1st reading 1-21-15

Sponsored by: _____

Seconded by: _____

CITY OF HOBOKEN

ORDINANCE NO.: Z-331 Z-331

AN ORDINANCE TO AMEND CHAPTER 29 ENTITLED "ETHICS" TO INCORPORATE THE ADMINISTRATION'S AFFIRMATIVE ACTION POLICY AND PROVIDE FOR AN ENFORCEMENT OFFICER FOR THE CHAPTER

WHEREAS, Chapter 29 of the Administrative Code of the City of Hoboken titled "Ethics" addresses various issues, including those pertaining to appropriate and ethical conduct of City employees; and

WHEREAS, the Administration, by way of an Executive Order, has enacted an Affirmative Action Policy, which the City Council heretofore seeks to codify, subject to minor revisions; and

WHEREAS, the City Council seeks to expressly clarify the enforcement officer for employee issues relating to Chapter 29.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hoboken that Chapter 6 of the Administrative Code of the City of Hoboken shall be amended as follows (additions noted in underline; ~~deletions~~ noted in ~~strikethrough~~):

SECTION ONE: AMENDMENT

Article I: Ethical Municipal Public Employment

§ 29-7 Affirmative Action in the Workplace

The City of Hoboken and its employees, agents, contractors and officers shall be required to follow an Affirmative Action Policy, which shall be attached to this City of Hoboken Administrative Code Chapter 29, Article 1 as Appendix A.

§ 29-8 Complaint procedure, violations policy and penalties.

Unless complaint procedures, violation policies or penalties are otherwise described within the sections of this article, the following shall apply:

A. Public meetings. Any person who comports him/herself in such a manner which violates any section of this article shall be warned once to cease and desist from such actions. If the person refuses or fails to stop such activities, he/she shall be removed from the meeting by the police and warned that future similar actions shall result in the filing of a defiant trespass action.

B. Employee at workplace. Any employee who believes he or she has been subjected to offensive and/or insulting behavior by a co-worker, member of the public, elected official, supervisor or vendor has ~~an obligation~~ the option to directly inform the offending person that the conduct is offensive and must stop.

(1) If this direct communication with the offending person is not successful, or if the employee subject to the offensive and/or insulting behavior does not wish to utilize the option of direct communication, for any reason, the employee should promptly report

the incident(s) and the names of the individuals involved to his or her supervisor or, in the alternative, to the Business Administrator, who will investigate all such claims and take appropriate corrective action, if any.

(2) Confidentiality to the extent possible will be maintained, and no reprisals or retaliation will result from the good faith reporting of intolerant behavior.

C. In determining whether the alleged conduct constitutes a violation of this article, the totality of the circumstances, the nature of the conduct and the context in which the alleged conduct occurred will be investigated. Any employee found to have engaged in such impermissible behavior shall be subject to sanctions, including, but not limited to, warning, suspension or termination, subject to applicable procedure requirements. Nonemployees, violating any section of this article may be subject to removal from City property and/or prohibition from appearing on City property or at City events.

D. A violation of any provision of this article shall be considered a violation of the City Code of Ethics and may subject the municipal official employee or appointee to disciplinary action.

E. The Enforcement Officer for Chapter 29, Article I of the City Code shall be the appointed Affirmative Action Officer, and, in the appointed Affirmative Action Officer's absence or incapacity, Corporation Counsel shall appoint outside legal counsel.

SECTION TWO: REPEAL OF INCONSISTENT PROVISIONS All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all ordinances or part of ordinances now existing or in effect unless the same being conflict or are inconsistent with any provision of this Ordinance shall remain in effect.

SECTION THREE: SEVERABILITY The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION FOUR: EFFECTIVE DATE This Ordinance shall take effect upon passage and publication as provided by law.

SECTION FIVE: CODIFICATION

This Ordinance shall be a part of the Administrative Code of the City of Hoboken as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Administrative Code.

The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Administrative Code of the City of Hoboken in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Administrative Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

Date of Introduction: January 21, 2015

Introduction:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla	✓			
Theresa Castellano		✓		
Peter Cunningham	✓			
James Doyle	✓			
Elizabeth Mason		✓		
David Mello				✓
Tim Occhipinti	✓			
Michael Russo		✓		
President Jen Giattino	✓			

Final Reading:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla	✓			
Theresa Castellano	✓			
Peter Cunningham	✓			
James Doyle	✓			
Elizabeth Mason				✓
David Mello	✓			
Tim Occhipinti				✓
Michael Russo	✓			
President Jen Giattino	✓			

Approved as to Legal Form:

Mellissa L. Longo, Corporation Counsel

Adopted by the Hoboken City Council
By a Vote of 7 Yeas to 0 Nays
On the 3 day of Feb., 2015

James Farina, City Clerk

☐ Vetoed by the Mayor for the following reasons: _____

_____

_____

_____

_____

-or-

☐ Approved by the Mayor
On the 4th day of March, 2015

Dawn Zimmer, Mayor

APPENDIX A TO CHAPTER 29 OF THE ADMINSTRATIVE CODE OF THE CITY OF HOBOKEN
CITY OF HOBOKEN AFFIRMATIVE ACTION POLICY

I. PURPOSE:

In recognition of the dignity and worth of all individuals employed by the City of Hoboken ("City"), including the Office of the City Clerk and the City Council, this city-wide policy, addressing the issue of harassment in the work-place, is created to establish guidelines and set standards for dealing with inappropriate conduct as defined by this policy. In that regard, this policy was not designed and shall not be used to intentionally bring frivolous or malicious charges against any City employee.

Each employee in city government is entitled to work in an environment free from discrimination of any kind. Harassment demeans and demoralizes the individual, undermines the employment relationship and reduces productivity in the workplace. Workplace harassment will not be tolerated.

II. COVERAGE:

This policy applies to all employees of the City, including the Office of the City Clerk and the City Council, and prohibits such conduct by or towards any City employee including conduct by any supervisor, co-worker, or the general public.

Independent contractors, vendors and all other parties engaged in a business relationship with the City of Hoboken are expected to abide by this policy in their dealings with City employees.

III. DEFINITION:

Generally, discrimination consists of unwelcome conduct, whether verbal, physical or visual, based on a person's race, color, sex, religion, national origin, age, physical handicap, marital status, disability or other protected status. Such conduct is harassment when it affects a job benefit, interferes unreasonably with work performance or creates an intimidating, hostile or offensive work environment.

Specifically, sexual harassment is defined as: unwelcome sexual advances, requests for sexual favors and/or other verbal or physical conduct based on gender when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; and/or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; and/or
3. 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 including, but not limited to:

    Gender Harassment: Generalized gender-based remarks and/or behavior;

    Seductive Behavior: Inappropriate, unwanted, offensive physical and/or verbal sexual advances;

    Sexual Bribery: Solicitation of sexual activity or other sex-linked behavior by promise of reward;

    Sexual Coercion: Coercion of sexual activity by threat of punishment; and

    Sexual assault: Gross sexual imposition, including, but not limited to, touching, fondling, grabbing or assault.

IV. STATEMENT OF PROHIBITED CONDUCT:

The City considers the following listed conduct to represent some of the types of acts or incidents which violate its Affirmative Action/Anti-Harassment Policy. Clearly, each alleged act or incident must be investigated and evaluated within its own factual context. However, the following listed conduct can be used as a guideline for City employees. The atmosphere created by each incident of harassment against an individual affects all persons who share the victim's classification and causes all to suffer the consequences of the offensive behavior.

A. Physical contact of a sexual nature, including but not limited to, sexual contact:

1. Rape, sexual battery, sexual assault, molestation or attempts to commit these assaults; and/or
2. Intentional unwelcome physical contact of a sexual nature such as touching, pinching, patting, grabbing, or brushing against another person's body.

B. Unwanted sexual advances, propositions or sexual comments, including, but not limited to:

1. Sexually-oriented gestures, noises, remarks or jokes about an individual's sexuality, sexual orientation or sexual experience made in front of, or directed at, an employee; and/or
2. Promise of reward for sexual activity; and/or
3. Making the performance of a person's job more difficult because of a refusal to submit to sexual conduct.

C. Sexual or discriminatory displays or publications in the work place, including, but not limited to:

1. Displaying pictures, posters, calendars, graffiti, objects, reading materials or other materials which are sexually suggestive, sexually demeaning, pornographic or racially or ethnically demeaning in nature. A picture or display will be presumed to be sexually suggestive if it depicts a person of either sex not fully clothed or in clothes not suited to routine work or who is posed for the purpose of drawing attention to the private portions of his or her body.
2. Displaying and/or maintaining pictures, reading materials and/or videos that are sexually suggestive, sexually demeaning, pornographic or racially or ethnically demeaning in nature on a City-owned computer or City-owned telephone, including, cellular telephones. Again, a picture or display will be presumed to be sexually suggestive if it depicts a person of either sex not fully clothed or in clothes not suited to routine work or who is posed for the purpose of drawing attention to the private portions of his or her body.

D. Retaliation for harassment complaints may include, but is not limited to:

1. Disciplining, changing work assignments, providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with an employee because that employee has filed a sexual harassment complaint or participated in a harassment investigation; and/or
2. Falsely denying, lying about or covering up, or attempting to cover-up prohibited conduct. Also, intentionally pressuring persons to engage in a similar or same conduct.

E. Other acts:

1. The acts or conduct described above are not all inclusive of prohibited acts under this policy. Any of the above–described conduct may be construed as sexual harassment.

V. TRAINING:

Recognizing that the issue of harassment is complex and involves both legal and non-legal considerations, the City stresses the importance of civil rights education on a continuing basis to help its work force properly identify

inappropriate behavior, encourage respect and tolerance, appropriately handle complaints, and implement remedial actions, if necessary.

Training will be conducted on a regular basis to ensure that all supervisors and employees are equipped to appropriately and effectively prevent the occurrence of harassment and keep the work environment free of discrimination.

VI. CONFIDENTIALITY:

To the fullest extent possible, any investigation of harassment complaints will be conducted in confidence to protect the privacy and reputation of the complainant, the alleged harasser and all witnesses. All parties involved in the investigative process will be advised of the need for confidentiality and encouraged to maintain the integrity of the investigation from the interviews to the final agency decision.

VII. RETALIATION:

It is an absolute violation of this policy to take reprisals against any person because he/she has filed a complaint, acted as a witness or provided assistance in the investigation. Any threats and/or other forms of intimidation against any party involved in the proceeding shall be cause for disciplinary action, including termination.

VIII. PROTECTION OF ALL PARTIES:

The City's policy is to investigate all such complaints thoroughly and promptly.

The alleged harasser will receive notification of any complaint which has been lodged against him/her either through the Manager/Supervisor or Affirmative Action Officer or Authorized Designee.

A finding of no probable cause resulting from an investigation does not necessarily preclude a person from pursuing any actions or remedies which he/she may have in either equity or law.

IX. REMEDIAL ACTION:

This policy is progressive in nature to the extent that any remedial action taken against an employee found guilty of violation said policy may include, but is not limited to:

Referral to counseling
Oral reprimand
Written reprimand
Suspension (with or without pay)
Termination
Referral to the criminal justice system for further prosecution

However, the section of the available remedies shall be determined in a manner consistent to redress the nature, extent, frequency, etc. of the alleged violation(s). As set forth above, the City may avail itself of the right to immediately suspend (with or without pay) or terminate the alleged harasser upon a final determination that the alleged harassment occurred.

I. DISTRIBUTION OF POLICY:

The Harassment Policy and Procedures of the City shall be distributed to all current employees and all new hires. As deemed appropriate or necessary, a general policy statement will be issued to all employees restating the City's commitment to the personal worth of the individual, to the respect owed to each other, and to the fostering of a

work environment free from harassment. Additionally, any amendments, revisions or modifications to this policy shall be distributed to all City of Hoboken employees on or before its effective date.

COMPLAINT PROCESS AND PROCEDURES

I. *PROCESS AND PROCEDURES FOR AFFIRMATIVE ACTION REVIEW PANEL*

Ultimate responsibility for responding to a complaint and, if warranted, taking appropriate remedial action rests with Affirmative Action Review Panel which consists of the Business Administrator or his/her designee, Corporation Counsel or his/her designee and the Director of the Department or his/her designee which employs the alleged harasser, unless there is a conflict. However, in the event that the alleged harasser is not a City employee, then the third member to the Panel shall be the Director of the Department or his/her designee which employs the complainant.

These individuals are obligated to ensure that the workplace environment is free from harassment. The Affirmative Action Review Panel is required to ensure that there is a prompt and thorough investigation of all complaints, as required by law, by establishing City's internal procedural steps to effectively address this need. An attorney, either from the Office of Corporation Counsel or from an outside law firm, shall be appointed as the Affirmative Action Officer by the Corporation Counsel to advise and assist the Panel in carrying out its responsibilities as defined by this policy and procedure. The Affirmative Action Review Panel is specifically authorized to perform, including but not limited to, the following:

A. Appointment and Staff Development

1. Appoint one or more Authorized Designees of a gender other than that of the Affirmative Action Officer to provide the option for complainant to file initial complaint in accordance with the City's official policy and procedure.
2. May direct the Affirmative Action Office or Authorized Designee to investigate the harassment allegations set forth in the complaint and to ensure that the investigation is conducted by competent, qualified, and trained investigators in a prompt and thorough manner.
3. Appoint/retain, after an investigation by the Affirmative Action Officer or Authorized Designee results in a finding of no probable cause, a third party neutral fact-finder (who is not an employee of the City) to independently investigate the charges alleged in the complaint. Should the Panel deem this action appropriate, the forty-five (45) day time limit to issue the Final Determination Letter shall be extended for a period not to exceed forty-five (45) days from the date that he/she is appointed/retained except by consent of the parties.
4. Ensure that the Affirmative Action Officer, Authorized Designee, supervisory employees, and other staff are properly trained in responding to complaints of harassment.

B. Investigation and Disposition of Complaints

1. The Affirmative Action Review Panel must review the investigation report and supporting documentation to determine if the findings and recommendations are consistent with the findings set forth in the report.

2. The Affirmative Action Review Panel is responsible for issuing a final determination with regard to any harassment complaint and shall notify the complainant of its determination in writing within 45 days of the complaint.

a. Time limits in which the Affirmative Action Review Panel shall issue its final written determination may be extended by agreement of the parties or where a third party neutral fact-finder is appointed/retained by the Affirmative Action Review Panel.

3. If the Affirmative Action Review Panel is not satisfied with any portion of the investigation, including a finding of no probable cause, they may modify the recommendation or direct additional steps be taken to ensure the completeness of the investigation. Any Remedial action which may recommend disciplinary action shall direct the manager/supervisor to proceed in accordance with N.J.A.C. 4A:2-1.1, et seq.

   a. Where there is a finding after an investigation by the Affirmative Action Officer or Authorized Designee, of no probable cause, the Affirmative Action Review Panel may direct that a third party neutral fact-finder conduct an independent investigation of the allegations of the complaint.
   b. In the instance that there is an actual or potential conflict of interest, the Corporation Counsel and/or the Business Administrator, in his/her best judgment, may refer the matter to outside legal counsel for handling and disposition.

4. The Affirmative Action Review Panel shall render a final determination letter which contains appeal rights and provide a copy to the Affirmative Action Officer.

5. The Panel must advise the Affirmative Action Officer or Authorized Designee in writing of any additional findings and/or conclusions resulting from an investigation to ensure that she/he provides notification and available appeal rights to the parties involved in the complaint.

6. If a settlement agreement contemplates reducing disciplinary charges implemented against a harasser at any point in the disciplinary appeal process, the Affirmative Action Review Panel must carefully consider the implications of such reduced penalty in the face of the original findings of the harassment investigation.

C. Other Responsibilities

1. The Affirmative Action Review Panel is bound by the same confidentiality provisions that apply to all other parties in the complaint process.

2. The Affirmative Action Review Panel directs, through the Affirmative Action Officer or Authorized Designee, who conducted the investigation, the implementation of remedial action, including discipline, and ensures that such action has been taken.

3. The Affirmative Action Review Panel directs the ongoing distribution of the city-wide policy in accordance with requirements listed in the policy.

II. *PROCESS AND PROCEDURES FOR AFFIRMATIVE ACTION OFFICER AND AUTHORIZED DESIGNEE*

Primary responsibility for the intake and investigation of every civil rights complaint rests with the Affirmative Action Officer or Authorized Designee as described herein. Ultimate responsibility remains at all times with the Affirmative Action Review Panel. Subsequently, the Affirmative Action Officer or Authorized Designee shall, under the authority of the Affirmative Action Review Panel, monitor compliance with any findings and/or conclusions directed by same. The Affirmative Action Officer is charged with the notification requirements at each step of the process. Specific actions required include the following:

A. **Immediate Responsibilities**

1. Allegations of harassment should be investigated promptly.

2. Upon receiving any information which may potentially involve harassment, the Affirmative Action Officer is obligated to investigate even in the absence of a written charge. The Affirmative Action Review Panel must be notified in writing of all complaints.

3. The Affirmative Action Officer must immediately record complaints not submitted in writing and maintain the information in a secured, confidential file to ensure that all complaints regarding harassment are appropriately responded to by the employer.

4. Upon receiving an employee's complaint pertaining to harassment, the Affirmative Action Officer must assess any impact on the employee which warrants immediate intervention to protect the welfare of the complainant in the event of potential retaliatory action. Such immediate intervention must be coordinated through the appropriate organizational channels with due consideration for the privacy and confidentiality of all parties involved.

B. **Complaint Process**

1. The Affirmative Action Officer shall conduct the initial interview of the complainant.

2. The Affirmative Action Officer will provide a copy of the signed complaint form to the complainant.

3. The Affirmative Action Officer will notify the Affirmative Action Review Panel, in writing, that a complaint has been filed and will be investigated.

4. The Affirmative Action Officer will provide the complainant with a written acknowledgment of the receipt of the complaint and include any further appropriate appeal rights.

C. **Investigative Process**

1. The Affirmative Action Officer will conduct an immediate investigation of the complaint. Interviews will be conducted with the complainant, followed by witnesses, and then with the alleged harasser.

2. The interviews should elicit specific facts pertinent to the claim, including, but not limited to, dates, places, witnesses, alleged injuries, the impact of the harassment upon the employee's job performance, the need for potential employee protection, professional counseling and other assistance deemed necessary and/or appropriate.

3. The Affirmative Action Officer should determine whether there are other sources of corroborating evidence to support the claims of harassment. Witnesses named by the complaining party and unnamed co-workers in a position to observe the events in question are potential sources of such information. Interviewees should be instructed that the investigation is being conducted in as confidential manner as possible and should only be told what they need to know in order to enable them to provide useful information.

4. The Affirmative Action Officer will advise the alleged harasser that the employer has received a complaint, interviews are being conducted and she/he is expected to be fully cooperative and candid with the interviewer. An individual accused of harassment should be advised that she/he is expected to cooperate in the investigation of the complaint and should be informed that she/he should not discuss the matter with any other individuals, including co-workers. The accused harasser should,

also, be advised that the employer will not make a decision with respect to the complaint until all available evidence is reviewed, there is no presumption of guilt or innocence in the matter, the employer will advise him/her of the results of its investigation shortly after it has been completed and any retaliation will subject the alleged harasser to discipline, up to and including termination.

5. During the course of the investigation, the Affirmative Action Officer is responsible for informing each individual involved of the necessity to maintain confidentiality throughout the course of the investigation. The Affirmative Action Officer must emphasize to all involved, including the complainant, the accused and the witnesses, of the confidential nature of the inquiry and must discuss the implications of divulging information related to the investigation, with specific reference to potential defamation claims, lawsuits, and/or disciplinary action that may occur as a result of unauthorized discussion of the case.

6. The Affirmative Action Officer will make facts uncovered during the course of the investigation available only to those authorized and on a need-to-know basis.

7. The Affirmative Action Officer must promptly investigate and respond immediately to any reported acts of retaliation by or to any party involved in the investigation.

8. Analysis of information obtained during the course of the investigation shall include, but not be limited to:

    a. Credibility of complainant, witnesses and alleged harasser.
    b. Definition of harassment as applied to facts uncovered during the investigation.
    c. Seriousness of the charge and the episode(s) leading to the complaint.
    d. Intent of the alleged harasser.
    e. Impact/effect on the victim.
    f. Impact/effect on the work environment.
    g. History or prior complaints involving parties in the current investigation.
    h. Other information which may become available during the course of the investigation.

D. <u>Final Report and Determination</u>

1. At the conclusion of the investigation, a complete written report must be executed. The report must include:

    a. Background of the complaint.
    b. Summary of the complaint.
    c. Findings of facts.
    d. Conclusions.
    e. Determination of probable cause, if applicable.
    f. Recommendations for remedial actions.

2. If disciplinary action is to be recommended, the Affirmative Action Officer must refer to the Office of Corporation Counsel to determine an appropriate penalty to recommend to the Affirmative Action Review Panel. The discipline imposed will vary according to the severity of the harassment and the record of the harasser in accordance with <u>N.J.A.C.</u> 4A:2-1.1, <u>et seq</u>.

3. If there is sufficient evidence to support the allegations of the complaining party, the Affirmative Action Officer or Authorized Designee prepares recommendations for effective remedial actions, including, if necessary, incorporation of discipline, as recommended by the Office of Corporation Counsel.

4. The Affirmative Action Officer or Authorized Designee shall issue a written investigation report to the Affirmative Action Review Panel with all appropriate information pertaining to the determination, remedial action and rights to appeal.

   a. The investigation report shall be submitted to the Affirmative Action Review Panel within the prescribed 45-day limit (unless otherwise extended by written notification to all parties) along with the investigative materials used to support the conclusions drawn in the report.

   b. The Affirmative Action Review Panel shall review the investigation report and render its findings and conclusions in a Final Determination Letter. The Affirmative Action Review Panel will be responsible for effecting notification of the determination to all parties involved in the complaint. Such notification shall be in writing.

   c. If remedial action(s) is recommended, the Affirmative Action Officer or Authorized Designee, by authority of the Affirmative Action Review Panel shall coordinate the implementation of all such remedial action with other departmental staff, when necessary, in consultation and cooperation with the Department of Personnel and Office of corporation Counsel and in accordance with the notice and hearing requirements of N.J.A.C. 4A:2-1.1 et seq.

   d. The Affirmative Action Officer or Authorized Designee must follow through to ensure that any remedial actions recommended have been implemented within appropriate time frames and in accordance with statutory mandates.

E. Authorized Designee

4. If the Authorized Designee is the initial contact only, she/he must turn the complaint over to the Affirmative Action Officer for investigation within 1 working day of initial receipt.

5. If so directed by the Affirmative Action Review Panel, the Authorized Designee shall be required to conduct the investigation and perform final determination functions. In that case, the Authorized Designee is required to follow all the procedures as described for the Affirmative Action Officer.

F. Other Responsibilities

1. The Affirmative Action Officer must provide information regarding the City's policy and procedures prohibiting harassment in the workplace, including a Written Complaint Form.

2. The Affirmative Action Officer must provide a yearly report to the Affirmative Action Review Panel, including findings and conclusions drawn from a review of documents received from various City departments relating to formal and/or informal harassment complaints.

III. *PROCESS AND PROCEDURES FOR MANAGERS/SUPERVISORY PERSONNEL*

A manager or supervisory employee has a legal obligation to take PROMPT action once notified of any harassing conduct. Furthermore, managerial and supervisory employees have an obligation to set the tone for a workplace environment that is free from harassment. Specific actions required include the following:

A. **Reporting requirements:**

1. A manager/supervisor must immediately notify the Affirmative Action Officer of any and all claims of harassment. Even if the employee indicates she/he does not intend to file a written complaint, the manager/supervisor should document all complaints in writing and immediately forward them to the Affirmative Action Officer for reporting purposes.
2. Should an employee advise the supervisor/manager of his/her intent to pursue a written complaint, the manager/supervisor must authorize release time for him/her to file a complaint with the Affirmative Action Officer or Authorized Designee without penalty.
3. If an employee is undecided as to whether or not she/he should proceed with a written complaint, the manager/supervisor still has an obligation to immediately inform the Affirmative Action Officer or Authorized Designee of the claim of harassment.

B. **Response to Employees Reporting Harassment:**

1. The manager/supervisor must remind the complaining employee of his/her right to bring the incident of harassment directly to the attention of the Affirmative Action Officer or Authorized Designee.
2. The manager/supervisor to whom an incident involving harassment is reported is obligated to report it immediately to the Affirmative Action Officer.

    a. If the event(s) which gave rise to the report of harassment involves areas of authority over which the supervisor/manager exerts direct control, the supervisor/manager may, after consultation with the Affirmative Action Officer or Authorized Designee, take action necessary to satisfy or resolve the complaint. The Affirmative Action Officer should be promptly notified of the event and action taken.
    b. If the Affirmative Action Officer is not available to provide guidance, where necessary, the manager/supervisor must promptly seek advice from the Authorized Designee or his/her own immediate supervisor or manager.

3. If an employee is visibly upset as a result of a harassment episode, the manager/supervisor may exercise his/her discretion in immediately referring the employee(s) to the Affirmative Action Officer for immediate review and remedial action.

C. **Confidentiality and Retaliation:**

1. Managers and supervisors are bound by the confidentiality provisions that govern all parties in the complaint process, whether or not a reported episode results in the employee filing a written complaint. Confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.
2. It is a violation of the city-wide policy governing harassment in the workplace for a manager or supervisor to retaliate against any person because she/he has reported an incident, filed a complaint, testified or assisted in any proceeding under the policy. Threats, other forms of intimidation and/or retaliation against the complainant or any other party who assisted in providing information relevant to harassment claim may be cause for disciplinary action, including termination.

D. **Other Responsibilities:**

1. The manager/supervisor along with the Department or Division Head is responsible for ensuring that any remedial action, that involves any action against any employee under his/her supervisions, is carried out as directed.

2. The manager/supervisor is responsible along with the Department or Division Head, for ensuring that ongoing staff training needs in the area of harassment are identified and included, for new employees and as a development tool, in the organization's overall training plan.
3. The manager/supervisor, along with the Department or Division Head, is responsible for implementing recommendations from the Affirmative Action Review Panel in regard to on-going staff development and for addressing areas of suggested improvements to departmental policies concerning issues of harassment identified by the Affirmative Action Review Panel.

IV. *PROCESS AND PROCEDURES FOR EMPLOYEES*

All employees are entitled to work in an environment free from all forms of unlawful discrimination and conduct which can be considered harassing, coercive or disruptive, including sexual harassment. Discrimination and harassment in the workplace will not be tolerated by the City.

Employees who believe that they have been subjected to discrimination or harassment should promptly report all alleged incidents of sexual harassment to their supervisor, Affirmative Action Officer or Authorized Designee. Employees are encouraged, whether directly or through a third party, to notify the harasser that the behavior in question is offensive and unwelcome. However, failure to do so would not preclude filing a complaint.

Employees who have any concerns that may be due to harassment are encouraged to avail themselves of the Affirmative Action reporting system.

A. **Reporting Requirements:**

1. A complaint based on harassment must be in writing and shall be filed within 30 calendar days of either the alleged incident or the date on which the person should reasonably have known of its occurrence.
2. The complaining employee must provide her/his name, title, department where employed, and home mailing address.
3. The complaining employee must provide specific information concerning the charge of harassment, including the date of the incident(s) in question, name(s) and title(s) of person(s) involved, and witness(es), if applicable.
4. The complainant's injuries and the impact of the harassment upon job performance, expression of any need for protection, professional counseling, and/or other assistance should be reported.

B. **Filing Requirements and Time Frames:**

1. The written complaint must be presented to the Affirmative Action Officer or Authorized Designee within 30 calendar days of the incident(s) giving rise to the complaint. Complaint forms may be obtained within each department from the Department of Personnel, or from the Affirmative Action Officer of the City of Hoboken.
2. The complaining employee may avail him or herself of the other forums for filing complaints pertaining to harassment.

C. **Confidentiality and Retaliation**

1. The complaint and investigation will be handled with sensitivity, and confidentiality will be maintained throughout the investigative process, to the extent practical and appropriate under the circumstances, in light of the privacy interests of all concerned.

2. It is a violation of the city-wide policy against harassment in the workplace for any person to take reprisal against any person who has filed a complaint, testified or assisted in any proceeding under this policy. Threats, other forms of intimidation and/or retaliation against the complainant or any party participating in the complain process may be cause for disciplinary action, including termination.
3. Acts of retaliation should be promptly reported and promptly investigated, as a separate case. Citations should be noted in each retaliation case to the initial case.

V. *PROCESS AND PROCEDURES FOR INDEPENDENT CONTRACTOR, VENDORS AND OTHER PARTIES CONDUCTING BUSINESS WITH THE CITY OF HOBOKEN*

Everyone who conducts business with the City is expected to adhere to the spirit and intent of the city-wide policy prohibiting harassment in the workplace. Employees of the City should report incidents of harassment to the appropriate supervisory and investigative personnel whether the complaint is related to conduct engaged in by fellow employees, supervisors, associates, partners, or outside vendors, consultants, clients, or other non-employees who conduct business with the City.

A. Reporting Requirements:

1. If an employee of the City is subject to harassment by any party outside the employ of the City, while conducting business with the City, she/he should immediately notify his/her manager/supervisor within thirty (30) days of the incident(s) giving rise to the complaint. The employee should concurrently submit a written report of the episode to the Affirmative Action Officer of the City.
2. The manager/supervisor of the complaining employee should contact the Affirmative Action Officer to ensure that the report has been filed by the employee and to determine the investigative steps that will ensue.
3. The Affirmative Action Officer must acknowledge receipt of the complaint in writing to the complaining employee. He/she must also notify, in writing, the vendor, independent contractor or other party conducting business with the City of the complaint.

   (i) The Affirmative Action Officer must request written disposition of the results of the investigation by the vendor or person(s) conducting business with the City.

   (ii) If the Affirmative Action Officer determines that the complaint has not been investigated or satisfactorily resolved, she/he must inform the Affirmative Action Review Panel of the entire matter and, if possible, recommend what additional steps might be taken.

4. If an employee of the City is alleged to have committed an act of discrimination or harassment against a contractor, vendor or other individual conducting business with the City, the following procedure should be utilized:

   a) The complaining individual should report the alleged harassment in writing, with as much detail as possible, to the employee's manager/supervisor and the Affirmative Action Officer of the City.
   b) The Affirmative Action Officer must notify the vendor or individual conducting business with the City of receipt of the complaint and that an investigation will be conducted. This acknowledgement must be in writing.
   c) The Affirmative Action Officer conducts the investigation in conformance with the procedures listed in this Process and Procedure Statement.

d) If probable cause is found, the Affirmative Action Officer will formulate and recommend remedial action to the Affirmative Action Review Panel and include all investigative material necessary to support his/her conclusions.

(i) If the Affirmative Action Review Panel concurs, remedial action will be directed.

(ii) If the Affirmative Action Review Panel does not concur, they may direct other action or steps deemed appropriate.

a) Regardless of the final determination, the Affirmative Action Panel must notify the independent contractor, vendor or individual conducting business with the City, who made the original allegation, of the disposition of the complaint, including what remedial action was taken, if any. Such notification must be made in writing and concluded within the 45-day maximum time frame for the investigative process described in this manual (unless extended by agreement of parties or where third party neutral fact-finder is appointed/retained).

B. Confidentiality and Retaliation:

1. The complaint and investigation will be handled with sensitivity, and confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances, in light of the important privacy interests of all concerned.
2. Reports, investigations, and all accompanying documents shall be considered a personal and confidential personnel document, not subject to the Open Public Records Act, N.J.S.A 47:1A-1 et. seq. Any Affirmative Action Complaint file shall only be disclosed to those individuals necessary to conduct and conclude the investigation, and as required by law.