ARTICLE 18 – ANTI-HARASSMENT POLICY

Section 18.00 – Policy Statement

Harassment of City employees based on race, color, creed, national origin, religion, age, disability, sexual orientation, gender, or marital or domestic partner status and all other classification as established by City, State and/or Federal Law, is prohibited. Harassment on these bases may rise to the level where it is a violation of the City ordinance, and/or State and Federal law.

The City of Albany hereby prohibits sexual harassment and all other harassment based on protected class status in the workplace and will, consistent with Civil Service Laws and/or collectively negotiated agreements, initiate disciplinary proceedings seeking, up to and including, discharge for anyone found to have violated this policy.

This policy applies to all employees, officers, interns, volunteers and non-employees of the City of Albany. “Non-employees” as defined by state law includes contractors, vendors, consultants or other persons providing service to the City of Albany pursuant to a contract or those who are employees of the contractor, vendor or consultant. Department heads and supervisory personnel are responsible for ensuring a workplace free from harassment. Department heads and supervisors must take immediate corrective action when allegations of harassment come to their attention and otherwise ensure compliance with this policy.

Section 18.01 – Definition of Harassment

Prohibited harassment is any conduct including the use of obscenities, profanity or other words, gestures and actions based on or involving race, color, creed, national origin, religion, gender, age, disability, Vietnam Era Veteran status, sexual orientation or marital or domestic partner status AND ALL OTHER CLASSES PROTECTED BY LOCAL, STATE AND/OR FEDERAL LAW which the recipient finds annoying, alarming, abusive, offensive, or could lead to a hostile work environment.

Prohibited harassment can take many forms including but not limited to: telling jokes that include references to people’s religion, race, national origin, color or gender; mimicking or imitating someone with a disability; using obscenities or profanity or making negative comments to someone about their age. These examples of harassment are not intended to be an all-inclusive list of behavior that may be considered harassment, and are illustrative purposes only.

Section 18.02A – Definition of Sexual Harassment

Sexual Harassment is a form of sex discrimination. It is a violation of Title VII of the Civil Rights Act, the New York State Human Rights Law, City ordinance and this policy.
As with discrimination, the City of Albany also prohibits the sexual harassment of its employees and officers. The City of Albany will take any-and-all steps necessary to eliminate sexual harassment in the workplace.

The City of Albany hereby prohibits sexual harassment in the workplace and will, consistent with the Civil Service Laws and/or collectively negotiated agreements, initiate disciplinary procedures up to and including discharge for anyone found to have violated this policy.

Sexual harassment may occur between men and women, and/or between members of the same sex. Prohibited behaviors include, but are not limited to, unwelcome sexual advances, requests for sexual favors or other verbal and/or physical conduct of a sexual nature when:

A. (i) Submission to the conduct is either explicitly or implicitly a term or condition of employment; or

(ii) In the case of a “non-employee” submission to such conduct is made explicitly or implicitly a term or condition of work for the City of Albany as a contractor, vendor or consultant.

B. Submission to or rejection of the conduct is used as a basis for an employment decision affecting the person rejecting or submitting to the conduct; or

C. The conduct has the purpose or effect of unreasonably interfering with an employee’s work performance, and/or creating an intimidating, hostile or offensive work environment.

Sexual harassment takes many forms. The most obvious form is making employment or promotion or some other job benefit contingent upon consenting to sex or the performance of sexual acts or "favors". Other forms of sexual harassment include making jokes or comments of a sexual nature and making sexual comments or requests in a joking or annoying manner. Sexual harassment can also take the form of commenting on someone's body or appearance or commenting on the bodies or appearance of other people, or the use of obscene language in a manner that is offensive to a coworker who can hear you. Displaying obscene, nude or pornographic photographs, pictures, magazines, art or other similar materials can create what is referred to as a hostile working environment. A hostile working environment is a form of sexual harassment. Displaying these materials in City buildings and facilities, on City job sites and in City vehicles is prohibited.

This list is not intended to include all of the forms of sexual harassment.
Sexual Harassment is also a form of employee misconduct, and that sanctions will be enforced against individuals engaging in sexual harassment and supervisory personnel who knowingly allow such behavior to occur or continue.

Section 18.02B - Unacceptable Harassing Conduct

1. Other unlawful harassment:

In addition to sexual harassment, harassment on the basis of any other protected characteristic also constitutes discriminatory harassment and is prohibited. Under this policy, prohibited discriminatory harassment is verbal or physical conduct that is offensive to or shows hostility or aversion toward an individual because of his/her sex (including gender identity or transgender status) race, creed, color, religion, national origin, age, disability, sexual orientation, military status, marital status, familial status, predisposing genetic characteristic, domestic violence victim status (and any other class protected by law), and that: (i) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (ii) has the purpose or effect of unreasonably interfering with an individual’s work performance; or (iii) otherwise adversely affects an individual’s employment opportunities.

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and display or circulation in the workplace (including through e-mail) of written or graphic material that denigrates or shows hostility or aversion toward an individual or group, based on an individual’s protected class.

2. Other Unacceptable Conduct:

This policy also prohibits conduct of one employee, intern or volunteer toward another that may not rise to the level of discrimination or discriminatory harassment in violation of the law, but nonetheless creates a degree of hostility or intimidation that adversely affects the work environment. Harassment which is not based on a legally protected characteristic, such as teasing, ridicule, and other conduct intended to annoy, personally attack, belittle or embarrass another individual is inappropriate and also unacceptable in the workplace. Therefore, the City encourages the use of its complaint procedure by employees, interns or volunteers who believe they have been subject to inappropriate conduct by another individual, even if such conduct may not be discriminatory harassment or discrimination per se. The City endeavors to create an environment in which employees, interns and volunteers may feel free to raise concerns and are confident that those concerns will be addressed.

Section 18.03 – Complaint Procedure

Employees are encouraged to report, in writing, incidents and complaints of sexual and other prohibited harassment to their supervisor, department head, Director of Human
Resources, or the Commissioner of Administrative Services. If you do not report your complaint, the likelihood that the offensive behavior will stop is severely diminished. Nevertheless, there is no legal requirement to tell the harasser to cease and desist. Attached hereto is the Discrimination/Harassment Complaint Form.

A thorough investigation of every complaint will be commenced immediately. Although it is not possible to investigate a complaint and maintain strict confidentiality, City employees involved in receiving and investigating harassment complaints will make every effort to keep personal matters private.

A. Any person with a complaint of prohibited harassment should contact his or her supervisor, department head, Director of Human Resources, or the Commissioner of Administrative Services.

B. A Supervisor or Department Head receiving a complaint of harassment must record the complaint and report the complaint to the Director of Human Resources or the Commissioner of Administrative Services. (All complaints must be reported).

C. The Commissioner of Administrative Services and/or his or her designee will meet with the complainant, explain the procedure to investigate the complaint, and outline other options available, such as filing a complaint with the New York State Division of Human Rights and/or the Equal Employment Opportunity Commission.

NOTE: Any employee wishing to discuss his or her complaint with someone other than the Commissioner of Administrative Services or his or her designee should make that desire known to his or her supervisor, department head, Director of Human Resources and/or the Commissioner of Administrative Services in a way that is comfortable for the employee. The matter shall than be referred to the Corporation Counsel’s Office to be handled.

D. The Commissioner of Administrative Services and/or his or her designee will investigate the complaint by:

1. Interviewing the complainant and witnesses, if any;

2. Reviewing pertinent documents;

3. Interviewing the employee, whose behavior has been complained of, informing him or her of the allegations and providing him or her an opportunity to response to those allegations.

4. Undertaking any other courses of action deemed necessary to fully understand the circumstances.
E. An employee, who participates in this procedure as a complainant or a witness, may do so without fear of retaliation. Retaliation against someone who has filed a complaint, or otherwise participated in this procedure, is unlawful and will result in disciplinary action.

F. Employees who are not represented by a union may retain counsel to represent them in this process. In the case of a complaint against a unionized employee, the complaint will be investigated and discipline imposed in accordance with all applicable laws, rules, and collective bargaining agreements.

G. The City of Albany Policy does not preclude the filing of a complaint with either the New York State Division of Human Rights or the federal EEOC, or the pursuit of any other remedy permitted by law.

When the investigation is completed the Commissioner of Administrative Services shall submit a written report with recommendations within thirty (30) work days from receipt of the complaint.

Section 18.04 – Sanctions

A. Sanctions will be enforced against any employee who is found to have harassed another employee as outlined above. Non-unionized employees will be disciplined in accordance with the New York State Civil Service Law. Unionized employees will be charged and disciplinary sanctions imposed in accordance with all applicable laws, rules, and collective bargaining agreements;

B. Sanctions will be enforced against supervisors and department heads who fail to immediately inform the Personnel Director or Commissioner of Administrative Services after having received a complaint in any form from an employee who claims to have been sexually harassed or who has experienced any other prohibited harassment.

C. Sanctions will be enforced against an employee who knowingly makes false allegations of sexual harassment.

Section 18.05 – Responsibilities of Managers/Supervisors

A. All managerial and supervisory personnel of the City of Albany shall be responsible for enforcing this policy and shall have particular responsibility for ensuring that the work environment under their supervision is free from discrimination and discriminatory harassment. Failure of a manager or supervisor to comply with this responsibility may result in disciplinary action.
B. All managerial and supervisory personnel who receive discrimination or discriminatory harassment complaints will be responsible for immediately forwarding such complaints to the Director of Human Resources.

Section 18.06 – Disclosure

The terms of any settlement or other resolution regarding sexual harassment are subject to disclosure UNLESS the Complainant seeks confidentiality. This request for confidentiality may be revoked within a certain time period in accordance with State law.

Section 18.07 – Reimbursement to the City

Any employee who has been subject to a judgment of personal liability for intentional wrongdoing in connection with a claim for sexual harassment shall reimburse the City for any monies it paid to a complainant for what was found to be the employee’s proportionate share of said judgment.

These reimbursements must be made within ninety (90) days from payment by the City to the Complainant. A failure to reimburse will result in the sum being withheld directly from the employee’s compensation or through enforcement of a money judgment.

Section 18.08 – Training and Policy Distribution

A. The City of Albany will conduct training for City of Albany employees on the issues surrounding discrimination and discriminatory harassment, the effects and appearances, and the role and responsibility of managerial/supervisory personnel in preventing incidents of discrimination and discriminatory harassment.

B. The City of Albany shall distribute this policy to all City of Albany employees, volunteers, interns and non-employees and all others covered by its parameters. Copies of this policy will be distributed to new employees as they are hired, to interns as they are accepted into the City’s internship program and to volunteers upon commencement of their service with the City.

C. Copies of this policy will be conspicuously posted.