

SEXUAL HARASSMENT POLICY:

SECTION I : PURPOSE:

Under Title VII of the Civil Rights Act of 1964, sexual harassment in the workplace constitutes unlawful employment discrimination which may give rise to liability against both the Town and the harasser whether the harasser is a supervisory level employee or a co-employee of the complainant. The purpose of this policy is to define sexual harassment, establish Town policy concerning allegations of sexual harassment and to establish appropriate enforcement and reporting procedures.

SECTION II : SCOPE:

This policy covers all employees of the Town of Windham.

SECTION III : DEFINITIONS:

- A) "Sexual Harassment" shall mean any unwelcome sexual advance, request for sexual favor, and/or other 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 employment;
 2. Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or
 3. The conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment.

The term Sexual Harassment shall not include any particular physical action or communication between employees which occurs within a purely personal, social relationship without a discriminatory employment effect.

- B) "Supervisor or Supervisory Capacity" shall mean any person employed by the Town in a position whose duties include overseeing, directing and instructing other Town employees in the performance of their job or whose duties include the authority to hire, fire, discipline or promote or to participate in or recommend such actions.

SECTION IV : EXAMPLES OF SEXUAL HARASSMENT:

In general, there are two (2) separate and distinct forms of sexual harassment:

Quid Pro Quo (this for that): Occurs where the employer or supervisor expressly or impliedly conditions employment opportunities upon entering into a sexual or social relationship.

Hostile Environment: Occurs where the employer, supervisor or co-employee makes or permits unwarranted and unwelcome sexual advances to another employee, or sexual conduct that rises to the level of creating an offensive or hostile working environment.

Some illustrative examples of conduct which could constitute sexual harassment in the workplace under certain circumstances would include but not necessarily be limited to the following:

- A) Sexual comments, attempts at humor or innuendoes of a provocative or suggestive nature.
- B) The leaving of sexually explicit books, magazines or photographs in the workplace.
- C) Unwelcome demeaning comments, ridicule, offensive language, propositions or other similar actions.
- D) Unwanted, unwarranted or unsolicited off-duty telephone calls and contact.
- E) Hiring or promoting an employee in exchange for sexual favors or transferring, demoting, or dismissing employees who refuse such sexual advances.

SECTION V : POLICY:

It is the policy of the Town of Windham to provide a professional, businesslike work environment free from all forms of employee discrimination including incidents of sexual harassment. No employee shall be subjected to unsolicited and unwelcome sexual overtures or verbal or physical conduct of a sexual nature. Sexual harassment will be treated as misconduct with appropriate disciplinary sanctions.

It shall be a violation of Town policy for any person employed by the Town to sexually harass any other Town employee.

It shall also be a violation of Town policy for any person employed by the Town as a supervisor or in a supervisory capacity who knows or should have known of conduct which violates this policy and who fails to take corrective action, or where no corrective action is taken, fails to report the occurrence to the Town Administrator. All supervisors or persons acting in a supervisory capacity observing a violation of this policy and who take corrective action pursuant to this policy must document the occurrence, the corrective action taken, and retain such documentation for a period of two (2) years.

SECTION VI : SUPERVISORY RESPONSIBILITIES:

Each supervisor or those serving in a supervisory capacity shall be responsible for preventing acts of sexual harassment. This responsibility includes but is not limited to the following:

- A) Monitoring the departmental environment on a continuous basis for signs of harassment that may be occurring;
- B) Counseling employees in the types of behaviors prohibited, and the Town's procedures for reporting and resolving complaints of harassment;
- C) Stopping any observed acts that may be considered harassment, and taking appropriate steps to intervene, whether or not the involved employee(s) are within their direct line of supervision;

- D) Taking immediate action to limit the work contact between two or more employees where there has been a complaint of harassment, pending investigation;
- E) Assisting any employee of the Town, who comes to that supervisor with a complaint of harassment, pending investigation.
- F) To treat all complaints as confidential and to inform the complainant(s) that confidentiality will be followed to the extent the investigation allows.

SECTION VII : EMPLOYEE RESPONSIBILITIES:

Each employee of the Town is responsible for assisting in the prevention of sexual harassment through the following acts:

- A) Refraining from participation in, or encouragement of, actions that could be perceived as harassment;
- B) Reporting acts of harassment to themselves or a fellow employee to their Department Head; and
- C) Reporting of any retaliation, after resolution of the case, to their Department Head.

SECTION VIII : PROCEDURES:

Any employee who believes that they have been sexually harassed shall report the incident to their Department Head in accordance with the following procedures. The employee also has the option of reporting an incident directly to the Town Administrator.

- A) INFORMAL PROCESS: The Department Head, or Town Administrator, if applicable, shall encourage the complainant to discuss the complaint with the respondent. The Department Head or Town Administrator may be present during such discussions if either party request such presence. If either the complainant or the respondent does not agree to discuss the complaint informally, or if the parties are unable to resolve the complaint through informal discussion, the complainant may proceed to the Formal Procedure outlined below.
- B) FORMAL PROCEDURE:
 - 1. Any employee who believes that they are being harassed shall report the incident(s) in accordance with this section as soon as possible, but no later than thirty (30) days from the alleged wrongdoing(s), so that steps may be taken to protect the employee from further harassment, and so that appropriate investigative and disciplinary measures may be initiated.
 - a) If the allegation involves a co-worker, the complaint shall be filed with the Department Head or, if they choose, directly to the Town Administrator;
 - b) If the allegation involves the employee's Department Head, they shall submit their complaint to the Town Administrator.
 - c) If the allegation involves the Town Administrator, the employee shall submit the complaint to the Board of Selectmen.

- d) If the allegation involves a member of the Board of Selectmen, or another elected official, they shall submit the complaint to the Town Administrator.
2. The complaint shall be written and shall include the following information:
 - a) A description of the action, policy, practice or procedure upon which the complaint is based;
 - b) If the complaint is based on an action, the date(s) thereof;
 - c) If the complaint is based on an action, the name of the respondent;
 - d) The nature of the alleged sexual harassment;
 - e) Whether or not the complainant has informally discussed the matter with the respondent or supervisor; and if so, the results of the discussion(s); and
 - f) Whether or not the complainant has filed a separate grievance through another Town process(s).

All complaints of sexual harassment will be treated seriously and with respect. Every complaint will be promptly and thoroughly investigated by the Department Head, the Town Administrator, or the Board of Selectmen, working singularly or in conjunction, to verify whether a violation of law and the Town's policy has occurred. When the allegations are verified, prompt and appropriate corrective action and disciplinary measures, up to and including dismissal, will be implemented.

3. The individual receiving the complaint shall conduct a thorough investigation in accordance with these procedures:
 - a) Within ten (10) business days of receipt of the written complaint, the Department Head, Town Administrator, or Board of Selectmen, as appropriate, shall conduct an interview with the complainant. At this time they shall inform the complainant of the procedural steps which will be taken and the complainant's rights under this policy. The information conveyed shall include:
 - 1) Notice that sexual harassment is also a violation of Title VII of the Civil Rights Act of 1964, as amended, and that the complainant has the right to elect to file a complaint with the United States Equal Employment Opportunity Commission or the State of New Hampshire Human Rights Commission.
 - 2) That if the complainant files such a complaint with the EEOC or the State Commission, that the investigation of the complaint by the Town of Windham would immediately cease.
 - 3) At the conclusion of the interview, the official shall have the complainant sign a statement that they have been advised and understand the procedures and their rights under this policy.

- b) Within ten (10) business days of the interview, the Department Head, Town Administrator, or Selectmen, as appropriate, shall notify the respondent in writing that a complaint has been filed and that an interview has been conducted. Such notification shall include a summary of the written statement and the interview.
- c) Within ten (10) business days of receipt of notification, the respondent shall provide the official with a written reply to the complaint.
- d) After the investigating official receives the reply from the respondent, they shall:
 - 1) Provide an opportunity for the complainant and respondent to meet with them to discuss the complaint.
 - 2) Interview all individuals whom the parties have identified as having pertinent information; and
 - 3) Review all documents provided by the parties.
- e) Within ten (10) business days of the date on which the respondent's reply is received, the investigating official shall complete their investigation and, unless it is the Town Administrator, shall submit a written report, including a summary of the complaint, findings, and recommendation, to the Town Administrator.
- f) Within ten (10) business days from receipt of the recommendation, the Town Administrator shall review the recommendation and shall uphold, reverse, or modify same.

The Town Administrator's decision shall be provided to the complainant and respondent in writing and shall include any findings of the investigation and a brief summary of any corrective actions to be taken, if any, by the Town with regard to the offending employee.

Any corrective or disciplinary action taken shall be consistent with the current Town personnel policy or applicable union contract.

- g) The complainant or respondent may appeal the Town Administrator's decision to the Board of Selectmen in writing within ten (10) business days of receipt of the decision. The Board of Selectmen shall review the decision of the Town Administrator and shall uphold, amend, or modify as they deem appropriate. The decision of the Board of Selectmen shall be made within fourteen (14) business days from receipt of the appeal and shall be considered final.
- h) If the complaint is filed against a member of the Board of Selectmen, that member may not take part in any appeals filed with the Board.
- i) If the complaint is filed against the Town Administrator, the Board of Selectmen, acting as investigating officials, shall render a decision which will be considered final.

SECTION IX : CONFIDENTIALITY:

All records and findings developed during the formal investigation of all complaints shall be held in the strictest confidence. These records shall be considered confidential under the New Hampshire Right to Know Law and shall only be released as required by law. The Town Administrator shall be responsible for maintaining such confidentiality.

If the Board of Selectmen are serving as the investigatory officials, then they would be responsible for maintaining the confidentiality of those specific records.

SECTION X : RETALIATION:

An employee reporting an incident of sexual harassment or assisting, testifying or participating in the investigation of such a complaint shall not be subject to retaliation from another employee. Retaliatory conduct shall be deemed a violation of this policy, and will result in discipline up to and including termination of employment. Employees who have experienced retaliation should report it immediately under the reporting procedures of this policy so that the allegations can be promptly investigated and addressed. An employee who knowingly provides false information, may be subjected to discipline up to and including termination of employment, and such discipline shall not constitute retaliation. *(amended 9/9/13)*

SECTION XI: REPORTING TO NH COMMISSION FOR HUMAN RIGHTS:

Notwithstanding any other provision outlined in this Policy, any employee who believes they have been sexually harassed can report the incident or file a complaint with the New Hampshire Commission for Human Rights.

SECTION XII : POSTING:

This sexual harassment policy shall be posted in each department. Any questions regarding this policy and procedures shall be directed to the Town Administrator.

SECTION XIII : AMENDMENTS:

This policy may be amended by vote of the Board of Selectmen at a properly scheduled meeting. Proposed amendments shall be posted in all departments at least 14 days prior to the meeting.

SECTION XIV : SIGNATURES:

This policy has been adopted by the Board of Selectmen at a properly posted Selectmen's Meeting on October 24, 1994.

Charles E. McMahon
Galen A. Stearns
Edward J. Milan
Elizabeth A. Dunn
Douglass L. Barker
Board of Selectmen

Re-codified and affirmed by the Board of Selectmen - May 11, 1998

Amended by Board – September 9, 2013

**SEXUAL HARASSMENT
COMPLAINT INTAKE CHECKLIST**

Name of Complainant: _____

Date(s) of Occurrence: _____

Brief Description of Occurrence: _____

Witnesses (if any identified): _____

_____ **Definition of Sexual Harassment explained**

_____ **Procedure for investigating complaints explained to complainant**

I have received an explanation of the Town of Windham's Sexual Harassment Policy, the procedures to be followed and my rights under the policy, and I understand these procedures and rights.

Complainant Signature

Date

**Department Head/Town Administrator
(signed by official accepting complaint)**

Date

Original to be retained by intake supervisor (no copies of this form are to be made). Original to be forwarded on to Town Administrator with complete investigation report.