Chapter 10

DISCRIMINATION AND HARASSMENT POLICY

§ 10-1. Purpose; applicability to employee or volunteer.

§ 10-2. Policy.

§ 10-3. Definition of sexual harassment.

§ 10-4. Procedure for reports and complaints; retaliation; disciplinary action.

§ 10-5. Distribution and periodic reviews of policy.

Discrimination and Harassment Complaint Procedure

Complaint of Illegal Discrimination or Harassment

Withdrawal of Discrimination or Harassment Complaint

Acknowledgment of Receipt of Copy of Policy

[HISTORY: Adopted by the Town Board of the Town of Cobleskill 1-10-2011; as last amended 10-3-2011. Subsequent amendments noted where applicable.]

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§ 10-1. Purpose; applicability to employee or volunteer.

The elected and administrative officers of the Town of Cobleskill believe in the dignity of the individual and recognize the right of any person to equal opportunities. In this regard, the Town has a longstanding practice of protecting and safeguarding the rights and opportunities of any person who might either seek or obtain employment with or volunteer for the Town without being subjected to illegal discrimination or harassment in the workplace. Solely for the purposes of this policy, the term "employee" shall also include a volunteer.

§ 10-2. Policy.

In addition to prohibiting illegal discrimination on the basis of race, color, sex, religion, age, disability, martial status, military status, national origin, sexual orientation, or other unlawful conduct, the Town also prohibits the illegal harassment of its employees or officers in any form. The Town will take all steps necessary to prevent and stop the occurrence of any illegal discrimination or harassment in the workplace.

A. This policy applies to all Town officers (elected and appointed) and employees. Depending on the extent of the exercise of control, this policy may be applied to the conduct of those who are not officers or employees or contractors of the Town with respect to illegal discrimination or illegal harassment of Town officers or employees in the workplace.

B. The Town and this discrimination and harassment policy prohibit conduct that is illegal under state or federal law including, but not limited to, the inappropriate forms of behavior described in this policy under the section entitled "Definition of Sexual Harassment."[1]

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1. Editor's Note: See § 10-3.

C. All elected officials of the Town, department heads and supervisory personnel are responsible for ensuring a work environment free from unsolicited, unwelcome, and intimidating unlawful discrimination or harassment. These individuals must take appropriate action when allegations of illegal discrimination or harassment come to their attention to assure compliance with this policy.

D. A person who is found to have committed an act of unlawful discrimination or harassment or other inappropriate behavior will be subject to disciplinary action in accordance with the provisions of negotiated labor agreement or state law, as may be appropriate. Additionally, retaliation against someone who has complained about prohibited discrimination or harassment is strictly prohibited as is retaliation against an individual who cooperates with an investigation of a discrimination or harassment complaint. Any such retaliatory conduct is illegal and will result in disciplinary action against the retaliator, if that person is an officer, employee, or volunteer of the Town. Intimidation, coercion, threats, reprisals or discrimination against any person for complaining about unlawful discrimination or harassment, as described in this policy, is prohibited.

E. All Town officers and employees will be held responsible and accountable for avoiding or eliminating the conduct prohibited by this policy. Individuals are encouraged to report violations of this policy to their supervisor or to a member of the Discrimination/Harassment Committee (also referred hereinafter as "the Committee"). The Committee shall consist of two members of the Town Board and one community member to be appointed by the Town Board. Each member shall serve for a term of three years except that one of the Town Board members shall be initially appointed for a one-year term, and then that position shall receive a three-year term starting January 1, 2012, and the community member shall be appointed for two years, and then that position shall receive a three-year term starting January 1, 2013. The Board should seek recommendations of a possible community appointee from the Citizen Anti-Bias Committee or other similarly purposed community organizations before appointing the community member of the Committee. The community member of the Committee shall serve as a full member of the Committee, except the community member will not participate in any investigation or determination as described in the section entitled "Discrimination and Harassment Complaint Procedure."

§ 10-3. Definition of sexual harassment.

A. Sexual harassment.

(1) Sexual advances that are not welcome, requests for sexual favors, and other verbal or physical conduct with sexual overtones constitute sexual harassment 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 work decisions such as promotion, transfer, or termination affecting such individual; 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 that an individual does not welcome; that is personally offensive; that fails to respect the rights of others; that lowers morale and that, therefore, interferes with an individual's work performance and effectiveness; or that creates an intimidating, hostile, or offensive working environment. Specific forms of behavior that the Town would consider sexual harassment include, but are not limited to, the following:

(a) Verbal harassment: abusive verbal language related to a person's sex, including sexual innuendos; slurs; suggestive, derogatory or insulting comments or sounds; whistling; jokes of a sexual nature; sexual propositions and threats. Included would be any sexual advance that is unwelcome, or any demand for sexual favors.

(b) Nonverbal harassment: abusive written language, showing or displaying (electronically or otherwise) pornographic or sexually explicit objects or pictures, graphic commentaries, leering or obscene gestures in the workplace such that it unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.

(c) Physical harassment: any physical contact which is not welcome, including touching, kissing, petting, pinching, tickling, coerced sexual intercourse, assault, or persistent brushing up against a person's body.

B. Sexual harassment is gender neutral and may involve members of the same or different gender.

§ 10-4. Procedure for reports and complaints; retaliation; disciplinary action.

A. Any Town officer or employee or member of the public is encouraged to report an incident of suspected illegal discrimination or harassment to a department head or to the Discrimination/Harassment Committee as soon as possible after an alleged incident. The alleged perpetrator does not have to be the victim's immediate supervisor. The alleged perpetrator could be an agent of a supervisor, another supervisor, a co-worker, or even someone not on the payroll of the Town who might have occasion to appear at a work site or enter a Town building or facility. A victim of illegal harassment or discrimination does not necessarily have to be the person at whom the conduct is directed. Such an individual could be someone who is affected by such conduct when it is directed towards another person, thereby creating a hostile work environment. Such conduct is unlawful and is prohibited by the Town and by this policy.

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 proceed in filing a complaint, that individual should review the Town's discrimination and harassment complaint

procedure[2] or contact any member of the Discrimination/Harassment Committee for assistance.

C. Should an individual file a complaint, the procedures of the Discrimination/Harassment Committee must be followed, including the time limit of 180 days. The procedures describe the steps to be taken when an individual 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 Town to any third party or to anyone within Town government who is not directly involved with or in the investigation. A breach of this prohibition will result in disciplinary action. Notwithstanding this subsection, nonidentifying general information, such as the number, general nature and resolution of complaints, shall be provided to the community member of the Discrimination/Harassment Committee as part of the annual review conducted by the Committee. The other members of the Committee shall confer with the Town Attorney prior to releasing any such nonidentifying general information to the community member.

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 allegation will be examined individually with a review of the nature of the behavior and the context in which the incident or incidents occurred. Confidentiality will be maintained throughout the investigatory process. The Discrimination/Harassment Committee will also investigate cases in which a supervisor requests or requires assistance.

F. An individual who believes that he or she has been unjustly charged with illegal discrimination or harassment will be afforded every opportunity to offer and present information relevant to the complaint. Any such information will be confidential.

G. 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 is prohibited and may well be a violation of federal or state law. Any such retaliation will result in disciplinary action.

H. A person who is found to have committed an act of illegal discrimination or harassment will be subject to disciplinary action in accordance with the provisions of a negotiated labor agreement or state law, as may be appropriate.

I. Retaliation against any individual who has filed a harassment/discrimination complaint is also prohibited. Should a complaint of such retaliation be filed with the appointing authority for the position held by the alleged retaliator, it will be investigated and may potentially lead to disciplinary charges.

J. Nothing in this policy should be construed to limit an individual's existing right to file a complaint with the New York State Division of Human Rights or the United States Equal

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2. Editor's Note: See the copy of the procedure included at the end of this chapter.

Employment Opportunity Commission or to take any legal action which he or she may deem advisable.

§ 10-5. Distribution and periodic reviews of policy.

A. The Town Supervisor shall cause a copy of this policy to be distributed to every elected and appointed officer and every employee of the Town within 30 days after the effective date of this article. Each officer elected or appointed thereafter shall be furnished a copy of this policy by the appropriate department head or Town Clerk. Each new employee shall be furnished a copy of this policy by his/her administrative supervisor or department head.

B. Within 60 days after the Town Board appoints the members of the Discrimination/Harassment Committee, the Committee will present to the Town Board a plan to introduce all Town appointed and elected officers, supervisors, department heads, and employees to this policy, and to train them in following its directives. This can be accomplished by hiring or appointing a human resource or diversity training professional to train a few selected officers and supervisors who will then decide how to best orient and train the others. The Town Board will also set standards to regulate when any specific group of officers, supervisors or employees requires a more concentrated training program. In addition, this plan shall include provisions to ensure that all elected and appointed officers and all employees review this policy on an annual basis. After a plan is adopted by the Town Board, the Committee will be in charge of the plan's implementation.

C. The Committee will present an annual report to the Town Board evaluating compliance with this policy. The annual report shall provide:

   (1) Information regarding the number, general nature and resolution of any complaints made to the Committee; and

   (2) Recommendations regarding the continued implementation of this policy and whether actions should be taken to improve compliance with the policy.

D. The Town Board and all department heads will review the contents of this policy annually.

DISCRIMINATION AND HARASSMENT POLICY

10 Attachment 1

Town of Cobleskill

Discrimination and Harassment Complaint Procedure

SECTION 1. STEP ONE

1. An aggrieved person, hereafter referred to as the complainant, will meet with his or her department head to discuss an allegation of discrimination or harassment and may file a complaint of discrimination or harassment. If a complaint is filed, the department head shall send a signed complaint on a form available from the Town to the Discrimination/Harassment Committee. Should an individual feel uncomfortable raising an issue of alleged illegal discrimination or harassment with a department head, any other department head or a member of the Committee may be approached; verbal complaints may be handled informally. If the community member is approached, he or she shall refer the matter to the other two members of the Committee.

2. Any written complaint must be filed by a complainant within 180 days of an alleged act of discrimination or harassment on a form available from the Town. A prompt filing is recommended.

3. The complainant may withdraw his or her complaint at any time by filing a notice in writing on a form available from the Town.

SECTION 2. STEP TWO

1. When a written complaint is filed, the department head or committee member shall have 15 working days to try to resolve the allegation informally by 1) gathering and assessing the facts deemed necessary to resolve it; 2) meeting with the alleged abuser and the complainant separately; 3) consulting with the Town Attorney; and 4) using whatever other methods deemed necessary or appropriate to attempt to resolve the complaint.

2. Regardless of whether the complaint is written or verbal, if a resolution is achieved by a department head or committee member, he or she will prepare a statement that the complaint has been resolved. If a written complaint has been filed, all parties must sign the statement. If the complaint was verbal, the department head or committee member should attempt to obtain the complainant's signature. All statements shall be sent to the Discrimination/Harassment Committee. The case will be considered closed.

3. If a complaint is not resolved, it will be turned over to the Discrimination/Harassment Committee. The Committee will investigate the complaint, call witnesses to appear before the Committee, and review any other evidence the Committee feels credible and probative of the allegation or allegations. Notice of the complaint must be given to the accused, who shall also be afforded an opportunity to appear before the Committee, with or without counsel, if he or she so desires. The Committee will have 15 working days to investigate

the complaint and an additional five working days to render a decision. Throughout the process described in this paragraph, the Committee shall consult with the Town Attorney on any determination and keep the Town Attorney apprised of its activities. If the Committee members cannot agree on whether a violation has or has not occurred, the complaint shall be forwarded to the Town Board for its review and decision. The Town Board shall abide by the time lines established in this paragraph. If a Committee member must recuse himself or herself from a particular complaint, the Town Attorney shall take the place of the Committee member. If both Committee members must recuse themselves, the complaint shall be forwarded to the Town Board for its review and decision.

4. Written notice of the Committee's decision will be given to both the complainant and the accused.

5. If the Committee determines that a violation has occurred, it shall forward its decision to the entire Town Board and make a recommendation to the Town Board regarding appropriate disciplinary action. The Town Board, in consultation with the Town Attorney, will be responsible for determining the appropriate disciplinary action.

SECTION 3. STEP 3 (APPEALS)

1. After the Discrimination/Harassment Committee, in consultation with the Town Attorney, makes a determination as to whether incident(s) reported constitute(s) unlawful discriminatory harassment as defined in this Policy, the party against whom the determination is adverse may appeal the determination to the Town Board for a final determination.

2. In the event that an appeal is filed with the Town Board, the appeal shall be reviewed by the Town Board or its designee. The Board may obtain additional information if necessary, including meeting with the complainant and the accused. Thereafter, the Town Board or its designee will issue a decision within 25 working days after receipt of the appeal.

3. If no appeal is taken within 30 calendar days from the date of the Discrimination/Harassment Committee's initial determination, the Committee's determination will constitute the final determination in the matter.

DISCRIMINATION AND HARASSMENT POLICY

10 Attachment 2

Town of Cobleskill

Complaint of Illegal Discrimination or Harassment

NAME OF COMPLAINANT: _____

HOME PHONE: _____ WORK PHONE: _____

DATE OF HIRE OR DATE VOLUNTEERING BEGAN: _____

YOUR DEPARTMENT: _____ DEPARTMENT HEAD: _____

NAME AND TITLE OF PERSON(S) COMPLAINED OF: _____

_____

NAME OF ANY WITNESSES: _____

DATE(S) OF INCIDENT(S): _____ TIME _____

DESCRIPTION OF INDICENT(S): _____

_____

_____

_____

_____

ARE YOU STILL EMPLOYED BY OR VOLUNTEERING FOR THE TOWN? Y N

ACTION YOUR ARE SEEKING? _____

_____

SIGNATURE _____ DATE _____

10 Attachment 3

Town of Cobleskill

Withdrawal of Discrimination or Harassment Complaint

NAME OF COMPLAINANT: _____

DATE COMPLAINT WAS FILED: _____

NAME OF DEPARTMENT HEAD NOTIFIED: _____

I HEREBY WITHDRAW THIS COMPLAINT AND AGREE THAT NO FURTHER ACTION IS REQUIRED ON IT.

_____ _____

SIGNATURE OF COMPLAINANT DATE

10 Attachment 4

Town of Cobleskill

Acknowledgment of Receipt of Copy of Town's Discrimination and Harassment Policy

I, _____ [Print name of employee/officer/volunteer], hereby acknowledge that I have been given a copy of the Town's policy on discrimination, read the policy, had an opportunity to ask any questions regarding the policy, and agree to abide by the policy. I understand that I have the right to file a complaint alleging illegal discrimination or harassment by another Town officer, employee, volunteer, or by someone employed by a contractor retained by the Town. I understand the procedures and the form for doing so are set forth in the Town's policy.

_____ _____

Signature of employee/officer/volunteer Date