

Agenda Summary

November 8, 2023

Agenda Item No. A-3

Sexual Harassment Policy Update

Summary: The Town's personnel attorney, Kerin Stackpole, incorporated Selectboard feedback and recent legislative changes to 21 V.S.A. §495h <https://legislature.vermont.gov/statutes/section/21/005/00495h> into the Sexual Harassment Policy and the proposed policy is attached,

Town Plan Impact: N/A

Fiscal Impact: The Town's personnel attorney will be scheduled to provide training to all municipal employees at an estimated cost of \$5,500. We will apply for a VLCT PACIF grant to help offset the cost.

Recommendation: Move to adopt the enclosed Sexual Harassment Policy.

**TOWN OF STOWE, VT
SELECTBOARD
SEXUAL HARASSMENT POLICY**

Section 1. Purpose – To comply with state (21 V.S.A. 495h) and federal law by adopting a written anti-discrimination/anti-harassment policy regarding behaviors based on sex, gender, gender identity, or sexual orientation. Additionally, this policy is designed to convey to the employees in writing that it is against the policies of the Town, and illegal under state and federal law, for any employee to sexually harass another employee or to discriminate against an employee based on sex, sexual orientation, gender or gender identity.

Section 2. Conduct – The Town is committed to providing a workplace free from sexual harassment and free of discrimination based on sex, sexual orientation, gender or gender identity (collectively referred to herein as sexual harassment). It is a violation of this policy for an employee to engage in sexual harassment. Sexual harassment is a form of unlawful discrimination and means:

- (a) Unwelcome sexual advances, requests for sexual favors, and other verbal, physical, written, auditory, or visual conduct of a sexual nature when:
 - (1) Submission to or rejection of such conduct is used as the basis for employment decisions affecting the person who did the submitting or rejecting;
 - (2) Submission to that conduct is made either explicitly or implicitly a condition of the individual's continued employment; or
 - (3) Such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.
- (b) Sexual harassment need not be severe or pervasive in order to be unlawful.
- (c) Examples of sexual harassment include, but are not limited to the following, when such acts or behavior fall under one of the above definitions:
 - (1) An individual repeatedly makes inappropriate remarks about someone's clothing, body, gender, gender identity, sexual orientation, sexual activities.
 - (2) An individual engages in unwelcome and offensive touching, patting, or pinching of another person's body parts; or engages in repeated leering or ogling; or engages in any type of assault of a sexual nature.

- (3) Sending, posting or displaying sexualized or sexually explicit materials to another employee's email, text, or social media account.
- (4) Posting sexualized or sexually explicit materials in any physical space frequented by employees.
- (5) Continuing to ask a person to socialize on or off-duty when that person has indicated that they are not interested.
- (6) Continuing to write sexually suggestive notes, emails or texts if it is known or should be known that the recipient does not welcome such behavior.
- (7) Referring to or calling a person a sexualized name or telling sexual or vulgar jokes or using explicit and vulgar language, if it is known or should be known that such behavior is unwelcome.
- (8) Retaliation of any kind for having filed or supported a complaint of sexual harassment (e.g. ostracizing the person, pressuring the person to drop or not support the complaint, adversely altering that person's duties or work environment, etc.).
- (9) Derogatory or provoking remarks about or relating to a person's sex or sexual orientation, gender or gender identity.
- (10) Harassing acts or behavior directed against a person on the basis of his or her sex or sexual orientation or gender or gender identity.

Conduct such as the above that happens off-duty, off-site or after hours, but that still falls within these definitions and affects the work environment, is also prohibited.

In addition, the Town prohibits employees from engaging in sexual activity of any kind while on duty, regardless of whether that activity is consensual.

Section 3. Training - Each Department Head has an affirmative duty to maintain his/her workplace free of sexual harassment and intimidation. Therefore, it is the responsibility of the Department Head to discuss this Policy with their employees and assure them that they can work in security and dignity, and are not required to endure insulting, degrading, or exploitive sexual treatment. It is also the responsibility of any Department Head to immediately report to the Town Manager or Human Resource Director any complaints they receive from their employees concerning sexual harassment.

Section 4. Complaints: Any employee or volunteer, who is the victim of sexual harassment, should report the matter to the Town Manager, who will take necessary steps to see that the matter is promptly investigated and addressed. If the complainant is dissatisfied with the employer's action, or is otherwise interested in doing so, the employee may file a complaint by writing or calling the following state or federal agencies:

Suggested Revisions – October 2023

- (a) Vermont Attorney General's Office, Civil Rights Unit, 109 State Street, Montpelier, VT 05609; tel; (802) 828-3171 (voice/TDD): Complaints should be filed within 300 days of the adverse action.
- (b) Equal Employment Opportunity Commission, 1 Congress Street, Boston, MA 02114, tel: (617) 565-3200 (voice/TDD). Complaints should be filed within 300 days of the adverse action.
- (c) Vermont Human Rights Commission, 14-16 Baldwin Street, Montpelier, VT 05633, 802-828-2480 (Voice/TDD). Complaints must be filed within 360 days of the adverse action.

Each of these agencies can conduct impartial investigations, facilitate conciliation; and, if it finds that there is probable cause or reasonable grounds to believe sexual harassment occurred, it may take the case to court. Although employees are encouraged to file their complaint of sexual harassment through this employer's complaint procedure, an employee is not required to do so before filing a charge with these agencies.

Section 5. Care will be taken to protect the identity of the person with the complaint and of the accused party or parties, except as may be reasonably necessary to successfully complete the investigation. It shall be a violation of this policy for any person who learns of the investigation or complaint to take any retaliatory action which affects the working environment of any person involved in this investigation.

Section 6. Retaliating or discriminating against an employee for complaining about sexual harassment is prohibited.

Section 7. Any substantiated instance of sexual harassment as described herein, any act of retaliation, or any failure to cooperate in the investigation or resolution of a sexual harassment complaint may result in disciplinary action consistent with any applicable collective bargaining agreement, statute or Town policy.

Section 8. In the event an employee accuses the Town Manager of this type of conduct, a complaint shall be submitted to a Selectboard Member. The Town Attorney shall cause an investigation to be undertaken and shall provide the Selectboard with a summary of findings.

Section 9. In the event an investigation leads to the conclusion that the accusation is unsubstantiated or does not constitute behavior which is inappropriate, no disciplinary action shall be taken. However, the Town may still require additional training, education, or behavior change as may be appropriate under the circumstances.

Section 10. In the event an investigation leads to the conclusion that the accusation is blatantly false and malicious, the accuser may be disciplined consistent with any applicable collective bargaining agreement, statute or Town policy.

Adopted by the Selectboard on: November 8, 2023

**Town of Stowe, VT
Sexual Harassment Policy
Acknowledgement Form**

I, _____ acknowledge that I have received and read the Town of Stowe Sexual Harassment Policy, have been given the opportunity to ask questions and receive information in response to my questions regarding such policy.

Dated this _____ day of _____, 20_____.

Signature

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