OF POLICY

I acknowledge receipt of this Sexual Harassment Policy from the City, and I have read its contents.

Employee Name (Print)

Employee Signature

Witness

Date