

Chapter 178

CITY OF NIAGARA FALLS **POLICY AGAINST DISCRIMINATION AND HARASSMENT**

(Revised 4/1/2013)

Section 178.01 **INTRODUCTION**

The City of Niagara Falls recognizes the right of all persons to equal opportunities and recognizes that all employees have the right to work in an environment free from discrimination and harassment. In this regard, it is the City's responsibility and practice to protect and safeguard the rights and opportunities of any person who might seek or obtain employment with the City or who might participate in the City's process for licenses and/or permits. Solely for the purposes of this policy, the term "employee" shall also include a volunteer and a member of boards, commissions and committees.

Section 178.02 **POLICY STATEMENT**

The City shall not tolerate discrimination in employment or any City service, program or activity. The City's policy is to provide equal opportunity without regard to age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status. All decisions shall be non-discriminatory, including decisions regarding hiring, promotions, terminations, and other terms and conditions of employment, examinations, and granting of licenses and/or permits. The City also prohibits the discriminatory harassment of its employees or officers in any form. The City will take all steps necessary to prevent and stop the occurrence of any illegal discrimination or harassment in the workplace. Specifically:

(a) No person employed by the City shall discriminate against any other person in employment, potential employment, or the terms and conditions of employment based on age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status.

(b) No person employed by the City shall be subjected to workplace harassment, as set forth in Section 178.03.

(c) No person employed by the City shall be subjected to retaliation on the ground that he or she complained about prohibited discrimination or harassment or testified, provided information, or otherwise assisted in any investigation of alleged prohibited conduct as set forth in Section 178.04.

(d) This policy applies to all City officers and employees and all individuals who serve as contractors to the City. This Policy may also apply to the conduct of individuals who are not officers, employees or contractors of the City over whom the City exercises sufficient control, such as members of boards, commissions, and committees. This policy applies to any City facility and all

work-related settings and locations where City employees are assigned to work.

(e) The City and this discrimination and harassment policy prohibit conduct that is illegal under State or federal law.

(f) Conduct which may not rise to the level of a violation of law may nonetheless violate this Policy.

Section 178.03 PROHIBITION AGAINST WORKPLACE HARASSMENT

In accordance with Section 178.02, workplace harassment shall be prohibited. Specifically:

(a) DISCRIMINATORY HARASSMENT

It shall be prohibited for an employee of the City to engage in harassment of another employee based on age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status.

(1) Prohibited conduct includes verbal, nonverbal or physical conduct that denigrates or shows hostility towards an individual or group because of their age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status when such conduct:

a. has the purpose or effect of unreasonably interfering with the individual's terms, conditions, and/or privileges of employment; or

b. has the purpose or effect of creating an intimidating, hostile, or offensive working environment; or

c. otherwise adversely affects an individual's employment benefits, conditions, or opportunities.

(2) Specific forms of behavior that the City would consider discriminatory harassment include, but are not limited to, epithets, slurs, negative stereotyping, or threatening, intimidating or hostile speech or acts, or written or graphic material displayed or circulated in the workplace, that denigrates or shows hostility towards an individual or group because of their age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status.

(3) Conduct which may not rise to the level of a violation of law may nonetheless violate this policy.

(b) SEXUAL HARASSMENT

It shall be prohibited for an employee of the City to engage in sexual harassment of another employee of the City.

(1) Prohibited conduct includes sexual advances that are not welcome, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature when:

a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's work; or

b. Submission to, or rejection of, such conduct by an individual is used as the basis for workplace decisions such as promotion, transfer, or termination; or

c. 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.

(2) Sexual harassment refers to behavior of a sexual nature that an individual does not welcome; that is personally offensive; that fails to respect the rights of others; that lowers morale and that, therefore, has the purpose or effect of interfering with an individual's work performance and effectiveness; or that creates an intimidating, hostile, or offensive working environment. Specific forms of behavior that the City would consider sexual harassment include, but are not limited to, the following:

a. Sexual Advances: Demands, direct or indirect, for sexual favors as a condition of employment, for favorable employment decisions, or for any other reason.

b. Verbal Harassment: Hostile or abusive verbal language related to a person's sex, including sexual innuendos; epithets; slurs; suggestive, derogatory, or insulting comments or sounds; staring; whistling; jokes of a sexual nature, even when not directed toward a specific individual; conversations with obvious sexual overtones, even when not directed toward a specific individual; sexual propositions; and threats.

c. Non-Verbal Harassment: Abusive written language; showing, displaying or circulating, including by the use of email, pornographic or sexually explicit jokes, objects or pictures; graphic commentaries; leering; or obscene gestures in the workplace that unreasonably interfere with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

d. Physical Harassment: Any physical contact which is not welcome, including touching, kissing, embracing, petting, pinching, coerced sexual intercourse, assault, or persistent brushing up against a person's body.

(3) A victim of sexual harassment does not have to be the opposite sex of the harasser. The harasser does not have to be the victim's immediate supervisor. The harasser could be an agent of a supervisor, another supervisor, a co-worker, or even someone not on the payroll of the City who might have occasion to appear at a work site or enter a City building or facility. A victim of discriminatory or sexual harassment does not necessarily have to be the person harassed but could be anyone affected by the offensive conduct directed at another person or not directed at any specific person.

(4) Conduct which may not rise to the level of a violation of law may nonetheless violate this policy.

Section 178.04 PROHIBITION AGAINST RETALIATION

It shall be prohibited for an employee of the City to engage in retaliation against an individual on the ground that the individual complained about prohibited discrimination or harassment or testified, provided information, or otherwise assisted in any investigation of alleged prohibited conduct as defined by law or this Policy.

Retaliation occurs when an employee suffers an adverse employment action, such as a demotion, discharge, or significant change in work assignment, or when other action is taken that might discourage a reasonable worker from opposing a discriminatory practice or making or supporting a charge of discrimination. Intimidation, coercion, threats, reprisals, or discrimination against any person for complaining about discrimination or harassment, as described in this Policy, is also prohibited. Any such retaliatory conduct is illegal and will result in disciplinary action against the retaliator.

Section 178.05 COMPLAINT PROCESS OVERVIEW

(a) Any City officer or employee is encouraged to report an incident of suspected discrimination, harassment, or retaliation as soon as possible to either a department head, the City Administrator, the Director of Personnel, the EEO Officer for Compliance and Workforce Diversity, or to the Discrimination/Harassment Committee, which shall consist of a minimum of three (3) members: The Corporation Counsel or his/her designee; the Director of Personnel or his/her designee; the EEO Officer for Compliance and Workforce Diversity or his/her designee; and any additional member(s) designated by the Mayor and/or City Administrator.

(b) Should an officer or employee believe that he or she has been discriminated against or harassed and would like guidance as to how to file a complaint, that individual should review the City's discrimination and harassment complaint procedure or contact the EEO Officer for Compliance and Workforce Diversity or any member of the Discrimination/Harassment Committee.

(c) Should an individual file a complaint, the procedures set forth below must be followed, including filing a complaint within 180 calendar days of the alleged conduct. The procedures describe the steps to be taken when an employee has filed a complaint, detail the responsibilities of all involved parties, and provide the time frames for actions to be taken.

(d) All complaints will be handled in a timely and confidential manner. In no event will information concerning a complaint be released by the City to any third party or to anyone within City government who is not directly involved with or in the investigation. Confidentiality will be maintained throughout the investigatory process. All complainants, respondents and witnesses in an investigation shall be informed of this confidentiality policy. A breach of this confidentiality policy will result in disciplinary action.

(e) The investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. The particular facts of the allegations will be examined individually, with a review of the nature of the behavior and the context in which the incident or incidents occurred.

(f) An individual who believes that he or she has been unjustly charged with illegal discrimination or harassment in violation of this policy will be afforded every opportunity to offer and present information in defense of the complaint. Any information will be confidential.

(g) All employees are required to cooperate fully with any investigation of alleged violations of this Policy or the law. Any employee who fails to cooperate with an investigation, obstructs an investigation, or interferes with the administration of any remedial or disciplinary action taken as a result of such investigation is subject to discipline.

(h) A person who participates in this procedure may do so without fear of retaliation. Retaliation against anyone who has filed a complaint under this policy or cooperates with an investigation is prohibited and may be a violation of federal or state law. Any such retaliation will result in disciplinary action by the City.

(i) A person who is found to have committed an act of illegal discrimination, harassment, or retaliation or otherwise to have violated this Policy will be subject to disciplinary action in accordance with the provisions of a negotiated labor agreement or State law, as may be appropriate.

(j) Nothing in this policy, including the complaint procedures, shall in any way limit an individual's existing right to file a complaint with the Niagara Falls Human Rights Commission, the New York State Division of Human Rights, the United States Equal Employment Opportunity Commission, or any other government agency, or to take any legal action which he or she may deem advisable. However, filing a complaint with the City or reporting allegations of discrimination, harassment, or retaliation to the City shall not toll any filing requirements set forth by these agencies or otherwise required by law.

Section 178.06 PROCEDURES FOR REPORTING A DISCRIMINATION OR HARASSMENT COMPLAINT

(a) GENERAL PROCESS

(1) If an employee feels that he or she is a victim of discrimination or harassment, the employee, hereafter referred to as the complainant, may meet with his or her department head to discuss an allegation of illegal discrimination or harassment or may file a complaint directly with the EEO Officer for Compliance and Workforce Diversity or the Discrimination/Harassment Committee.

(2) Any written complaint must contain information about the alleged discrimination or harassment such as the name, address, phone number of complainant, date and description of the incident(s), and should be filed on a “Complaint of Discrimination or Harassment” form. This form is available from the City and attached to this Policy.

(3) The written complaint should be submitted as soon as possible but no later than 180 calendar days after the alleged violation to:

Discrimination and Harassment Committee and
EEO Officer for Compliance and Workforce Diversity
Room 14, City Hall
745 Main Street
Niagara Falls, NY 14302-0069
(716) 286-4327

(4) Anonymous complaints will be accepted and investigated to the extent possible. Employees, however, must be aware that a complainant’s decision not to provide his or her identity may limit the ability to conduct a thorough investigation.

(5) The complainant may withdraw his or her complaint at any time by filing a “Withdrawal of Discrimination or Harassment Complaint” notice in writing. This form is available from the City and attached to this Policy.

(b) PROCESSING COMPLAINTS

(1) If an employee brings his or her complaint to a department head, the department head may seek initially to resolve and rectify the matter but shall also report the allegations to the EEO Officer for Compliance and Workforce Diversity. A department head shall have five (5) business days to try to resolve the allegations by (a) gathering and assessing the facts deemed necessary to resolve it; (b) interviewing the person alleged to have committed the discrimination or harassment, hereafter referred to as the respondent, and the complainant separately; and (c) using whatever other methods are deemed necessary or appropriate to attempt to resolve the complaint.

(2) Within five (5) business days from the date of the complaint, a department head must forward to the EEO Officer for Compliance and Workforce Diversity in writing the

complaint or allegations and any resolution. If no resolution is reached within five (5) business days, the department head must refer the case and any information gathered to the EEO Officer for Compliance and Workforce Diversity for further investigation.

(3) Regardless of whether the complaint is written or verbal, the department head will prepare a statement outlining the complaint and any resolution reached. If a resolution is reached, all parties must sign the statement prepared by the department head which shall be sent to the EEO Officer for Compliance and Workforce Diversity. The case will be considered closed subject to an independent review by the EEO Officer for Compliance and Workforce Diversity, who may re-open the case in his or her discretion if he or she deems warranted.

(4) If a complaint is filed directly with the Discrimination/Harassment Committee or the EEO Officer for Compliance and Workforce Diversity, or is not resolved at the department level within the specified time frame, the Committee will investigate the complaint. Specifically, the Committee shall interview the complainant, call witnesses to appear before the Committee, and review any other evidence the Committee feels credible and probative of the allegations. Notice of the complaint must be given to the respondent, who shall also be afforded an opportunity to appear before the Committee, with or without counsel, if he or she so desires. Barring extraordinary circumstances, the Committee will have fifteen (15) business days to investigate the complaint and an additional fifteen (15) business days to render a recommended determination and any proposed remedial action, where appropriate.

(5) Written notice of the Committee's recommendations will be given to both the complainant and the respondent, and filed with the EEO Officer for Compliance and Workforce Diversity.

(6) All complaints involving harassment, discrimination, and retaliation will be independently reviewed by the EEO Officer for Compliance and Workforce Diversity, who will make a final recommendation to the Mayor or his/her designee for approval.

**CITY OF NIAGARA FALLS
COMPLAINT OF DISCRIMINATION/HARASSMENT FORM**

Name of Complainant: _____

Address: _____

Home Phone: _____

Work Phone: _____

Employee

Volunteer

Applicant (for Exams, Licensing, Permits)

If an employee of the City of Niagara Falls:

Job Title: _____

Department: _____

Supervisor (if different from Dept. Head): _____

Date of Hire: _____

If an applicant:

Date of Application: _____

Name and department, board, commission or committee that you believe discriminated against you:

Please indicate the basis for the alleged discrimination:

Age

Gender Identity or Expression

Race

Religion

Creed

Disability

Color

Predisposing Genetic Characteristics

National Origin

Marital Status

Sex

Military Status

Sexual Orientation

Domestic Violence Victim Status

Retaliation

Date(s) & Times of Incident(s): _____

Description of Incident(s): (Include names and contact information of any witnesses. Use additional sheets if necessary)

What actions have you taken concerning the alleged discrimination?

Are you still employed by or volunteering for the City of Niagara Falls: Yes No

What action(s) are you seeking?

Signature _____ Date _____

In filing this complaint, you are saying that the allegations you are making are true and correct to the best of your knowledge. You acknowledge that the information may be used by the City of Niagara Falls to further investigate the complaint.

Forward to: EEO Officer for Compliance and Workforce Diversity
City Hall
745 Main Street, Room 14
Niagara Falls, NY 14302