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## CITY OF GREENVILLE

POLICY NO: 5.6

DATE: December 2, 2009

SUBJECT: Sexual Harassment No Tolerance Policy

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APPROVALS:

  
\_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
Human Resources Director

## I. Purpose

The purpose of this policy is to prohibit and prevent sexual harassment and to establish procedures for handling sexual harassment complaints, investigations, and corrective actions.

## II. Applicability

This policy applies to the conduct of all City of Greenville employees, managers, supervisors, volunteers, interns, and any other non-employee participants in the workplace. It also addresses the conduct of visitors to the City workplace to the extent supervisors and managers need to protect employees, volunteers, interns, and other non-employee participants from the inappropriate conduct of visitors.

## III. Definitions

- **Sexual Harassment:** The City adopts the definition of sexual harassment contained in 29CFR1604.11: “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.”

Sexual harassment in the City of Greenville work place is prohibited.

While sexual harassment encompasses a wide range of behavior, some examples of specifically prohibited conduct include:

- a) Promising an employee, directly or indirectly, job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment if the employee complies with a sexually oriented request.
- b) Threatening, directly or indirectly, to retaliate against an employee, if the employee refuses to comply with a sexually oriented request.
- c) Denying, directly or indirectly, an employee an employment-related opportunity, if the employee refuses to comply with a sexually oriented request.
- d) Exhibiting, permitting, or encouraging material such as pornographic or sexually explicit posters, calendars, graffiti, or objects.
- e) Engaging in unwanted, unwelcome, and unwarranted verbal sexual behavior and advances, including but not limited to, requests for sex or sexual favors, graphic commentary about or innuendos insinuating sex, degrading or explicit language or words, sexual references to an individual’s body or body parts, sexual jokes, stories, gestures, or statements.

- f) Intentional or offensive physical contact that is sexual in nature, including, but not limited to, touching, pinching, patting, hugging, kissing, rubbing, massaging, brushing and/or pulling against another's body or clothes, ogling, staring, or stalking.
  - g) Displaying, storing, or transmitting pornographic or sexually oriented materials using the City's equipment or facilities.
  - h) Engaging in indecent exposure.
  - i) Making sexual or romantic advances toward an employee and persisting, despite the employee's rejection of the advances.
  - j) Physical assaults on other employees, including, but not limited to rape, sexual battery, molestation, or any attempt to commit such acts or assaults.
- **Offender:** "Offender" means an individual who has engaged in sexual harassment. Sexual harassment can occur between any individuals associated with the City (e.g., an employee and supervisor, coworkers, and/or customers, consultants, and any employee participants in the workplace). Sexual harassment can occur in a variety of circumstances, including but not limited to the following:
    - The offender may be either male or female, and the victim may be either male or female. The occurrence can be between people of the same or different sexes.
    - The offender can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
    - The victim does not have to be the person directly harassed but could be anyone affected by the offensive conduct.
    - Sexual harassment may occur without economic injury to or discharge of the victim. The act itself is the injury.
    - The offender's conduct must be unwelcome in order to qualify as sexual harassment. However, the fact that the victim does not speak out when the offensive conduct occurs is not necessarily proof that the conduct was unwelcomed.
  - **Voluntary Romantic and/or Sexual Relationships:** Romantic or sexual relationships between individuals—even when completely voluntary by each person involved—constitute a conflict of interest and represents a potential liability for the individuals and for the City when the relationships occur between a supervisor and a subordinate. Such relationships regularly become disruptions in the workplace, have an adverse effect upon morale, and sometimes evolve into sexual harassment. Voluntary romantic and sexual relationships between supervisors and subordinates are prohibited. Any persons who find

themselves becoming involved in such a relationship must provide notice to their managers or to the Human Resources Department.

- **Victim:** "Victim" means a City employee, manager or supervisor, an individual under consideration for City employment, or an individual engaged in business or other activity with the City who has been subjected to sexual harassment. Victims do not only include direct targets of sexual harassment but also bystanders and witnesses to harassment.

#### **IV. Policy**

The City of Greenville does not tolerate workplace sexual harassment. Sexual harassment violates an individual's privacy, personal dignity, sense of self worth, and the right to be left alone from unwanted advances in the workplace. The City considers sexual harassment, in all its forms, to be a serious offense.

The City provides procedures for victims of sexual harassment to report such sexual harassment, and the City enforces disciplinary penalties on those who commit sexual harassment. No person, employee or third party, no matter his or her title or position, has the authority (expressed, actual, apparent or implied) to commit sexual harassment. The City of Greenville prohibits, forbids, and does not tolerate any employee, manager, male or female, to harass any other person, male or female, in the workplace, or to create a hostile or intolerable working environment by exhibiting, committing, or encouraging conduct comprising sexual harassment. The same standards of conduct applicable to employees shall apply to and be expected of contractors, consultants, customers and visitors conducting business with or on behalf of the City, or using any City facility. Any employee who experiences or observes sexual harassment in the work place by people who are not employees, volunteers, interns, or other persons subject to supervision by the City should report the offense to his or her supervisor or manager or to the Human Resources Department so that corrective and protective action can be taken.

All [claims of] sexual harassment must be reported and must be investigated. All employees, managers, and supervisors will cooperate with any investigation of workplace wrongdoing and/or risk determination. All employees, including supervisors and managers, will be subject to severe discipline, up to and including discharge, for any act of sexual harassment they are determined after inquiry to have committed.

In no event will a reporting employee be disciplined in any way for his/her valid effort to report known sexual harassment. No employee, supervisor, or manager shall be permitted to retaliate against another employee, supervisor, or manager for participating in or cooperating with an investigation of wrongdoing, and, if believed to have retaliated, shall be subject to severe disciplinary action.

#### **V. Procedures**

The Human Resources Director is responsible for the administration of this policy and the associated procedures. Department Directors, managers, and supervisors are responsible for acting

with due diligence to secure compliance with this policy. Any such individual who obtains information that would lead a reasonable person to believe that this policy has been violated must refer the matter to their Department Director and Human Resources Director to initiate a prompt and thorough investigation.

**A. Romantic and/or Sexual Relationships**

Individuals in positions of authority should be aware that romantic or sexual relationships with employees pose a potential of real, or perceived, exploitation and thus pose a legal risk to both the individual and the City. Romantic and/or sexual relationships between individuals when one has a supervisory role over the other in the workplace constitute a conflict of interest and are prohibited. The person in the position of higher institutional authority (management) has the primary responsibility to eliminate the conflict of interest. The conflict of interest must be eliminated in such a way which minimizes potential for harming the person with lower institutional authority.

No person involved in a romantic and/or sexual relationship will have direct responsibility for evaluating the performance or for making decisions regarding the hiring, promotion, compensation, or termination of the other party to the relationship. Alternative employee/supervisory arrangements will be made to avoid any real or perceived conflict of interest or unfairness. Acceptable alternative arrangement means removing any supervisory responsibilities between the person with institutional power and the employee. If acceptable alternative arrangements are not feasible, the relationship cannot continue.

Whenever individuals are involved in a relationship prohibited under this subsection (A) and they do not follow prescribed procedures in providing notice as required here, then they are in violation for the failure to disclose and for the failure to take corrective action.

**B. Duty to Act**

Any City of Greenville Department Director, manager, supervisor, or employee who becomes aware of information that would lead a reasonable person to believe that sexual harassment has occurred shall notify the Human Resources Director within five (5) days of becoming aware of this information by completing Exhibit A: Harassment Complaint Form. The Complaint form and any related documentation will initiate collaboration between the Human Resources Director and the impacted department to determine how to proceed with resolving the complaint.

**C. Confidentiality**

To the extent possible, all information received in connection with the filing, investigation, and resolution of allegations will be treated as confidential except to the extent it is necessary to disclose particulars in the course of investigation or when compelled to do so by law. Confidentiality during an investigation, however, cannot be absolutely assured. All individuals involved in the process should observe the same standard of discretion and respect for the

reputation of everyone involved in the process. The employee and the City's investigator(s) are expected to keep the information as discreet as possible; the City, therefore, suggests that employees limit their discussion of the complaint to the person to whom they make their report, and/or to the sexual harassment investigator(s) who interview them after their initial report.

**D. Retaliation**

City policy and federal law prohibit retaliation against an individual for reporting sexual harassment or for participating in an investigation. The City will not tolerate any form of retaliation against a sexual harassment complainant, alleged harasser or witness cooperating with an investigation of a harassment complaint. Retaliation is a serious violation that can subject the offender to sanctions independent of the merits of the sexual harassment allegations. Disciplinary action will be taken. The severity of the discipline will be based on the nature and extent of the harassment and retaliation and other relevant factors brought to the attention of management. The ultimate determination of the appropriate penalty for retaliation will be within the discretion of management. Allegations of retaliation should be directed to the Human Resources Director.

**E. Cooperation**

An effective sexual harassment policy requires the support of all the City of Greenville's personnel. Anyone who engages in sexual harassment and/or retaliation or who fails to cooperate with any City sponsored investigation may be disciplined by suspension or termination from employment. City of Greenville supervisors and managers who refuse to implement remedial measures obstruct remedial efforts or who retaliate against complainants, witnesses, or the alleged harasser may be disciplined by suspension or termination from employment.

**F. False Accusations**

The City recognizes that the question of whether a particular course of conduct constitutes sexual harassment requires a factual determination. The City also recognizes claims which are false, spurious, or made with the intent to harm fellow employees are also damaging and can be disruptive. If an investigation results in a finding that a person who has accused another of sexual harassment has maliciously or recklessly made false accusations are subject to discipline to the same extent, up to and including discharge, as those who commit the prohibited act. Any such discipline shall not be considered retaliation as prohibited in Section D.

**G. Reporting a Sexual Harassment Complaint**

Complaints should be filed in writing by completing a Harassment Complaint Form (Exhibit A) as soon as possible after an incident of alleged sexual harassment. An alleged violation of the City's sexual harassment policy may be taken to any of the following designated individuals:

- A Department Director
- The Human Resources Director
- Any supervisor
- The City's Risk Manager
- A member of the Collective Risk Management Team.

As another alternative for reporting sexual harassment and wrongdoing in general, the City has provided a toll-free 24-hour/day available *Employee Protection Hotline* which employees may anonymously call to report sexual harassment. *To report a complaint using the Employee Protection Hotline, call toll-free 1 (800) 576-5262 day or night, 24 hours per day.* When reporting complaints via the hotline, be sure to indicate the *City's Organization Code* which is *10046*.

Employees should make such reports of sexual harassment to their immediate supervisor. If the alleged harasser is the alleged's supervisor, the alleged should contact the next higher level supervisor, his/her Department Director, or the Human Resources Director. An individual under consideration for City employment or engaged in business or other activity with the City, who feels they have been subjected to sexual harassment, should immediately make a complaint to the alleged offender's immediate supervisor, the Department Director, or the Director of Human Resources.

Department Directors, managers, supervisors, and any Collective Risk Management Team member who receive such reports should contact the Human Resources Director immediately to coordinate the investigation.

## **H. Informal Resolution Procedures**

Sexual harassment concerns can often be resolved by the person being harassed addressing the matter directly with the alleged harasser. If the victim chooses to do so, he/she should immediately and directly express disapproval of an individual's sexually oriented attention or conduct. Employees are not required to directly confront the person who is the source of their sexual harassment complaint before notifying the City through any of the other reporting channels.

In many cases, a supervisor's informal warning to an alleged harasser, combined with appropriate follow-up supervision and monitoring of the employee's behavior might be sufficient to prevent sexual harassment. If the complaint cannot be resolved informally, the complainant should file a written sexual harassment complaint, using the Harassment Complaint form (Exhibit A).

## **I. Formal Resolution Procedures**

To initiate a formal investigation into an alleged violation of this policy, employees who feel that they have been a victim of sexual harassment also must file a sexual harassment complaint with either their supervisor, another manager within their department, their Department

Director, the Risk Manager, or the Human Resources Director, using the Harassment Complaint form (Exhibit A).

Complaints should be filed as soon as possible after an incident of alleged sexual harassment. To ensure the prompt and thorough investigation of a sexual harassment complaint, the complainant should provide as much of the following information as is possible:

- The name, department, and position of the person or persons allegedly causing the harassment;
- A description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
- The alleged effect of the incident(s) on the complainant's position, salary, benefits, promotional opportunities, or other terms or conditions of employment;
- The names of other employees who might have been subject to the same or similar harassment;
- The steps the complainant has taken to try to stop the harassment; and
- Any other information the complainant believes to be relevant to the harassment complaint.

#### **J. Investigation**

The Human Resources Department is responsible for ensuring that a thorough investigation begins as soon as possible after a complaint has been filed. In most cases, the Human Resources Director conducts/and or leads the investigation with the participation of the supervisor, Department Director, Risk Manager, or City Attorney's office. However, the Human Resources Director might appoint a qualified representative to lead the investigation, if necessary, to expedite the resolution of a complaint or resolve any potential conflict of interest. The City attempts to complete investigations within thirty (30) working days or within a reasonable time frame given the circumstances.

#### **K. Report and Recommendation**

The Human Resources Department or designated investigator will prepare a written report and recommendation immediately following the completion of the investigation. Except in the most unusual circumstances, the report will be completed within fifteen (15) working days after the completion of the investigation. The report and recommendation may include:

- A summary of the complaint.
- A summary of the response by the individual charged with harassment.
- A summary of the statements and evidence obtained during the investigation.



- A finding of whether a violation of this policy occurred and an explanation supporting the finding. If a violation occurred, the finding must include a statement about the severity of the violation.
- A summary of prior settlements or substantiated complaints against the respondent or against the complainant, if appropriate.
- A recommendation of a disciplinary action, if appropriate, against the respondent if the complaint was supported, and against the complainant, if appropriate, for filing a false complaint.
- A recommendation as to the restoration of any employment terms, conditions, or opportunities the complainant might have lost as a result of sexual harassment.
- An appendix containing the complaint, statements of the complainant and the respondent, witness statements, and other tangible evidence obtained during the investigation.

#### **L. Ruling on the Complaint**

A copy of the report and recommendation must be sent to members of a decision-making panel consisting of the Director of Human Resources, the City Attorney's Office, and the respondent's Department Director or immediate superior, and, if necessary the Risk Manager. After consideration of the report, the panel must agree to one of the following:

- Sustain the complaint, order the harassment to stop, impose appropriate sanctions on the harasser, recommend the restoration of any employment benefits the complainant lost because of the harassment, and provide any other relief necessary to remedy the situation.
- Order further investigation, for a period not to exceed ten (10) working days, and require a supplementary report and recommendation.
- Dismiss the complaint, if it is found to be without merit. The decision-making panel may impose discipline against the complainant if it agrees with the investigation's findings that the complaint was reckless, frivolous, fraudulent, or malicious.
- Recommend some other resolution which will be agreeable and satisfactory to the complainant, if the complaint is found to have merit.

#### **M. Discipline**

Employees who violate this policy are subject to appropriate disciplinary action. This disciplinary action may include minimum discipline in a written reprimand but may include up to termination of employment for very serious or repeat violations.

**N. Retention of Written Report on Complaint and Investigation**

All information pertaining to a sexual harassment complaint or investigation shall be maintained by the Human Resources Department in secure files. No record of a complaint shall be kept in the complainant's and/or the respondent's personnel file, unless the investigation and decision making panel conclude that the individual engaged in prohibited conduct, resulted in disciplinary action. If disciplinary action is taken, a record of such action is to be filed in the offending employee(s) personnel file.

**O. Monitoring Compliance**

The supervisor of an individual found to have violated this policy is responsible for monitoring the individual's compliance with any recommendation approved by the decision-making panel. The supervisor must ensure that the harassment does not reoccur and that the complainant is not subjected to retaliation of any kind. Even where the results are inconclusive, the situation shall be closely monitored and reviewed by the supervisor, Department Director or designee, or the Human Resources Director or designee, in order to ensure that the problem has been solved.

Follow-up inquiries shall be made by the Human Resources Director, Department Director, or designee, to ensure that harassment has not resumed and the victim has not suffered retaliation. If inquiries reveal such occurrences, they shall be appropriately dealt with by management. Management shall notify the Human Resources Director of the occurrence(s) and their corrective action.

**P. Training**

Human Resources will be responsible for providing ongoing sexual harassment training. All City management and employees will receive training on the City's sexual harassment policy during new employee orientation. Upon being promoted to a supervisor or a managerial position, the newly promoted employees will attend a training class for supervisors and managers on sexual harassment, regardless of the date of their most recent sexual harassment policy training as an employee. Each department shall be responsible for ensuring its employees are trained in accordance with direction from Human Resources.

**Q. Roles and Responsibilities**

1. Employees:

- All City personnel, whether management or an employee, must refrain from conduct of a sexual nature that could be considered inappropriate or unwelcome in the workplace.

- All personnel shall immediately report all incidents of sexual harassment or inappropriate sexual conduct as outlined in Section G whether they are the target of this conduct or not.
- If employees believe that they have been subject to sexual harassment or any unwanted sexual attention, they can make their unease and/or disapproval directly known and immediately known to the harasser. They should also make a written record of the date, time and nature of the incident(s) and the names of any witnesses, and report the incident.

2. Managers and Supervisors:

- Managers and supervisors shall communicate this policy and the avenues available for resolution of sexual harassment issues at the worksite to all employees.
- Supervisors must deal expeditiously and fairly with allegations of sexual harassment within their departments whether or not there has been a written or formal complaint. Supervisors must:
  - Ensure that any and all harassment or inappropriate sexually oriented conduct is reported immediately to their Department Director and the City's Human Resources Department.
  - Act promptly to investigate sexual harassment or inappropriate sexually oriented conduct. **(Investigations must be coordinated with the Human Resources Director or designee.)**
  - Upon completion of an investigation, submit investigation report to the Department Director and Human Resources Director for review.
  - Ensure that harassment or inappropriate sexually oriented conduct is reported to the next level manager, Department Director and Human Resources Director.
  - Take corrective action to prevent prohibited conduct from reoccurring.
- The supervisor represents management to subordinate employees. Therefore, each manager or supervisor is accountable for the proper conduct of all employees under his/her supervision, including preventing sexual harassment and taking measures to stop sexual harassment should it occur. Supervisors who knowingly allow or tolerate sexual harassment are in violation of this policy and subject to disciplinary action.
- Management shall keep supervisors aware of the requirement to guard against the various types of harassment that might potentially occur within their areas of responsibility.

3. Human Resources:

The Director of Human Resources is the City's designated EEO Officer and is responsible for:

- Ensuring that both the individual filing the complaint (hereafter referred to as the complainant), and the accused individual (hereafter referred to as the respondent), are aware of the seriousness of a sexual harassment complaint.
- Explaining the City's sexual harassment policy and investigation procedures to the complainant and the respondent.
- Exploring informal means of resolving sexual harassment complaints.
- Referring the complainant and/or the respondent to the City's Employee Assistance Program for counseling and referral services, if appropriate.
- Notifying the Police Department if criminal activities are alleged.
- Conducting or arranging for an investigation of the alleged harassment and the preparation of a written report and recommendation which will be sent to members of a decision-making panel.



## Harassment Complaint Form

The information you provide below is considered sensitive and will be shared only with those who are considered essential to the investigation and disposition of this complaint. Do not feel limited by the space provided in this form—you are encouraged to attach additional pages if you believe it will assist in the investigation.

Your Name: \_\_\_\_\_

Position: \_\_\_\_\_

Department: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Immediate Supervisor: \_\_\_\_\_

1. Provide the name, department, and position of the person or persons allegedly causing the harassment.
  
2. Provide a description of the incident(s), including the date(s), location(s),
  
3. Describe, if any, the alleged effect of the incident(s) on the complainant's position, salary, benefits, promotional opportunities, or other terms or conditions of employment.

