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## Sexual Harassment


### 147.1 PURPOSE

The New Paltz Police Department is committed to maintaining a workplace free from sexual harassment and discrimination. Sexual Harassment is a form of workplace discrimination that subjects an employee to inferior conditions of employment due to their gender, gender identity, gender expression (perceived or actual), and/or sexual orientation. Sexual harassment is often viewed simply as a form of gender-based discrimination, but the New Paltz Police Department recognizes that discrimination can be related to or affected by other identities beyond gender. Under the New York State Human Rights Law, it is illegal to discriminate based on sex, sexual orientation, gender identity or expression, age, race, creed, color, national origin, military status, disability, pre-disposing genetic characteristics, familial status, marital status, criminal history, or status as a victim of domestic violence. Our different identities impact our understanding of the world and how others perceive us. For example, an individual's race, ability, or immigration status may impact their experience with gender discrimination in the workplace. While this policy is focused on sexual harassment and gender discrimination, the methods for reporting and investigating discrimination based on other protected identities are the same.

The purpose of this policy is to maintain a healthy work environment by teaching members to recognize discrimination, including discrimination due to an individual's intersecting identities, and provide the tools to take action when it occurs. All members are required to work in a manner designed to prevent sexual harassment and discrimination in the workplace. This policy is also intended to provide members with procedures for reporting, investigating and resolving complaints of sexual harassment and discrimination.

### 147.2 POLICY

- A. Sexual harassment and discrimination are against the law and all employees must be aware that they may not engage in any acts that threaten, intimidate, harass, demean or torment fellow employees irrespective of whether the employee is a member of a protected class. All members of the department have a legal right to a workplace free from sexual harassment and employees are urged to report sexual harassment. Those covered by this Policy who engage in sexual harassment, and managers and supervisors who engage in sexual harassment or who knowingly allow such behavior to continue, will be subject to remedial action or discipline in accordance with law or an applicable Collective Bargaining Agreement. This Policy also prohibits retaliation against individuals who report or complain of sexual

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harassment or participate in the investigation of a sexual harassment complaint, as further described herein.

B. Complaints of sexual harassment should be submitted to the Lieutenant. The Lieutenant/Chief will conduct a prompt, thorough and confidential investigation that ensures due process for all parties, whenever a member of the department receives a complaint about sexual harassment or retaliation, or otherwise knows of possible sexual harassment occurring. The department will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever sexual harassment or retaliation is found to have occurred. All agency members are required to cooperate with any internal investigation of sexual harassment.

1. In the event the Lieutenant is the subject of the complaint, the complaint should be made to the Chief of Police. If the Chief of Police is the subject of the complaint, the complaint should be made to the Town Supervisor and Police Commission.


C. All members are responsible for reporting any harassment, discrimination or behaviors that violate this policy. An electronic complaint form for the reporting of harassment and to file complaints is located in the “Company” folder. Supervisors are required to report any complaint that they receive, or any harassment that they observe or become aware of in the workplace. Such reporting must be in written form to the Lieutenant. Confronting the actor is not required but is encouraged if the complainant feels it is possible and safe to do so. Anyone covered by this policy has the right to file a good faith complaint without first communicating with the offender.

1. It is a violation of this policy even if the act was severe or pervasive as to alter the condition of the victim’s employment and/or create an abusive work environment. A single act may suffice. To determine if the activity is unreasonable, the totality of the circumstances surrounding the incident must be assessed.

**SCOPE**

A. **Who is covered by this Policy?** This Policy applies to all employees, applicants for employment, interns, whether paid or unpaid, volunteers, non-employees and persons conducting business with the department.

B. **Who can be a target of sexual harassment?** Sexual harassment can occur between any individuals, regardless of their sex or gender. Harassment does not have to be between members of the opposite sex


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or gender. New York Law protects employees, paid or unpaid interns, and non-employees who provide services in the workplace. This Policy also protects volunteers of the department.

- C. **Who can be a sexual harasser:** A harasser can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor, or anyone with whom the person interacts while conducting their job duties. In short, harassers can be anyone in the workplace.
- D. **Where can sexual harassment occur?** Unlawful sexual harassment and discrimination is not limited to the physical workplace itself. It can occur while employees, interns and/or volunteers are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage can constitute or contribute to unlawful workplace harassment, even if occurring away from the workplace premises or during non-work hours.

### **147.3 DEFINITIONS**


- A. Sexual Harassment – is a form of gender-based discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, self-identified or perceived sex or gender, sexual orientation, gender identity, gender expression or transgender status. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender.
  - 1. Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:
    - i. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment;
    - ii. Such conduct is made either explicitly or implicitly a term or condition of employment; or
    - iii. Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.

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2. Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment does not need to be severe or pervasive to be illegal.
3. A sexually harassing **hostile work environment** consists of words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, self-identified or perceived sex or gender, sexual orientation, gender identity, gender expression or transgender status. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, and/or which interfere with the recipient's job performance.
4. Sexual harassment also occurs when a person in authority tries to offer job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "**quid pro quo**" harassment.
5. Anyone subject to and/or covered by this policy who feels harassed is encouraged to report the behavior so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

B. Examples of Sexual Harassment - Sexual harassment under the law and prohibited by this policy may include, but is not limited to, the following prohibited conduct. **This list is just a sample of behaviors and should not be considered exhaustive.**


1. Physical assaults of a sexual nature, such as:
  - i. Touching, pinching, patting, grabbing, brushing against another person's body or poking another person's body; rape, sexual battery, molestation or attempts to commit these assaults (which should be reported to local authorities as promptly as is possible).
2. Unwanted sexual advances or propositions, such as:
  - i. Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other employment benefits or detriments;
  - ii. subtle or obvious pressure for unwelcome sexual activities.
  - iii. Repeated requests for dates or romantic gestures, including gift-giving.

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3. Sexually oriented gestures, noises, remarks, jokes or comments about a person’s sexuality or sexual experience, which create a hostile work environment. This is not limited to interactions in person. Remarks made over virtual platforms and in messaging apps when employees are working remotely can create a similarly hostile work environment.
4. Sex stereotyping, which occurs when conduct or personality traits are considered inappropriate or treated negatively simply because they may not conform to other people’s ideas or perceptions about how individuals of a particular sex should look or act.
5. Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - i. Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace or in a work-related gathering or setting.
  - ii. This also extends to the virtual or remote workspace and can include having such materials visible in the background of one’s home during a virtual meeting.
6. Hostile actions taken against an individual because of that individual’s sex, self-identified or perceived sex or gender, sexual orientation, gender identity, gender expression or transgender status, such as:
  - i. Interfering with, destroying or damaging a person’s workstation, tools or equipment, or otherwise interfering with the individual’s ability to perform the job;
  - ii. Sabotaging an individual’s work;
  - iii. Bullying, yelling, name-calling.
  - iv. Intentional misuse of an individual’s pronouns; or
  - v. Creating different expectations for individuals based on their perceived identities

**C. Retaliation**

1. Retaliation is unlawful and is any action by an employer or supervisor that punishes an individual upon learning of a harassment claim, that seeks to discourage a worker or covered individual from making a formal complaint or supporting a sexual harassment or discrimination claim, or that punishes those who have come forward. These actions need not be job-related or occur in the workplace to constitute unlawful retaliation. For example, threats of physical violence outside of work hours or disparaging someone on social media would be covered as retaliation under this policy.


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2. The New York State Human Rights Law and this policy protect any individual who has engaged in “protected activity.” Protected activity occurs when a person has:
  - i. made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
  - ii. testified or assisted in a proceeding involving sexual harassment under this Policy, the State Human Rights Law or other anti-discrimination law;
  - iii. opposed sexual harassment by making a verbal or informal complaint to the department (including a supervisor or manager) or by simply informing a supervisor or manager of harassment;
  - iv. reported that another employee, intern, volunteer or non-employee covered by this Policy has been sexually harassed; or
  - v. encouraged a fellow employee, intern, volunteer and/or non-employee covered by this policy to report harassment.
  
3. Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.
  
4. Employees, interns, volunteers, and non-employees who believe they have been subjected to retaliation should report this conduct in accordance with the same reporting procedures as are outlined below. These complaints of retaliation will be investigated in accordance with the same procedures utilized to investigate a complaint of sexual harassment. Individuals also may file complaints of retaliation with the federal or state enforcement agencies (EEOC or New York State Division of Human Rights.) Any individual found to have engaged in retaliation as defined in this Policy may be subject to disciplinary action up to and including termination, and/or other corrective or remedial action as necessary.

#### **147.4 REPORTING PROCEDURES AND RESPONSIBILITIES**

##### A. Reporting Procedures

1. **Preventing sexual harassment is everyone’s responsibility.** The department cannot prevent or remedy sexual harassment unless it knows about it. Any employee, intern, volunteer or non-employee who has been subjected to behavior that may constitute sexual harassment is strongly encouraged to report such behavior to their immediate supervisor who will notify the


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Lieutenant. Anyone who witnesses or becomes aware of potential or perceived instances of sexual harassment should also report such behavior to their immediate supervisor who will notify the Lieutenant.

2. Although encouraged, note that neither this Policy nor state or federal law requires that an individual tell an alleged harasser to stop their actions. Failure to do so does not preclude the individual from filing a complaint of sexual harassment. Individuals should feel free to keep written records of any actions which may constitute sexual harassment, including time, date, location, names of others involved, witnesses (if any), and who said or did what to whom.
3. Reports of sexual harassment may be made verbally or in writing. If made verbally, the complaint must be reduced to writing by the individual who it was reported to. Individuals who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another person's behalf.
  - i. The written report must be given to the Lieutenant. If the report is about the Lieutenant, it should be given to the Chief of Police. If the report is about the Chief of Police, it should be given to the Town Supervisor and Police Commission.
4. Employees, interns, volunteers or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

#### B. Supervisory Responsibilities

1. Supervisors have a special responsibility to make sure employees feel safe at work and that workplaces are free from harassment and discrimination. Supervisors shall be responsible for enforcing this policy. In addition to being subject to discipline or other remedial action if they engaged in sexually harassing conduct themselves, all supervisors who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report same in writing, to the Lieutenant. Supervisors will be subject to discipline (or other remedial and appropriate action) for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.
2. Supervisors will also be subject to discipline or other appropriate remedial action for engaging

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in retaliation.


### C. Administrative Responsibilities

1. The Chief of Police or their designee will be responsible for ensuring that this policy is provided to all members and that training on this Sexual Harassment Prevention Policy is conducted annually.
2. The Chief of Police will also be responsible for monitoring and ensuring that retaliation does not occur.

## **147.5 INVESTIGATION AND RESPONSE PROCEDURES**


- A. **All** complaints or information about suspected sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner and will be confidential to the extent possible.
- B. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commencing immediately and completed as soon as possible. The investigation will be confidential to the extent possible. All persons involved, including complainants, witnesses and alleged harassers will be accorded appropriate due process to protect their rights to a fair and impartial investigation.
- C. Members *shall be* ~~may be~~ required to cooperate as needed in an investigation of suspected sexual harassment. As further set forth herein, the department will not tolerate retaliation against those who file complaints, support another's complaint, or participate in the investigation of a complaint.
- D. All investigations will be conducted by the Lieutenant. The nature of an investigation may vary on a case-by-case basis dependent upon the circumstances and extent of the allegations. Generally, investigations should be conducted by the Lieutenant in accordance with the following steps and New Paltz Police Department Policy and Procedure 25.1 Internal Affairs.
  1. Upon receipt of complaint, the Lieutenant will notify the Chief of Police and conduct an immediate review of the allegations, and take interim actions, as appropriate. If the complaint is oral, the individual will be encouraged to complete the "Complaint Form" in writing. If they refuse, a Complaint Form or other write up of the complaint based on the oral reporting will be



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prepared.

2. If documents, emails, phone records or social media records are relevant to the allegations, take steps to obtain and preserve them.
  3. Request and review all relevant documents, including all electronic communications.
  4. Interview all parties involved, including any relevant witnesses;
  5. Create (at a minimum) written documentation of the investigation (such as a letter, memo or email), which contains the following:
    - i. A list of all documents reviewed, along with a detailed summary of relevant documents;
    - ii. A list of names of those interviewed, along with a detailed summary of their statements;
    - iii. A timeline of events;
    - iv. A summary of prior relevant incidents, reported or unreported; and
    - v. Recommendation(s) for the final resolution of the complaint, together with any recommendations for corrective or remedial actions to be taken.
  6. Written documentation and associated documents shall be kept in the investigative file.
- E. The Chief of Police shall make notification to the Town Supervisor and Police Commission of any sexual harassment complaint made against a member of the agency and provide updates on the investigation.
- F. Once the investigation is completed, the Lieutenant will forward the investigation findings to the Chief of Police as to whether the policy has been violated. The Chief of Police will review the investigation file and findings. The Chief of Police will review the completed investigation with the Town Supervisor and the Police Commission for a final determination on policy violation and discipline.
- G. The Chief of Police shall promptly notify the complainant of the Final Determination, and also inform the complainant of their right to file a complaint or charge externally.
- H. If a complaint of sexual harassment or retaliation is determined to be founded, the Chief of Police may take disciplinary and/or corrective action in accordance with section 6.3 of the Collective Bargaining Agreement between the Town of New Paltz and the New Paltz Police Association, Inc.

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### **147.6 CONFIDENTIALITY AND DISCLOSURE**


In recognition of the personal nature of discrimination complaints and the emotional impact of alleged discrimination, the department shall keep complaints as confidential as is consistent with a thorough investigation, applicable collective bargaining agreements, and other laws and regulations regarding employees and the workplace setting. For the protection of all individuals who make complaints or are accused of prohibited discrimination, every witness interviewed during an investigation under this policy will be advised of the confidentiality requirement and instructed not to discuss the complaint, the investigation, or the persons involved. To the extent complaints made under this policy implicate criminal conduct, the department may be required by law to contact and cooperate with the appropriate law enforcement authorities.

### **147.7 FALSE REPORTS**

Reporting of a false complaint is a serious act. In the event it is found that an individual bringing the complaint has knowingly made false allegations, the department may take appropriate remedial action and/or disciplinary action in accordance with the provisions of applicable collective bargaining agreement and/or state law

### **147.8 LEGAL PROTECTIONS AND EXTERNAL REMEDIES**


- A. Sexual harassment is not only prohibited by the Town of New Paltz and the department, but is also prohibited by state, federal, and, where applicable, local law.
- B. Aside from the internal process set forth in this policy, members may also choose to pursue legal remedies with the following governmental entities **at any time**.
  - a. **New York State Division of Human Rights (DHR)**
    - i. The Human Rights Law (HRL), codified as N.Y. Executive Law, Art. 15, § 290 et seq., applies to employers in New York State with regard to sexual harassment, and protects employees, interns and non-employees. A complaint alleging violation of the Human Rights Law may be filed either with Division of Human Rights or in New York State Supreme Court. Complaints with DHR may be filed any time **within three years** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged discrimination. An individual may not file with DHR if they have already filed a HRL complaint in state court.

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- ii. Complaining internally to the department does not extend the time for filing a complaint with DHR or in court. The *three years* are counted from date of the most recent incident of harassment.
- iii. An individual does not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.
- iv. DHR will investigate the complaint and determine whether there is probable cause to believe that discrimination has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination is found after a hearing, DHR has the power to award relief, which varies but may include requiring the employer to act to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.
- v. Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

**b. United States Equal Employment Opportunity Commission (EEOC)**

- i. The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within **300 days** from the *most recent incident of* harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred. If the EEOC determines that the law may have been violated, the EEOC will try to reach a voluntary settlement with the employer. If the EEOC cannot reach a settlement, the EEOC (or the Department of Justice in certain cases) will decide whether to file a lawsuit. The EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court if the EEOC closes the charge, is unable to determine if federal employment discrimination laws may have been violated or believes that unlawful discrimination occurred by does not file a lawsuit.
- ii. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may

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award remedies if discrimination is found to have occurred.

- iii. If an individual believes that they have been discriminated against at work, they can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov)
- iv. If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### **147.9 TRAINING**

- A. All members of the New Paltz Police Department will receive sexual harassment training on an annual basis. The training will include an interactive component.
- B. Record of the completed annual training will be kept in the department’s training records and forwarded to the Town’s Personnel Office.