

# **Town of Amherst Policy Against Sexual Harassment and Unlawful Harassment**

*Revised December 2017 by Town Manager*

## **I. Policy Statement**

It is the policy of the Town of Amherst to maintain a working environment free from sexual harassment, or any other form of unlawful harassment or practice. Sexual Harassment in the work place is unlawful. Inappropriate or disrespectful conduct and unwanted communication of a sexual nature or harassing nature is prohibited. The Town of Amherst will not tolerate conduct which creates an intimidating, hostile, humiliating, or sexual offensive work place or work environment. Sexual Harassment or any other unlawful harassment or practice by any Town employee, by another employee, a supervisor, or an officer of the town is prohibited.

The Town recognizes the importance of an employee's right to work in a non-hostile environment regarding sexual and other unlawful harassment. To that end, the Town of Amherst will take all reasonable actions to ensure that no employee be subjected to sexual or other unlawful harassment by any member of the public.

## **II. Definitions**

**Sexual Harassment** - "Sexual Harassment" for the purpose of this policy shall include the definitions of sexual harassment as stated in the guidelines issued by the United States Equal Employment Opportunity Commission in connection with Title VII of the Civil Rights Act of 1964 and Massachusetts General Laws, chapter 151B, Section 1, and Title I of the Civil Rights Act of 1991. 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 or female workers may also constitute sexual harassment.

All employees should take special note that 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 Town of Amherst.

**"Unlawful Harassment or Practice"** - for the purpose of this policy shall include definitions of unlawful practices as stated in guidelines issued by the United States Equal Employment Opportunity Commission in connection with Title VII of the Civil Rights Act of 1964 and Massachusetts General

Laws, Chapter 151 B, section 1, and Title I of the Civil Rights Act of 1991. The Civil Rights act of 1964 prohibits discrimination against any employee due to their race, color, religion, sex or national origin. Chapter 151 B, Section 1 of Massachusetts General Laws identifies as an unlawful practice any discrimination because of the race, color, religious creed, national origin, sex, sexual orientation, genetic information or ancestry of an employee, gender identity, and pregnancy, childbirth or related condition. Harassment becomes unlawful where enduring the offensive conduct becomes a condition of continued employment or (b) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive.

**Employee** - A person hired or authorized to perform work or carry out tasks, duties, or responsibilities on behalf of the Town of Amherst, whether or not the person receives compensation for these activities. A Town board or committee member is an employee of the Town for purpose of this policy. An independent contractor or any employee of any independent contractor shall not be considered an employee of the Town of Amherst for the purpose of the policy unless the independent contractor performs his/her work for the town in a work place controlled by the Town of Amherst under the supervision of a Town employee, office, board, or committee

**Work Place** - Any office, building, facility, vehicle, indoor or outdoor area under the control of the Town of Amherst in which any employee is expected or required to carry out the functions of his/her position.

**Supervisor** - The person, board, committee, or commission to whom an Employee reports or is responsible for the performance of his/her assigned duties on a daily basis.

**Respondent(s)** - The person(s) accused of sexual harassment or unlawful harassment.

### **III. POLICY, PROHIBITED CONDUCT, RESPONSIBILITY OF SUPERVISORS**

**A.** No employee, supervisor, or other official shall engage in any action toward any other Town employee which shall constitute sexual and/or other unlawful harassment under this policy. Specifically, no one shall threaten or insinuate, either explicitly or implicitly, that an employee's refusal to submit to sexual advances will in any way adversely affect the employee's employment, evaluation, salary, advancement, assignment, scheduling, or any other condition of employment or career progress; no employee or supervisor shall engage in any action toward any other Town of Amherst employee which shall constitute any other form of unlawful harassment or practice. No one shall engage in such behavior that may create an offensive or hostile work environment.

**B.** While it is not possible to list all additional circumstances that may constitute sexual harassment, 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.

1. Unwelcome sexual advances, whether they involve physical touching or not;
2. Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body comment about an individual's sexual activity, deficiencies or prowess;
3. Displaying sexual suggestive objects, pictures, cartoons;
4. Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;

5. Inquiries into one's sexual experience; and
6. Discussion of one's sexual activities.

C. Unlawful harassment, practices or conduct may include, but not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference works performances.

### **Responsibility of Supervisor**

The Town shall provide department heads and supervisors training in preventing sexual and unlawful harassment in the workplace and each department head and supervisor shall communicate the Town's Policy Against Sexual and Unlawful Harassment to his/her staff. Employees shall receive positive assurance that no employee is required to endure any form of sexual harassment or other unlawful harassment.

Any supervisor, department head or other Town official in charge of a work place who knows of any sexual harassment or other unlawful harassment shall take appropriate remedial action to stop, correct, or terminate the behavior. This action shall be taken even if no complaint is filed by an in connection with such harassment.

No supervisor or department head in charge of a work place shall permit any form of sexual harassment or other unlawful harassment to be directed at any employee in the work place by any vendor, customer, and member of the public or any other person present in the workplace.

Supervisors and Department Heads should clearly communicate to employees that unwelcomed and unlawful harassing conduct will not be tolerated. Any supervisor in charge of a work place who knows of any unlawful harassment shall take appropriate remedial action to stop, correct, or terminate the behavior.

## **IV. PROCEDURE**

Reporting a Charge of Sexual Harassment or Unlawful Harassment:

- A. **REPORT:** Any employee who feels he/she has been subjected to unlawful or sexual harassment should document in detail the incident (s) or conduct and report it immediately utilizing the Town's Sexual and Unlawful Harassment Complaint Form (attached). This form is optional and is provided as a courtesy. A complaint can be filed verbally or via email or letter. An employee making a claim should be willing and able to cooperate in the investigation of the claim.

An employee should report a charge of unlawful or sexual harassment to his/her immediate supervisor or department head. If the charge is against the supervisor or department head or if an employee does not wish to report a charge of unlawful or sexual harassment within his/her department, the employee may alternatively report to the Director of Human Resources & Human Rights, (413-259-3119) or the Town Manager (413-259-3002) all at Town Hall, 4 Boltwood Avenue, Amherst MA 01002.

A supervisor who receives a complaint shall report the charges to their department head unless the charge involves the department head. In such case, the supervisor is directed to report the charges to the Town Manger. The department head receiving a complaint shall inform the Town Manager and the Director of Human Resources/Sexual and Unlawful Harassment Officer. In every case of an allegation of sexual or unlawful harassment the attached Sexual Harassment or Unlawful

Harassment Complaint Form will be completed or delivered orally to person receiving the complaint.

The department head, Town Manager or the Director of Human Resources & Human Rights (acting in the capacity of Sexual Harassment or Unlawful Harassment Officer) may discuss the complaint with the person bringing the charges if it is necessary to determine if the allegation falls within the scope of this policy against sexual harassment or unlawful harassment. If the initial determination is that the allegation falls within the scope of the policy, the Town Manager shall appoint a trained sexual or unlawful harassment investigator to conduct a thorough and impartial investigation. The Investigator will make a report of findings to the Town Manager.

If the department head, Town Manager or Sexual Harassment Officer determine that the complaint does not fall within the scope of this policy, the complaint should be addressed according to appropriate supervisory and disciplinary procedures. If the complainant does not agree with a finding of no sexual harassment or unlawful harassment, an appeal may be made to the Town Manager (see Section VII).

The Employee Assistance Program (EAP) is available for consultation and counseling regarding unlawful or sexual harassment, but consultation with EAP is confidential to the employee and will not result in follow-up and investigation

- B. **RETALIATION:** In all instances in which a complaint is made, the employee making the complaint, or any witness involved in an investigation, will be afforded protection from retaliation. Any form of retaliation against a complaint or witness is prohibited and unlawful and will result in appropriate disciplinary action
  - C. **CONFIDENTIALITY:** in the investigation is of the utmost importance to protect the complainant, respondent and the employer. Lack of confidentiality may lead to damaged careers/reputations and may undermine confidence and trust in the employer. All communications regarding the complaint, both written and oral, should be confidential. Information should be disclosed only on a need to know basis and with the understanding that the recipient has a duty to preserve confidentiality.
- V. **INVESTIGATION:** All sexual harassment complaints shall be investigated by a trained and unbiased investigator assigned by the Town Manager. The Sexual Harassment or Other Unlawful Harassment Officer shall serve in an advisory capacity to the supervisor if requested and appropriate. Any investigation shall be thorough and impartial and shall be pursued with all practical discretion and confidentially in a timely manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. The investigation will include a private interview with the person filing the complaint and with witnesses. The investigator will interview any Amherst town employee alleged to have committed sexual or unlawful harassment and will request to interview non employee(s) alleged to have committed sexual or unlawful harassment. When the investigation is completed, the finding of the investigation will be communicated to both the complainant and the respondent.

The rights of the respondent shall not be compromised by such confidentiality. If the conduct of any Town employee forms the basis of the complaint, the person investigating the complaint shall give the person allegedly behaving in an offensive way an opportunity to discuss and respond to the complaint. This procedure is not a criminal procedure, and the respondent does not have the right to question the complainant directly. All matters of conduct should be specifically detailed by the investigator. All

records of the investigation procedure and the resolution shall be retained by the Sexual Harassment and other Unlawful Harassment Officer.

At the conclusion of the investigation, the investigator shall recommend to the Town Manager a finding with regard to the complaint and the behavior of the respondent. The basis for a finding is the administrative procedure is the "preponderance of evidence" (not the "innocent until proven guilty beyond a reasonable doubt" basis that applies to criminal procedures). The department head or Town Manager shall inform the complainant and respondent of the results of the investigation.

VI. **DISCIPLINARY ACTION:** If it is determined that inappropriate conduct has been committed by an employee, the Town will take such action as is appropriate under the circumstances. Disciplinary action will be taken in accordance with the provisions of the Personnel Procedures Manual and/or collective bargaining agreements, and may range from counseling to demotion to termination or such other forms of disciplinary action as deemed appropriate under the circumstances. In any complaint which is found to involve sexual and or unlawful harassment, the discipline shall be determined by the Town Manager.

VII. **APPEAL:** If the complainant or respondent disagrees with the recommendation of the department head as to a course of action, the complainant or respondent may make a complaint to the Town Manager. The Town Manager shall review the complaint and the investigation and may, if it appears warranted, conduct a separate investigation into the complaint. If merit is found in the complaint, the Town Manager shall initiate any of the courses of action of this policy or any other course of action as may be appropriate.

VIII. **STATE & FEDERAL REMEDIES:** 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 of The Equal Employment Opportunity Commission (EEOC) at 1-800-669-4000 which has a 180 day filing requirement or the Massachusetts Commission against Discrimination (MCAD) at 1-413-739-2145. A charge of discrimination must be filed in person at one of the Massachusetts Commission Against Discrimination (MCAD) offices. With few exceptions, the MCAD only accepts complaints based on incidents that occurred within the last 300 days. If you have a disability and need assistance to file a complaint, call the office to request that assistance. Using the Town complaint process does not prohibit you from filing a complaint with these agencies. Each of the agencies has a specific time period of opportunity for filing a claim. The EEOC website is [www.eeoc.gov](http://www.eeoc.gov) and the MCAD website is [www.mass.gov/mcad](http://www.mass.gov/mcad). Both websites contain additional information.

IX. **RECORDS:** Every Harassment Complaint Form of a sexual nature and all reports of investigation, recommendation, and disposition will be forwarded to the Sexual Harassment Officer when complete. Disciplinary actions also will be filed in individual personnel files in accordance with the Town's personnel bylaw/collective bargaining agreements.

X. **COLLECTIVE BARGAINING AGREEMENT CONFLICTS:** Any conflict regarding this policy and any collective bargaining agreement shall be resolved in favor of the agreement.

TOWN OF AMHERST  
SEXUAL or UNLAWFUL HARASSMENT COMPLAINT FORM (Optional)

Complainant: \_\_\_\_\_ Job Title: \_\_\_\_\_

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

Date and Time of Incident(s): \_\_\_\_\_

Location: \_\_\_\_\_

Name(s) of  
Respondent(s): \_\_\_\_\_

Name of  
Witnesses: \_\_\_\_\_

**Description of Incident or Conduct** Please describe actions of all person(s) involved, including you. Attach separate sheets if necessary. Please describe where the specific event occurred; the circumstances; and what happened in as much detail as possible.

How did you feel after the incident?

Describe any steps taken to try to stop harassment:

Any other information complainant believes to be relevant to the harassment complaint:

Complainant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Complaint submitted to: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title (Printed): \_\_\_\_\_ Date Received: \_\_\_\_\_

Signature of Recipient: \_\_\_\_\_