

**AN ORDINANCE AUTHORIZING THE ADOPTION OF AN EMPLOYEE SEXUAL HARASSMENT AND HARASSMENT POLICY AND THE ADDITION OF THE POLICY AS DEFINED TO THE VILLAGE EMPLOYEE HANDBOOK**

WHEREAS, Brewster Village Council desires to adopt an Employee Sexual Harassment and Harassment Policy and to modify the Village Employee Handbook to include an Employee Sexual Harassment and Harassment Policy.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BREWSTER, THAT:**

**SECTION 1:** The Village shall adopt an Employee Sexual Harassment and Harassment Policy as defined below and shall add Section 6.06 - Employee Sexual Harassment and Harassment Policy to the Village Employee Handbook as follows:

**6.06 SEXUAL HARASSMENT AND HARASSMENT POLICY**

**A. Statement of Purpose**

The purpose of this policy is to prevent sexual harassment or harassment of employees based on sex, race, color, religion, national origin, ancestry, marital status, age, mental or physical disability, military status, or any other protected category by supervisors, co-workers, customers, vendors, or consultants.

If an employee believes he or she is being subjected to any of the prohibited forms of harassment or believes he or she is being discriminated against because other employees are receiving favored treatment in exchange for sexual favors, he or she must bring this to the attention of the Village of Brewster. The very nature of harassment makes it virtually impossible to detect unless the person being harassed registers their discontent with the appropriate Village of Brewster representative. Consequently, in order for the Village of Brewster to deal with the problem of harassment if it occurs, employees must report such offensive conduct or situations.

**B. Policy**

The Village of Brewster is committed to promoting a productive work environment in which every employee is treated with respect. It is the policy of the Village of Brewster that employees should be able to work in an environment free from all forms of harassment as defined by this policy or by law. Sexual Harassment and/or harassment will not be tolerated. It is a violation of Village policy for any employee of the Village to engage in sexual harassment or harassment as set forth herein.

**C. Sexual Harassment - Definition**

Harassment on the basis of sex is a violation of Title VII of the 1964 Civil Rights Act and state law. Sexual harassment is the attempt to control, influence, or affect the career, salary, or job of an individual by sexual coercion. Sexual harassment may also be conduct which creates a hostile or offensive work environment or unreasonably interferes with an individual's ability to perform their job.

**Types of Sexual Harassment**

1. **Quid Pro Quo harassment** - where submission to unwelcome sexual advances become(s) the basis for an employment decision. Examples of Quid pro quo harassment include:
  - Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, and/or
  - Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
2. **Hostile Working Environment** - where the unwelcome sexual advances creates an intimidating, hostile, and/or offensive working environment for any employee. It would include where conduct has the purpose or effect of unreasonably interfering with an individual's work. Unwanted sexual advances or comments or treating a person like a sexual object fall into this category.

**"Unwelcome Sexual Advances"** is defined as unwelcome sexual advances, requests for sexual favors, sexual demands, and other verbal or physical conduct of a sexual nature are considered acts

which constitute sexual harassment. Unwelcome sexual advances can come from supervisors, co-workers, customers, residents, vendors, or consultants.

**D. Examples of Unwelcome Sexual Advances and/or Sexual Harassment:**

The following specific conduct is prohibited, **but is not intended to be an exhaustive list**, of prohibited conduct:

1. Sexually-oriented verbal abuse; and/or
2. Subtle pressure for sexual activity; and/or
3. Demands for sexual favors accompanied by implied or overt promises of preferential treatment or threats concerning an individual's employment status; and/or
4. Threats, demands, or insinuations, implicit or explicit, that any employee's refusal to submit to sexual requests, invitations, or advances will adversely affect the employee's retention, evaluation, wages, promotion, duties, or any other condition of employment; and/or
5. Orientation activities that involve unwelcome sexual behavior; and/or
6. Unwelcome sexual invitations, sexual flirtations, sexual advances, sexual contact, or sexual propositions, especially after prior refusal; and/or
7. Verbal or written abuse of a sexual nature; and/or
8. Physical conduct such as unwanted touching, impeding or blocking movement, interference with doing work, or assault; and/or
9. Non-verbal behavior such as whistling, staring, leering, or gestures; and/or
10. Graphic verbal comments about an individual's body; and/or
11. Uninvited sexual or physical contact such as embracing, kissing or touching; and/or
12. Intrusive questions about sexual activity; and/or
13. Promises, propositions or threats in return for sexual favors; and/or
14. Sexual comments or jokes of a provocative or suggestive nature; and/or
15. Sexually degrading words used to describe an individual; and/or
16. Jokes, derogatory expressions, epithets, slurs, or comments that are sexually explicit or sexually oriented intended for and/or directed to another employee or able to be heard by another employee; and/or
17. The display in the workplace of sexually explicit or sexually suggestive objects, pictures, graphics, posters, drawings, cartoons, e-mails, or websites intended for and/or directed to another employee or able to be seen by another employee; and/or
18. Jokes, derogatory expressions, epithets, slurs, or comments involving race, color, religion, gender, national origin, marital status, age, mental or physical disability, or military status intended for and/or directed to another employee or able to be heard by another employee; and/or
19. The display of degrading objects, pictures, graphics, posters, drawings, cartoons, e-mails, or websites involving race, color, religion, gender, national origin, marital status, age, mental or physical disability, or military status intended for and/or directed to another employee or able to be seen by another employee; and/or
20. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; and/or
21. Submission to or rejection of such conduct by an individual is used as a basis for employment decision(s) such as hiring, promotion, retention, or compensation on whether an employee or applicant submits to sexual advances affecting an individual; and/or
22. Such conduct has the purpose or effect of substantially and unreasonably interfering with work performance or creating an intimidating, hostile or offensive working environment.

**E. Harassment - Definition**

Harassment is a form of misconduct which undermines the integrity of the employment relationship. The Village prohibits all forms of unlawful harassment on the basis of race, color, religion, sex, military status, national origin, disability, age, ancestry, or other legally protected category. Harassment can come from supervisors, co-workers, customers, residents, vendors, or consultants.

Harassment can be further defined as offensive or intimidating conduct, of a verbal or physical nature, based on a protected category (race, color, religion, sex, military status, national origin, disability, age, ancestry, or other legally protected category), which has the purpose or effect of

unreasonably interfering with an employee's working conditions or performance, creating a hostile, intimidating, or offensive work environment, or otherwise adversely affects employment or employment opportunities. Harassment can be committed by an elected official, supervisor, co-worker, customer, vendor, or consultant.

#### **Examples of Harassment**

The following conduct is prohibited, **but is not intended to an exhaustive list** of prohibited conduct:

1. Verbal abuse or comments that put down or stereotype people; and/or
2. Derogatory or demeaning jokes intended to offend on the basis of stereotyped characteristics; and/or
3. Offensive communications (such as posters, letters, e-mails, faxes, screen savers, web sites); and/or
4. Offensive telephone or electronic mail or other computer system communications; and/or
5. Insults, taunting, name calling, innuendo or bullying; and/or
6. Persistent or intrusive questions or comments about an individual's personal life; and/or
7. Orientation activities that involve unwelcome sexist, racist or other discriminatory behavior; and/or
8. Engaging in behavior which is embarrassing, humiliating or intimidating; and/or
9. Derogatory comments about race, religion and customs; and/or
10. Teasing or offensive language and racist behaviors; and/or
11. Mocking customs or cultures.

#### **F. Response to Sexual Harassment, Unwelcome Sexual Advances, or Harassment**

##### **STEPS TO TAKE IN THE EVENT OF SEXUAL HARASSMENT, UNWELCOME SEXUAL ADVANCES, OR HARASSMENT**

**If an employee believes workplace harassment or unwelcome sexual advances have occurred, do ALL of the following:**

##### **1. RESPOND**

Any employee who believes he or she has been the subject of workplace harassment or unwelcome sexual advances by anyone, including a co-worker, supervisor, resident, or by people doing business with or for the Village, or is a witness to such workplace harassment or unwelcome sexual advances, should respond to the alleged act immediately.

**PUT THEM ON NOTICE! TELL THEM TO STOP! TELL THE OFFENDER THAT SUCH CONDUCT IS UNWELCOME AND UNACCEPTABLE!**

**Victims should respond promptly and directly to the harasser.** It is strongly advised (but not required) to be sure that the person who is subjecting you to workplace harassment or unwelcome sexual advances knows that you do not welcome that person's conduct/advances/comments/actions.

**Clearly inform the harasser you feel offended by the behavior and want it to stop immediately.** If the offensive behavior does not stop, or if the employee is uncomfortable confronting the offender, the employee should immediately report such conduct to their supervisor, or to the Village Administrator, the Mayor, or Clerk-Treasurer (Appointing Authority).

##### **2. DOCUMENT**

Attempt to write down each offensive advance/comment/action. Be as specific as possible, including time, date, and location. Note the names of any co-workers or any others who may have witnessed or overheard the alleged harassment. **Keep a record of the behaviors in case (or WHEN) an investigation is later conducted.**

##### **3. REPORT**

An employee who believes they have experienced any form of workplace harassment or unwelcome sexual advances or a witness to any form of workplace harassment or unwelcome sexual advances should promptly report the matter.

If harassment continues after you inform the harasser to stop, **OR** if you feel the conduct is severe, inform the Village and/or submit a complaint.

The report should take place as soon after the event as possible so that evidence can be obtained/preserved and/or interviews with anyone involved or with direct knowledge can be contacted when their memories are fresh.

There are multiple avenues available to make a report. Inform (make a verbal or written report to) your

- immediate supervisor; or
- next in the “chain-of-command”; or
- your superintendent; or
- the Village Administrator, the Mayor, or Clerk-Treasurer (Appointing Authority)

of the alleged sexual harassment or harassment. In the event that the employee’s immediate supervisor is unavailable, or should the concern be about the employee’s immediate supervisor, or the employee would rather not discuss with their immediate supervisor, there are other avenues to make a report.

The Village will promptly undertake an investigation ensuring confidentiality to the greatest possible extent.

Supervisors and/or Superintendents are required to inform the Village Administrator, Mayor, or Clerk-Treasurer (Appointing Authority) **immediately when they become aware** of alleged conduct that could be classified as sexual harassment or harassment. The knowledge does **NOT** need to come from a formal complaint (report) of any form of workplace harassment or unwelcome sexual advances. Sexual Harassment and/or harassment needs to be reported when the Village obtains knowledge of alleged conduct, even if/when an employee states they do not want an investigation.

#### **G. Investigation**

All complaints will be investigated promptly. The investigation will be conducted by the appropriate Village employee/official or designee. The investigation will be performed in a fair, impartial, effective, thorough, and objective manner, and completed in a timely a manner as is practical. Allegations of workplace harassment or unwelcome sexual advances will be investigated even if no formal complaint is filed or the affected/complaining individual refuses to cooperate in an investigation. However, in order to assist the Village in insuring that all employees have a safe workplace free from sexual harassment or harassment, all employees who possess knowledge of an alleged incident or of similar incidents are expected to cooperate with the Village's investigation by fully and accurately responding to Village inquiries. The determination will be communicated to the employee who complained (or who was the “target” of the behavior being investigated) and to the person whose behavior was investigated.

#### **H. Suspension**

If appropriate, an alleged offender may be suspended from work pending the outcome of the investigation.

#### **I. Discipline for Violation**

Any employee who is found to have condoned or to have failed to report such action on the part of subordinates, will be subject to appropriate disciplinary action up to and including termination of employment.

Any employee who is found, after an investigation and due process, to have engaged in workplace harassment or unwelcome sexual advances as defined pursuant to the terms of this policy, local, state, and/or federal law or any other applicable rule or order, will be subject to discipline, up to and including termination of employment.

Other appropriate action may also be taken by the Village to correct the effects of sexual harassment or harassment and/or to deter any future sexual harassment or harassment.

#### **J. No Retaliation for Filing a Complaint**

There will be no intimidation, threats, coercion, discrimination or retaliation against an employee who files a bona fide report of harassment. The Village expressly prohibits any form of retaliatory action against any employee availing themselves of the benefits of this procedure. The registering or filing of a complaint, or being a witness, will in no way be used or held against an employee, nor will it have an adverse impact on the employee’s employment status. The Village prohibits retaliation. No employee will be retaliated or discriminated against, discharged, or receive any adverse action for

- reporting, threatening to report, opposing, or registering a complaint of prohibited or unlawful harassment, or
- assisting, participating, being a witness, or supplying information in any investigation, proceeding, hearing, or other forum, or

Retaliation is a violation of this policy and will result in disciplinary action, up to and including termination. If you believe retaliation has occurred, inform the Village Administrator, Mayor, or Clerk-Treasurer (Appointing Authority), or the Law Director.

#### **K. False Complaint**

While the Village will take appropriate action in the event that it is substantiated that behavior has occurred which violates this policy, in the event that it is determined that a false report or complaint has been made the employee found to make a false report or complaint (not made in good faith) will be subject to discipline, up to and including termination of employment.

#### **L. Activities Which Do Not Qualify as Harassment**

Normal management activities do not qualify as workplace harassment. Matters of inherent managerial policy do NOT constitute harassment, which include, but are not limited to:

- Areas of discretion or policy such as the functions and programs of the public employer, standards of services, budget, utilization of technology, and organizational structure;
- Directing, supervising, evaluating employees;
- Maintaining and/or improving the efficiency and effectiveness of governmental operations;
- Determining the overall methods, process, means, or personnel by which governmental operations are to be conducted;
- Performance evaluations;
- Giving appropriate criticism and/or taking appropriate corrective action when an individual's work is unsatisfactory, such as suspending, disciplining, demoting, or discharging for just cause;
- Laying off, transferring, assigning, scheduling, promoting, or retaining employees;
- Determining the adequacy of the work force;
- Determining the overall mission of the employer as a unit of government;
- Effectively managing the work force;
- Taking actions to carry out the mission of the public employer as a governmental unit.

The foregoing, while they may not please employees, unless it is done in a discriminatory manner, does not constitute harassment.

#### **M. Appeal**

An employee may choose to contact their Appointing Authority or Law Director if a complaint is not resolved in a timely or satisfactory manner.

In the event that a complaint/investigation is not resolved satisfactorily by an appointing authority or the Law Director, a final appeal may be taken by an aggrieved employee by requesting that an outside third party be picked by the Mayor, Law Director, and Chairperson of the Personnel Committee of Council.

This final appeal must be requested within thirty (30) calendar days of a decision. An employee may only file one (1) appeal.

#### **N. Confidentiality**

All aspects of the complaint-handling procedure will be handled as discreetly as possible. A record of the complaint and the findings will become a part of the complaint investigation record. Except for written documentation of disciplinary action, the file/record will be maintained separately from the employees' personnel files. It is understood that any person electing to utilize this procedure will be treated professionally and courteously. The procedure shall maintain confidentiality **to the fullest extent possible**. The Village cannot guarantee complete confidentiality.

**SECTION 2:** The above policy replaces any previous version of this policy and supersedes any current policy which may be in conflict with this policy.

**SECTION 3:** This ordinance shall be in full force and effect at the earliest date provided by law.

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Mayor Michael E. Schwab

ATTEST:

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Village Clerk Treasurer K. Kris King

CERTIFICATE

I, K. Kris King, hereby certify that the above is a true copy of an ordinance passed at a regular meeting of the Brewster Village Council held on March 6, 2017

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Clerk K. Kris King

I, K. Kris King, Clerk of the Council of the Village of Brewster, State of Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by Council as follows: Office of Brewster Utilities, Belloni's IGA, Brewster Federal Credit Union, Post Office and Brewster Laundromat.

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Clerk K. Kris King