

**VILLAGE OF DOWNERS GROVE**  
**Report for the Village Council Meeting**  
**1/9/2018**

<b>SUBJECT:</b>	<b>SUBMITTED BY:</b>
A resolution amending the Village's Sexual Harassment Policy	Enza Petrarca Village Attorney

**SYNOPSIS**

A resolution has been prepared amending the Village of Downers Grove Sexual Harassment policy and Section 2.3 of the Downers Grove Personnel Manual.

**STRATEGIC PLAN ALIGNMENT**

The goals for 2017-2019 include *Exceptional Municipal Services*.

**FISCAL IMPACT**

N/A

**RECOMMENDATION**

Approval on the January 9, 2018 Consent Agenda.

**BACKGROUND**

Public Act 100-0554 (the Act) was enacted on November 16, 2017, which amends the State Officials and Employees Ethics Act, including Section 70-5, which pertains to local governmental entities. The Act mandates that all units of local government adopt, within 60 days after the effective date, a resolution establishing a policy prohibiting sexual harassment.

Although the Village already has a sexual harassment policy, it is being updated to reflect specific requirements of the Act. This resolution will become a Village Council Policy applicable to all Village officials and employees and will also be incorporated as part of section 2.3 of the Employee Personnel Manual.

**ATTACHMENTS**

Resolution



## Village of Downers Grove

### Official Village Policy Approved by Village Council

Description:	<b>Sexual Harassment Policy</b>		
Res. or Ord. #:	<b>Res.</b>	Effective Date:	<b>1/9/18</b>
Category:	<input checked="" type="checkbox"/> New Council Policy <input type="checkbox"/> Amends Previous Policy Dated: _____ Description of Previous Policy (if different from above): _____		

**A RESOLUTION ADOPTING A SEXUAL HARASSMENT POLICY  
 AND AMENDING THE VILLAGE OF  
DOWNERS GROVE PERSONNEL MANUAL**

WHEREAS, the Village Council has adopted certain Administrative Rules and Regulations of the Village of Downers Grove which are contained in the Downers Grove Personnel Manual; and

WHEREAS, the Village Manager recommends that the Sexual Harassment Policy of the Downers Grove Personnel Manual be updated and amended as a result of changes to the State Officials and Employee Ethics Act amended by Public Act 100-0554, which was adopted on November 16, 2017.

NOW, THEREFORE, BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That a Village of Downers Grove Sexual Harassment Council Policy be and is hereby adopted; and
2. That Section 2.3 of the Employee Personnel Manual dated December 2, 2014 is also hereby amended by incorporating the Sexual Harassment Council Policy as Section 2.3. A copy of the Downers Grove Sexual Harassment Policy is attached hereto as Exhibit 1.
3. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.
4. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_

Village Clerk

I:\mw\policy\CPs\LGM Sexual Harassment

## 2.3 Sexual Harassment

It is unlawful to harass a person because of that person's sex. All persons have a right to work in an environment free from sexual harassment. Sexual harassment is unacceptable misconduct which affects individuals of all genders and sexual orientations. It is the policy of the Village of Downers Grove to prohibit harassment of any person by any Village official, Village agent, Village employee or Village agency or office on the basis of sex or gender. All Village officials, Village agents, Village employees and Village agencies or offices are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.

The Village shall provide employees a working environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, as defined and otherwise prohibited by State and Federal Law. The Village will not tolerate sexual harassment of any of its officials, employees or agents and will take immediate steps to stop it when it occurs.

### Definition of Sexual Harassment

This policy adopts the definition of sexual harassment as stated in the Illinois Human Rights Act, which currently defines sexual harassment as:

Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature 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 substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Conduct which may constitute sexual harassment includes:

- Verbal: sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
- Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- Textual/Electronic: "sexting" (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).

The most severe and overt forms of sexual harassment are easier to determine. However, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. Sexual harassment will be assessed by what would offend a "reasonable person."

~~Village employees shall not make sexual advances or request sexual favors or engage in any 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 employment;~~
- ~~b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or~~
- ~~c. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.~~

~~The terms intimidating, hostile or offensive include, but are not limited to, conduct which has the effect of humiliation, embarrassment or discomfort. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, and other inappropriate verbal or physical conduct of a sexual nature. Sexual harassment may include, but is not limited to:~~

- ~~a. Repeated uninvited sex oriented verbal "kidding," or demeaning sexual innuendoes;~~
- ~~b. Unwelcome touching, such as patting, pinching, or constant brushing against another's body;~~
- ~~c. Suggesting sexual involvement to or demanding sexual involvement of any other employee where such person has made it clear that such a suggestion or demand is unwelcome; or,~~
- ~~d. Expressing humor or telling jokes about sex or gender specific traits.~~

#### **PROCEDURE FOR REPORTING AN ALLEGATION OF SEXUAL HARASSMENT**

An employee who either observes sexual harassment or believes herself/himself to be the object of sexual harassment should deal with the incident(s) as directly and firmly as possible by clearly communicating her/his position to the offending individual and her/his immediate supervisor. It is not necessary for sexual harassment to be directed at the person making the report.

Any employee may report conduct which is believed to be sexual harassment, including the following:

- *Electronic/Direct Communication.* If there is sexual harassing behavior in the workplace, the harassed employee should directly and clearly express her/his objection that the conduct is unwelcome and request that the offending behavior stop. The initial message may be verbal. If subsequent messages are needed, they should be put in writing in a note or a memo.
- *Contact with Supervisory Personnel.* At the same time direct communication is undertaken, or in the event the employee feels threatened or intimidated by the situation, the problem must be promptly reported to the immediate supervisor of the person making the report, his/her Director, the Director of Human Resources, the Ethics Officer, or the Village Manager.

The employee experiencing what he or she believes to be sexual harassment must not assume that the Village is aware of the conduct. If there are no witnesses and the victim fails to notify a supervisor or other responsible officer, the Village will not be presumed to have knowledge of the harassment.

Documentation of any incident may be submitted with any report (what was said or done, the date, the time and the place), including, but not limited to, written records such as letters, notes, memos and telephone messages.

All allegations, including anonymous reports, will be accepted and investigated regardless of how the matter comes to the attention of the Village. However, because of the serious implications of sexual harassment charges and the difficulties associated with their investigation and the questions of credibility involved, the claimant's willing cooperation is a vital component of an effective inquiry and an appropriate outcome.

- Resolution Outside Village. The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every report and incident so that problems can be identified and remedied by the Village. However, all Village employees have the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) for information regarding filing a formal complaint with those entities. An IDHR complaint must be filed within 180 days of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must be filed within 300 days.

#### **PROHIBITION ON RETALIATION FOR REPORTING SEXUAL HARASSMENT ALLEGATIONS**

No Village official, Village agents, Village employee or Village agency or office shall take any retaliatory action against any Village employee due to a Village employee's:

1. Disclosure or threatened disclosure of any violation of this policy,
2. The provision of information related to or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy, or
3. Assistance or participation in a proceeding to enforce the provisions of this policy.

For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any Village employee that is taken in retaliation for a Village employee's involvement in protected activity pursuant to this policy.

No individual making a report will be retaliated against even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation.

Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (5 ILCS 430/15-10) provides whistleblower protection from retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:

1. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, Village agency, or other Village employee that the Village employee reasonably believes is in violation of a law, rule, or regulation,
2. Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any officer, member, Village or State agency or other Village or State employee, or

3. Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act.

Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. In addition, an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. (740 ILCS 174/15(b)).

According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act. A retaliation charge or complaint with IDHR or EEOC, may be filed within 180 days (IDHR) or 300 days (EEOC) of the alleged retaliation.

**CONSEQUENCES OF A VIOLATION OF THE PROHIBITION ON SEXUAL HARASSMENT**

In addition to any and all other discipline that may be applicable pursuant to Village policies, employment agreements, personnel manual and/or collective bargaining agreement, any person who violates this policy or the Prohibition on Sexual Harassment contained in 5 ILCS 430/5-65, may be subject to a fine of up to \$5,000 per offense, applicable discipline or discharge by the Village and any applicable fines and penalties established pursuant to Village ordinance, State law or Federal law. Each violation may constitute a separate offense. Any discipline imposed by the Village shall be separate and distinct from any penalty imposed by a court of law or a State or Federal agency.

**CONSEQUENCES FOR KNOWINGLY MAKING A FALSE REPORT**

A false report is a report of sexual harassment made by an accuser using the sexual harassment report to accomplish some end other than stopping sexual harassment or retaliation for reporting sexual harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report is a severe offense that can itself result in disciplinary action. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to discipline or discharge pursuant to applicable Village policies, employment agreements, personnel manual and/or collective bargaining agreements.

In addition, any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission or officer, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to \$5,000 against any person who intentionally makes a false, frivolous or bad faith allegation.

~~A violation of this policy may result in discipline, up to and including discharge. Any person making a knowingly false accusation regarding sexual harassment will likewise be subject to disciplinary action, up to and including discharge.~~

~~Employees are encouraged to report claims of sexual harassment to their immediate supervisor. If an employee does not feel comfortable reporting claims of sexual harassment to his/her immediate supervisor or if the immediate supervisor is the alleged harasser, an employee may report claims to the Director of his/her department. If an employee does not feel comfortable reporting sexual harassment complaints to the Director of the department, or if the Director is the alleged harasser, then an employee may report a sexual harassment complaint directly to the Human Resources Director. Such complaints may be oral or written.~~

~~When a sexual harassment complaint is received by either an employee's immediate supervisor or Director, that individual will attempt to conciliate the problem, provided that the problem can be resolved to the satisfaction of all parties involved. If a complaint is resolved internally by the department, the immediate supervisor or Director shall document the complaint and its resolution and forward a copy to the Human Resources Director. The immediate supervisor or Director will also have the parties involved verify in writing that they are satisfied with the actions taken in response to the complaint.~~

~~If the complaint cannot be resolved within the department or if it requires further investigation, the immediate supervisor or Director shall report the complaint to the Human Resources Director. The Human Resources Director shall promptly begin an internal sexual harassment investigation. This investigation shall include interviewing the complainant, the accused, and any and all other parties who may possess information relevant to the complaint. The investigator shall take into consideration all relevant circumstances relating to the sexual harassment complaint. Where the investigation confirms the allegations, the Village shall take prompt corrective action(s), including but not limited to, disciplinary action, up to and including discharge. Appeals of disciplinary actions may be requested in accordance with the provisions in Section 6 of this Manual.~~

~~The right to confidentiality, both of the complainant and the accused, will be respected consistent with the Village's legal obligations and with the necessity to investigate allegations of misconduct and to take corrective action when this conduct has occurred.~~

~~There shall be no retaliation against employees for good faith reporting of sexual harassment or assisting the Village in the investigation of the complaint. Res. 99-70 (11/2/99)~~