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July 4, 2015

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Kenneth J. Frank, Esq., Corporation Counsel  
Office of Corporation Counsel  
City of Binghamton  
38 Hawley Street, 5th Floor  
Binghamton, NY 13901

**Re: BPD Policy Review – Report & Recommendations  
Our File No. 20232-0013**

Dear Ken:

Attached is the "Policy Review – Report & Recommendations." Please contact me if you have any questions or comments.

This letter will confirm your request that I will be available for a committee meeting to be scheduled.

Very truly yours,

COUGLIN & GERHART, LLP

  
By Joseph J. Steflik, Esq.  
Partner

JJS/st  
Enclosure



## JOSEPH J. STEFLIK, JR.

### Education

University of Pennsylvania, B.A.,  
cum laude, 1968

University of Pennsylvania, J.D., 1971

### Bar Admissions

State of New York, 1972

United States Supreme Court, 1980

United States Court of Appeals, Second  
(1975) and Third (2000) Circuit

United States District Courts, Northern  
(1972) and Western (1989) Districts

### Professional Experience

Mr. Steflik joined Coughlin and Gerhart, LLP in 1999 and is a Partner in the firm. He is Chair of the firm's Labor and Employment Law Practice Group. Mr. Steflik concentrates his law practice in the areas of labor, employment, and construction law.

### Other

Mr. Steflik is the past Chair of the Labor and Employment Law Section of the New York State Bar Association, and a member of the American Bar Association's Labor and Employment Law Section and its Forum on the Construction Industry. Mr. Steflik has given numerous lectures on such topics as strikes, picketing and their alternatives, union organizing activities, age, sex, disability discrimination, administrative procedures, and the multiple aspects of construction law. Mr. Steflik is a contributor to various books including the American Bar Association/BNA treatises Developing Labor Law, Employment Discrimination Law and Employee Benefits Law. He is listed in the labor and employment law section of Best Lawyers in America. Mr. Steflik also teaches at Binghamton University. Mr. Steflik has been honored as one of the "New York Area's Best Lawyers" in the area of labor and employment law in the 2008 listings published by New York Magazine.



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**POLICY REVIEW**  
**REPORT & RECOMMENDATIONS**

I. Introduction

A. Task

Coughlin & Gerhart, LLP (“C&G”) was requested to review the written policies and procedures of the Binghamton Police Department (“BPD”) concerning discrimination and harassment, determine the effectiveness of those policies and procedures, review training, make recommendations, if necessary, as to revisions, and interview officers to determine if discrimination, harassment, or retaliation is occurring at the BPD in violation of existing policies. The review did not involve the pending legal, administrative, and internal proceedings involving Chief Joseph Zikuski and Officer Kristi Sager.

Joseph J. Steflik, Jr., Esq. was designated as lead attorney to conduct the review. He was assisted by Irene Graven, Esq. The following steps were taken:

1. Policies and procedures were reviewed
2. Personnel files were reviewed
3. Interviews of all female officers were conducted by Mr. Steflik and Ms. Graven
4. Interviews of minority officers were conducted
5. Interviews of a sampling of male non-minority officers were conducted
6. Interviews of a sampling of the command staff were conducted

The BPD is comprised of approximately one hundred thirty five (135) officers of all ranks (including recruits). It includes approximately twelve (12) female officers

and eight (8) minority officers. Due to recent recruitment and hiring the BPD is becoming, on average, younger. The police profession is a unique one and is not generally comparable with other professions. It is particularly hazardous and requires special qualifications, training, and skills (a copy of the Civil Service job description is attached as Appendix “A”). Bargaining unit members are represented by the Police Benevolent Association (“PBA”) pursuant to a collective bargaining agreement. There are approximately nine (9) PBA representatives available to the officers.

## II. Policies and Training

Relevant written policies of the BPD concerning discrimination and harassment are included in the G.O. Manual and specifically in G.O. 400 (“General Rules of Conduct”); and G.O. 401 (“Sexual Harassment Policy”):

1. G.O. 400 (24) (“Respect to Fellow Employees”)
2. G.O. 400 (25) (“Harassment in the Working Environment”)
3. G.O. 400 (26) (“Respect to Subordinates”)
4. G.O. 400 (27) (“Criticism and Malicious Gossip”)
5. G.O. 400 (46) (“Discussions / Religious, Racial or Political”)
6. G.O. 401 (“Sexual Harassment Policy”)

(copies are attached as Appendix “B”)

The policies are generally satisfactory. Nonetheless, it is our suggestion that they should be revised to be more compatible with each other and reflect recent interpretations by courts and administrative agencies. In addition, it would be in the best interests of the City of Binghamton to broaden the scope of the policies to reference all types of discrimination.

The policies were originally distributed to all officers by hard copy and more recently on a computer disc. In addition, a hard copy is available for review in the administrative offices. Experienced officers seem to favor hard copy while new officers utilize the computer disc. However, most officers have not reviewed the discrimination provisions more than once and utilize the manual mainly for direct job related questions (use of force, etc.). Officers have, in the past, signed for reissued policies (copy of receipt for 2008 reissuance of City of Binghamton Sexual Harassment Policy is attached as Appendix “C”). Officers also sign an acknowledgment that they have been presented with and had explained to them policies and procedures including “Sexual Harassment” (copy is attached as Appendix “D”).

Training in the BPD is, as is normal in all police departments, primarily devoted to duty issues – personal appearance, uniforms, operating procedures, etc. Due to limited training time these issues must be given priority. However, training in other areas – discrimination/harassment is given at the Police Academy, in-service by the BPD/HR, distribution of policies, and seminars by outside providers (Binghamton University). Officers recollected generally such training but not the specifics.

III. Legal Issues – A general analysis of the law will be helpful to understand the process and recommendations.

A. Discrimination

Discrimination and liability results from a violation of the prohibitions against such discrimination contained in Title VII, 42 U.S.C., Section 2000e et seq., the New York Human Rights Law, Executive Law, Sections 290 et seq., Binghamton Human Rights Law, and various municipal, state, and federal statutes. Meritor Savings Bank v. Vinson, 477 US 57 (1986). The Supreme Court has established a three-step pattern of proving unlawful discrimination, including race, national origin, color, and sex discrimination, pursuant to which

the plaintiff retains the ultimate burden of persuasion at all times. Saint Mary's Honor Center v. Hicks, 509 U.S. 502 (1993). Pursuant to that test:

1. The plaintiff-employee must establish a prima facie case of discrimination.
2. The defendant-employer then must articulate a legitimate non-discriminatory reason for the employment action.
3. The plaintiff must then prove by a preponderance of the evidence that gender was the determinative factor for the adverse employment action.

The employee must be performing satisfactorily at the time of his discharge. Ploplis v. Panos Hotel Grp., LLC, 84 F. App'x 359 (4th Cir. 2004) (plaintiff “could not show she was meeting the legitimate expectations of [the employer] at the time of her demotion”); Peele v. Country Mut. Ins. Co., 288 F.3d 319 (7th Cir. 2002) (plaintiff’s history of poor performance reviews in her job as an insurance claims handler demonstrated that she did not meet employer’s legitimate expectations); Grayson v. O'Neill, 308 F.3d 808 (7th Cir. 2002) (plaintiff “failed to establish that he was meeting his employer’s legitimate expectations”); Waterhouse v. District of Columbia, 298 F3d 989 (D.C. Cir. 2002) (no genuine issue as to plaintiff’s failure to perform her basic job responsibilities where she admitted to missing deadlines, being late in making payments to vendors, and failing to submit monthly reports).

## B. Retaliation

The standard for proof of retaliation is similar to the Title VII test:

“... the plaintiff must establish (1) statutorily protected expression, (2) an adverse employment action, and (3) a causal link between the protected expression and the adverse action.” Payne v. McLemore's Wholesale & Retail Stores, 654 F.2d 1130, 1136 (5th Cir. 1981).

See Van Zant v. KLM Royal Dutch Airlines, 80 F.3d 708 (2d Cir. 1996) (summary judgment dismissing retaliation claim); Fennell v. First Step Designs, Ltd., 83 F.3d 526, 528 (1st Cir. 1996); Murray v. New York University, 57 F.3d 243 (2d Cir. 1996) (complaint insufficient set forth facts to support claim of retaliation). The applicable standard for establishing a case of employment discrimination under New York law is the same. See Ioele v. Alden Press, Inc., 145 A.D.2d 29, 536 N.Y.S.2d 1000 (1st Dept. 1989).

### C. Sexual/Racial Harassment

Claims of sexual harassment derive from the prohibition against gender discrimination established pursuant to the Civil Rights Act of 1964, 42 U.S.C., Section 2000(e)-2 and the New York State Human Rights Law, Executive Law, Sections 290 et seq. The courts have recognized two types of sexual harassment - “quid pro quo” and “hostile work environment.” Meritor Savings Bank v. Vinson, supra; Locastro v. East Syracuse-Minoa Central School District, 830 F.Supp. 133 (NDNY 1993). A claim of “quid pro quo” sexual harassment involves proof that the claimant was denied an economic benefit because a sexual advance made by a supervisor was rejected. Kotcher v. Rosa and Sullivan Appliance Center, Inc., 957 F.2d 59 (2d Cir. 1992).

A “hostile work environment” depends on a number of circumstances - frequency of the conduct, severity of the conduct, whether the conduct was physically threatening and humiliating or a mere offensive utterance, and whether the conduct substantially interfered with an employee’s work performance. Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993).

Recovery under this theory of sexual harassment is limited to where the proof establishes that claimant:

“... was subjected to unwelcome sexual harassment in the form of sexual advances, requests for favors or other verbal or physical conduct of a sexual nature, and that the harassment affected a term, condition or privilege of employment.... the offensive behavior was ‘sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment’.... The sexually harassing conduct ‘must be repeated and continuous; isolated acts or occasional episodes will not merit relief’.... Finally, the conduct must also be unwelcome.” Locastro v. East Syracuse-Minoa Central School District, 830 F.Supp. at 137.

See also Meritor Savings Bank v. Vinson, supra; Kotcher v. Rosa and Sullivan Appliance Center, Inc., supra.

The actions alleged to constitute hostile environment discrimination must include sexually discriminatory intimidation, ridicule, and insults which are so severe or pervasive as to alter the conditions of employment. Harris v. Forklift Systems, Inc., supra. Actions which are merely tasteless jokes, groundless rumors, or vulgar comments are insufficient to establish a violation. Baskerville v. Culligan International Company, 50 F.3d 428 (7th Cir. 1995); Beckett v. The Prudential Insurance Company of America, 893 F.Supp. 234 (SDNY 1995). Mere claims that a supervisor makes life “miserable” are also insufficient to support a claim. Monica v. New York City Off-Track Betting Corporation, 1995 WL 117879, at \*4 (S.D.N.Y. Mar. 20, 1995) *aff’d*, 100 F.3d 941 (2d Cir. 1996). Even comments that are sexual in nature do not reach the level of harassment if they do not alter the conditions of employment. Baskerville v. Culligan International Company, supra.

A similar analysis is used in racial harassment cases. See Bolden v. PRC Inc., 43 F.3d 545 (10th Cir. 1994) cert. denied 116 S.Ct. 92 (1995). There summary judgment in favor of the employer was affirmed where two racial comments were made by coworkers, there was general ridicule routinely directed against everyone, and racially derogatory terms were used extensively with respect to other employees. The court stated the “... record portrays Mr. Bolden



as a sensitive and serious person working in a shop filled with boorish churls.” Id. at 548. This was held not enough to alter working conditions so as to constitute racial harassment.

#### D. Importance of an Anti-Discrimination / Anti-Harassment Policy

An action for hostile work environment sexual harassment involving supervisors or co-employees may be maintained only if it is established that the employer did not provide a complaint procedure or knew of the harassment and took no action. See Faragher v. City of Boca Raton, 524 US 775 (1998); Burlington Industries, Inc. v. Ellerth, 524 US 742 (1998). The affirmative defense has two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. Locastro v. East Syracuse-Minoa School District, supra. The Second Circuit Court of Appeals, in Karibian v. Columbia University, 14 F.3d 773(2d Cir. 1994), clarified that the impact of a sexual harassment policy on employer liability. See also Morales v. Human Rights Division, 878 F.Supp. 653 (SDNY 1995).

The existence of an active policy against discrimination, harassment, and retaliation generally eliminates employer liability for hostile work environment sexual harassment where the complainant fails to utilize the policy. Gary v. Long, 59 F.3d 1391 (D.C. Cir. 1995) cert. denied 116 S.Ct. 569 (1995). The procedure does not need to be specific as to discrimination, but may even be a general “open door” policy for reporting grievances or complaints. Bouton v. BMW of North America, 29 F.3d 103 (3d Cir. 1994).

Disciplinary issues and procedures will, of course, be affected by the relevant portions of the Civil Service Law and the collective bargaining agreement with the PBA.

#### IV. Interviews

##### A. Generally

Interviews were conducted with all female officers, nearly all minority officers, a sampling of male non-minority officers and a sampling of command staff. The same template was utilized for all interviewed (copy is attached as Appendix “E”)

##### B. Female Officers

Twelve (12) female officers were interviewed concerning their familiarity with policies and procedures, training, knowledge of any discrimination, harassment, or retaliation, general perceptions, and suggestions. They did not appear reticent to discuss the conditions at the BPD.

1. Policies and Procedures – all officers have received either the hard copy or the computer disc. Several remembered reviewing the contents. However, most were not familiar with or did not recollect the provisions related to discrimination or harassment. The officers mainly use the G.O. Manual when they have specific questions concerning job duties – use of force, etc.
2. Training – officers had widely different recollections of training regarding discrimination and harassment. Most stated that they received such training at the Police Academy. However, their comments about internal or in-service training differed substantially. Several stated they recollected such training from City of Binghamton Human Resources (5); some remembered training from Binghamton University (4); others didn’t recollect any such training (5). It appears

that the Binghamton University training was centered on public diversity and potential difficulties in dealing with a diverse public. It did not deal specifically with internal police operations and received mixed reviews – “very good” to “useless”.

3. Complaint Procedures – most officers were not aware of the specific complaint procedures set forth in G.O. 401 (e.g. Department Head, Executive Assistant to the Mayor, Director of Personnel and Safety, Corporation Counsel, and Assistant Corporation Counsel). However, each officer responded that she would make a complaint if she was discriminated against or harassed – compliance with procedures (2), chain of command (5), mayor’s office (1), human resources (2), PBA (3), take care of it herself (3), talk to other female officers (2).
4. Claims of Discrimination – all female officers, with one (1) exception, state they have not been the victim of discrimination. That officer felt she had been removed from a special assignment due to gender. It appears that this was the subject of an EEOC administrative proceeding several years ago and settled. Comments by other female officers included the following:

“No discrimination.”

“Never passed over for assignment or promotion.”

“Everything is as it should be.”

“Personally comfortable.”

“Not aware of any problems.”

“Most females on special details.”

5. Claims of Harassment – all female officers, with one (1) exception, denied either being the subject of harassment or witnessing such harassment. One officer referenced an incident over ten (10) years ago which was addressed through the chain of command with the harasser being terminated. Comments by officers included the following:

“No knowledge of any retaliation.”

“I would tell the person off.”

“No.”

“Disputes are resolved among ourselves.”

“Not much socialization.”

“Personally comfortable.”

“People come to me with personal problems. Nobody has come to me concerning harassment or discrimination.”

“Guys treat me good.”

“Some ball busting but mutual.”

“Most disputes involve personal conflicts.”

6. Complaints Not Involving Discrimination – female officers, in a manner similar to the male officers, had complaints which did not involve discrimination and/or harassment – “would like additional training”; “hasn’t occurred but more emphasis on non-retaliation”; “specific training on discrimination and harassment”; “favoritism due to cliques”; “lack of manpower”; “nitpicking” concerning lowering windows in vehicles and saying hello; “too much micromanaging.”

### C. Minority Officers

Eight (8) minority officers were interviewed concerning their familiarity with policies and procedures, training, knowledge of any discrimination or harassment, and suggestions. None appeared to be reticent to discuss the conditions at the BPD.

1. Policies and Procedures – all officers have received either the hard copy or the computer disc. Several remembered reviewing the contents. However, most were not familiar with or did not recollect the provisions related to discrimination or harassment. The officers mainly use the G.O. manual when they have specific questions concerning job duties – use of force, etc.
2. Training – officers had widely different recollections of training regarding discrimination and harassment. Most stated that they received such training at the Police Academy. However, their comments about internal or in-service training differed substantially. Several stated they recollected such training from City of Binghamton Human Resources (4); some remembered training from Binghamton University (5); others didn't recollect any such training (2). The Binghamton University training was centered on public diversity. It did not deal specifically with internal police operations.
3. Complaint Procedures – some officers were aware of the specific complaint procedures set forth in G.O. 401 (e.g. Department Head, Executive Assistant to the Mayor, Director of Personnel and Safety, Corporation Counsel, and Assistant Corporation Counsel) (2).

However, each officer responded that he would make a complaint if he was discriminated against or harassed – compliance with procedures (2); chain of command (2); multiple alternatives (5).

4. Claims of Discrimination – no minority officer advised he was the victim of discrimination. Comments included the following:

“If race a factor would jump on it immediately.”

“Department is not racist.”

5. Claims of Harassment – minority officers denied any instances of harassment.

6. Complaints Not Involving Discrimination – there were numerous complaints not involving discrimination and/or harassment. These included:

“It is who you know not what you know.”

“Decline in morale due to manpower shortage.”

“Night shift doesn’t see command staff; a little ‘chit-chat’ would help.”

“Department plays it too close to the vest; should respond in favor of officers.”

“Cliquish by age groups.”

“Nitpicking – tattoo policy.”

“Small town politics.”

“Not a lot of space for movement due to size of department.”

“Don’t get assignment because Chief doesn’t like you.”

#### D. Male/Non-Minority Officers

Five (5) non-minority male officers were interviewed concerning their familiarity with policies and procedures, training, knowledge of any discrimination or harassment, and suggestions. They did not appear to be reticent to discuss the conditions at the BPD.

1. Policies and Procedures – all officers have received either the hard copy or the computer disc. Several remembered reviewing the contents. However, most were not familiar with or did not recollect the provisions related to discrimination or harassment. The officers mainly use the G.O. manual when they have specific questions concerning job duties – use of force, etc.
2. Training – Similar to the female and minority officers these officers had widely different recollections of training regarding discrimination and harassment. Most stated that they received such training at the Police Academy. However, their comments about internal or in-service training differed substantially. Several stated they recollected such training from City of Binghamton Human Resources (3); some remembered training from Binghamton University related to diversity (3); one (1) officer; didn't recollect any training (1).
3. Complaint Procedures – some officers were aware of the specific complaint procedures set forth in G.O. 401 (e.g. Department Head, Executive Assistant to the Mayor, Director of Personnel and Safety, Corporation Counsel, and Assistant Corporation Counsel). However,

each officer responded that he would make a complaint if he was discriminated against or harassed or aware of any such actions – chain of command (3); PBA (2).

4. Claims of Discrimination – only one (1) non-minority male officer made any claims of discrimination. He believed female officers were receiving better assignments.
5. Claims of Harassment – no claims of harassment were made by the non-minority officers. However, one officer said he knew of one (1) case involving a female officer; this appears to be a reference to the EEOC complaint/settlement discussed above.
6. Complaints Not Involving Discrimination – non-minority male officers had numerous complaints unrelated to discrimination. One officer blamed morale on Chief Zikuski and seems to have had several disagreements with him. The same officer stated that the PBA was “useless.” Comments dealt mainly with favoritism and morale:

“Stress from media – locally and nationally”

“Morale low. Failure to back-up officers publicly.”

“No discrimination but depends on who is liked and in same social circles.”

“Perception of cliques.”

“Need to unify and get back to police work.”

However, a frequent comment was - “Department is young and has a lot of energy.”



#### E. Command Staff

Five (5) members of the command staff were interviewed. None were aware of any claims of discrimination or harassment. Each stated no officer had come to them with any such complaints. This confirms the statements by the other interviewed officers.

#### V. A.O. #39-08

Joseph Zikuski, on June 17, 2008, when he was Acting Chief of Police, issued A.O. #39-08 (a copy is attached as Appendix "F"). That order directed – "Effective immediately, no Police Department Personnel are to go to Corporation Counsel to discuss Compensation or any other matters without the permission of the Chief or Assistant Chief of Police." That order has not been rescinded.

Several officers interviewed during this review made reference to such an order even though they had not actually seen it. In addition, several officers thought it also involved not going to Human Resources. No such order involving Human Resources has been located.

A review of the history of this order indicates it was issued because some officers went directly to the Office of Corporation Counsel with questions related to compensation, leave time, and similar issues rather than utilize the normal chain of command. This caused additional and unnecessary work for the Office of Corporation Counsel which could easily have been completed within the BPD.

However, the broad language of A.O. # 39-08 could cause a reasonable officer to believe that resort to Corporation Counsel for claims of discrimination or harassment was prohibited. The order should be rescinded immediately.

## VI. Summary / Conclusions

The review of documents and the interviews establish:

1. No complaints or evidence of any quid-pro-quo sex harassment
2. No complaints or evidence of hostile or offensive sex harassment
3. No specific complaints or evidence of discrimination or harassment based on sex, gender, race, national origin, etc.; some general complaints about assignments
4. Complaints of “cliquishness” but unrelated to protected classifications
5. Normal complaints in a police department or similar paramilitary organization. Most officers would use chain-of-command for complaints or, if necessary, go to Mayor’s Office, Corporation Counsel, Human Resources, or PBA
6. General perception that morale is low due to past staffing reductions, general adverse publicity, methods of determining assignments

It is the conclusion of this review that there is no cognizable discrimination or harassment in the BPD based on protected classifications.

## VII. Recommendations

1. Revise policies as suggested (copies are attached as Appendix “G”)
2. Specific training every two (2) years involving harassment and discrimination recommended; an appropriate time could be upon the finalization and distribution of the revised policies
3. Certificates confirming such training should be placed in officer’s personnel file
4. Attendance records for training should be maintained in a central location

5. A.O. #38-08 should be rescinded with a memorandum advising that there are no restrictions involving the ability of officers to make complaints involving discrimination and/or harassment based on an officer's race, color, gender, disability, or other protected classification to the Office of the Mayor, Corporation Counsel, and/or Personnel and Safety Officer.

Date: July 4, 2015

Respectfully Submitted,



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Office of Corporation Counsel  
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# Appendix A

## POLICE OFFICER

40250  
(Competitive)

### DISTINGUISHING FEATURES OF THE CLASS

This is law enforcement work involving responsibility to enforce federal and state laws and local ordinances and to maintain order in an assigned area. Under the general supervision of a superior officer, an employee in this class performs routine patrol duties on an assigned shift. Assignments to plain-clothes investigative work are usually performed under immediate supervision. In emergencies, an employee in this class exercises considerable independent judgment. Work is reviewed by direct observation and through the submission of reports. Supervision is not exercised in this class. Does related work as required.

### TYPICAL WORK ACTIVITIES

- Patrols a specific district or beat on foot, on a motorcycle, or in a radio cruising car.
- Performs investigatory work in plain clothes.
- Performs rudimentary investigatory work in vice squad or detective bureau.
- Does routine plain clothes work in Youth Bureau.
- Checks doors and windows of unoccupied business and residential property.
- Investigates suspicious activities and makes arrests for violations of Federal and State Laws and local ordinances.
- Escorts prisoners to jail and to court, and has them booked on charges.
- Watches for and makes investigations of wanted and missing persons, stolen cars and property.
- Directs traffic and marks cars for overtime parking.
- Maintains order in crowds at parades and other public gatherings.
- Answers questions for and directs the public.
- Receives complaints from the public.
- Broadcasts radio messages and sends Teletype messages.
- Make daily reports of activities.

### FULL PERFORMANCE KNOWLEDGES, SKILLS, ABILITIES AND PERSONAL CHARACTERISTICS

- Ability to establish and maintain good relationships with the general public.
- Ability to follow commands without hesitation and to exercise independent judgment in emergencies.
- Ability to follow written directions.
- Ability to learn the proper use and care of firearms.
- Physical condition commensurate with the demands of the position.

### MINIMUM QUALIFICATIONS

Age: Candidates must be at least 19 years and 6 months old on or before the written examination to be admitted to the test. Eligibility for appointment begins when candidates reach their 20<sup>th</sup> birthday. On April 26, 1999, Chapter 32 of the Laws of 1999 amended Section 58 of Civil Service Law to establish a maximum age limitation of 35 years of age as of the date the individual takes the written examination (eligibility ceases upon a candidates 35<sup>th</sup> birthday). Time spent on military duty, not exceeding a total of six (6) years (Volunteer service after July 1, 1970 is limited to a total of four (4) years unless performed during a period of war or national emergency), shall be subtracted from the age of any applicant who has passed his/her 35<sup>th</sup> birthday.

Education: Candidates must be high school graduates or holders of a high school equivalency diploma issued by an education department of any of the states of the United States or holders of a comparable diploma issued by any territory, commonwealth, or possession of the United States or by the Canal Zone or holders of a report from the United States Armed Forces certifying successful completion of the tests related to general education development, high school level at time of appointment.

Citizenship: Candidates must be citizens of the United States. at time of appointment.

License: Possession of a valid New York State driver's license at time of appointment.

Physical: Candidates must meet the prescribed general physical and medical conditions as stated in the Municipal Police Training Council standards.

Psychological: Psychiatric and Polygraph examinations may be required of any successful candidate prior to appointment.

Moral Character: Candidates must be of a good moral character with no conviction of a felony. Conviction of a misdemeanor or other offense including traffic violation may bar appointment.

12/99 REVISED

# Appendix B

4. No person shall operate a department vehicle in which the safety belt in the driver's position is inoperable. No person shall be transported in a seating position in which the safety restraint is inoperable.
5. No person shall modify, remove, deactivate or otherwise tamper with the vehicle safety belts except for vehicle maintenance and repair and not without the authorization of the Chief of Police.
6. Any finding of an inoperable restraint system will be immediately reported to motor pool and the appropriate supervisor.
7. Whenever possible, prisoners being transported will be properly secured with the vehicles safety restraints.
8. Officers operating in an undercover capacity may be exempt if circumstances warrant.

23. USE OF PERSONAL VEHICLES WHILE ON DUTY

- A. Officers shall not use their own, any commercial or private vehicle for the purpose of covering their post.
- B. Personal vehicles or other vehicles which may be available to them shall not be parked upon their assigned post with the intention of using the same while on duty.
- C. Personal vehicles, when parked on public highways or in public owned parking facilities, shall be parked in compliance with laws and ordinances governing parking.
- D. No employee shall use their own or other private vehicle for official purposes without the permission of a Superior Officer.

24. RESPECT TO FELLOW EMPLOYEES

- A. Officers shall be courteous and respectful in their dealings with Superiors and each other. Employees shall not use coarse, violent or profane language or gestures towards Superiors or fellow Officers. Officers shall not utter offensive or derogatory statements or slurs concerning race, sex, religion, politics, national origin or life style.

25. HARASSMENT IN THE WORKING ENVIRONMENT

- A. This Department will maintain a working environment free from all forms of harassment including sexual harassment. Harassment in any manner or form is strictly forbidden.



- B. Incidents constituting harassment may include, but are not limited to:
  - 1. Exercise, or attempted exercise of the power or authority of one's position to control, influence or affect the job or other employment conditions of an employee for sexual favors;
  - 2. Verbal abuse, threats, or false accusations;
  - 3. Unwelcome remarks or comments about a person's body, attire, age, sex, race, disabilities, marital status, ethnic or religious background;
  - 4. Displaying of pornographic, racist, or other offensive or derogatory material;
  - 5. Unwelcome or repeated sexual advances, propositions or gestures;
  - 6. Physical contact that one finds objectionable or offensive.
- C. The Binghamton Police Department adheres to the Sexual Harassment Policy as set forth for the City of Binghamton, fully documented in G.O. 401.

26. RESPECT TO SUBORDINATES

- A. Authority within this Department shall be exercised with firmness, kindness and justice. Superior Officers shall avoid as far as circumstances permit, censuring subordinates in the presence of others. They are forbidden to injure or discredit those under their authority by tyrannical conduct or abusive language.

27. CRITICISM AND MALICIOUS GOSSIP

- A. No Officer will criticize a fellow Officer except in the line of duty as a Superior to a subordinate, nor will the Officer maliciously gossip regarding any member of this Department.

necessary for the performance of Police Duties or is authorized by proper authority.

44. ENDORSEMENTS AND REFERRALS

- A. Officers shall not recommend or suggest in any manner except in the transaction of personal business, the employment or procurement of a particular product, professional service or commercial service, (such as an attorney, ambulance service, towing or garage service, bondsman, mortician, etc.). In the case of ambulance or towing services, when such service is necessary and the person needing such service is unable or unwilling to produce it or request assistance, officers shall proceed in accordance with established Departmental procedures found In General Order (# 649) of this manual.

45. COURTESY

- A. Officers shall be courteous to the public. Officers shall be tactful in the performance of their duties, control their tempers and exercise the utmost patience and discretion and shall not engage in argumentative discussions even in the face of extreme provocation.
- B. In the performance of their duties, Officers shall not use coarse, violent, profane or insolent language or gestures, and shall not express any prejudicial remarks concerning race, religion, politics, national origin, lifestyle or any similar personal characteristics.

46. DISCUSSIONS/RELIGIOUS, RACIAL OR POLITICAL

- A. Officers shall not engage in any religious or political discussions to the detriment of good discipline or morale, nor shall they speak disparagingly of the nationality, religion, color, creed, lifestyle or belief of any person.

47. CITIZEN COMPLAINTS

- A. Officers shall courteously and promptly record in writing any complaint made by a citizen against any Officer or the Department, forwarding the complaint to the Officer in Charge. Officers may when appropriate, attempt to resolve the complaint, but shall never attempt to dissuade any citizen from lodging a complaint against any Officer or the Department. Officers shall follow established Departmental procedures for processing complaints, found in General Order (# 500) of this manual.

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**SUBJECT:**

**SEXUAL HARASSMENT POLICY**

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POLICY

All officers of the Binghamton Police Department will adhere to the Sexual Harassment Policy as set forth by the City of Binghamton.

CITY OF BINGHAMTON  
Sexual Harassment Policy

- I. Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, sex, age or national origin. Sexual harassment is also included among the prohibitions.

According to the federal Equal Employment Opportunity Commission (EEOC), sexual harassment consists of unwelcome sexual advances, requests for sexual favors or other verbal or physical acts of a sexual or sex-based nature where:

- A. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- B. an employment decision is based on an individual's acceptance or rejection of such conduct; or
- C. such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.

**Sexual harassment is unlawful, and such prohibited conduct exposes not only the City of Binghamton, but also any individual engaging in such prohibited conduct, to significant liability under the law.**

Examples of conduct that would be considered sexual harassment or related retaliation are set forth in section III. of this policy.

It is also unlawful to retaliate or take reprisal in any way against anyone who has articulated any concern about sexual harassment or discrimination, whether that concern relates to harassment of, or discrimination against, the individual raising the concern or against another individual.

As part of its Sexual Harassment Policy, the City of Binghamton is also issuing Procedures for Making Sexual Harassment and Retaliation Complaints (Section II.) which outlines how any individual can lodge a complaint with appropriate City official and how that complaint will be handled.

The City of Binghamton and its officials are under a duty to investigate and eradicate any form of sexual harassment or sex discrimination or retaliation. Sexual harassment of anyone by any City of Binghamton official or employee will not be tolerated.

Whenever a charge or allegation of sexual harassment is found to have merit or substance, appropriate corrective action will be taken. **The range of appropriate corrective actions may begin with a non-disciplinary counseling and will include up to the removal or discharge of the city official or employee by the appointing authority.** Corrective action taken against any City official or employee will be reasonably calculated to end the harassment and ensure that retaliation will not occur. Factors guiding the particular disciplinary action taken may include the following:

- A. the nature and severity of the sexual harassment conduct;
- B. the pervasiveness of the conduct involved;
- C. the harassing party's employment record;
- D. any prior sanctions of the harasser for sexual harassment; and,
- E. any other factors the investigating sexual harassment official deems relevant and necessary.

All factors considered in reaching the decision of whether and how to discipline an employee accused of sexual harassment will be documented.

## II. PROCEDURES FOR MAKING SEXUAL HARASSMENT/RETALIATION COMPLAINTS

- A. The city of Binghamton is dedicated to providing its employees with a reliable mechanism for reporting incidents of sexual harassment. The City of Binghamton therefore designates, in addition to department heads, the Executive Assistant to the Mayor, the Director of Personnel and Safety, the Corporation Counsel and the Assistant Corporation Counsel as City official to whom such complains may be made. Anyone seeking to discuss an incident of sexual harassment may contact of these City officials and be assured of retaining anonymity, should they so choose.
- B. Anyone who has observed sexual harassment or retaliation should report it to one of the designated personnel above. Persons making the complaint need not be the victim or target.
- C. Only those who have an immediate need to know, including the alleged target of harassment or retaliation, the alleged harasser or retaliator, and any witnesses,

will be informed of the identity of the complainant. All parties contacted in the course of investigating a sexual harassment complaint will be advised that all parties involved in a complaint are entitled to respect, and that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complainant or who has provided evidence in connection with a complaint, is a separate offense under the sexual harassment policy. The investigating sexual harassment official in their said capacity, shall strive towards, and use all best efforts to hold, all information gleaned from their investigation in as much confidentiality as their continued investigation allows.

- D. The complaint process will be administered consistent with state labor law and City employees who are represented by a union remain free at all times to utilize grievance procedures contained in their collective bargaining agreement to process a complaint of sexual harassment.
- E. All complaints will be investigated expeditiously and the investigating City official will produce a written report, which, together with the investigation file, will be promptly transmitted to the Offices of the Corporation Counsel and the Director of Personnel and Safety. The Corporation Counsel and the Director of Personnel and Safety will thereafter recommend remedial measures based upon the results of the investigation, and said City Counsel and the Director of Personnel and Safety deem necessary, will promptly consider and act upon such recommendation. When a complaint is made, the City official receiving the complaint will have the duty of immediately forwarding said complaint to the confidential attention of the Office of the Mayor of the City of Binghamton, the Corporation Counsel and the Director of Personnel and Safety.
- F. An effective sexual harassment policy requires the support and example of City management personnel in positions of authority. The City of Binghamton's agents or employees who engage in sexual harassment or retaliation or who fail to cooperate with a City – sponsored investigation of sexual harassment or retaliation may be severely sanctioned by suspension or dismissal. By the same token, officials who refuse to implement remedial measures, obstruct the remedial efforts of other City of Binghamton employees, and/or retaliate against sexual harassment complaints or witnesses may be immediately subject to discipline by the City which may include suspension or dismissal.

### III. STATEMENT OF PROHIBITED CONDUCT

Conduct which the City of Binghamton considers a violation of the City's Sexual Harassment Policy includes but is not limited to:

- A. Physical assaults of a sexual nature, such as:
  - 1. Rape, sexual battery, molestation or attempts to commit these assaults;

2. intentional physical conduct which is sexual in nature such as touching, pinching, patting, grabbing brushing against, or poking another employees body;
- B. Unwanted sexual advances, propositions or other sexual comments such as:
1. sexually – oriented gestures, noises, remarks, jokes or comments about a person’s sexuality or sexual experience directed at or made in the presence of any employee who indicates or has indicated in any way that such conduct in his or her presence is unwelcome;
  2. Preferential treatment or promise of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and
  3. subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee’s job more difficult because of that employee’s gender.
- C. Sexual or discriminatory displays or publications anywhere in the City of Binghamton’s workplace by City of Binghamton employees, such as:
1. displaying pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic, or bringing into the City of Binghamton work environment or possessing any such material to read, display or view at work. A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed or in clothes that are not suited to or ordinarily accepted for the accomplishment of routine work in and around the workplace and who is posed for the obvious purpose of displaying or drawing attention to primary or secondary sexual organs of his or her body; or
  2. reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning or pornographic; or
  3. Displaying signs or other materials purporting to segregate an employee by sex in any area of the workplace (other than restrooms and semi-private lockers/ changing rooms).
- D. Retaliation for sexual harassment complaints such as:
1. disciplining, changing work assignments of, intentionally providing inaccurate work information to, or refusing to cooperate or discuss work-

related matters with any employee because that employee has complained about or resisted harassment, discrimination or retaliation; or

2. Intentionally pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up conduct such as that described in any item above.

E. Other acts:

1. The above is not to be construed as an all inclusive list of prohibited acts under this policy.
2. Sexual harassment is unlawful and hurts other employees. Any of the prohibited conduct described herein is sexual harassment of anyone at whom it is directed or who is otherwise subjected to it. Sexually-oriented acts or sex-based conduct have no legitimated business purpose; accordingly, the employee who engages in such conduct should be and will be made to bear the full responsibility for such unlawful conduct.

F. False accusations:

1. Use of the complaint procedures outlined above to falsely accuse a City employee shall be deemed a form of sexual harassment which shall be subject to discipline. However, regardless of the outcome of the investigation, no adverse action will be taken against any employee making a good faith claim of harassment.

# Appendix C



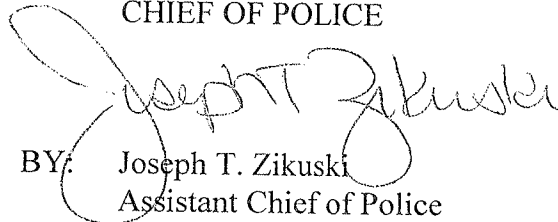
CITY OF BINGHAMTON INTER-DEPARTMENT CORRESPONDENCE  
G.O. #01-08

DATE: March 19, 2008  
TO: Captains – All Relief's – All Divisions  
FROM: STEVEN R. TRONOVITCH, CHIEF OF POLICE  
SUBJECT: Sexual Harassment Policy – Re-issued  
COPIES: All Relief's, All Divisions, Clipboard & File

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Please find copies of the City of Binghamton Sexual Harassment Policy attached to this order. Please see that everyone on your Relief or Division gets a copy and have them sign/initial the Roster next to their name and return to the Administration Office ASAP.

STEVEN R. TRONOVITCH  
CHIEF OF POLICE

  
BY: Joseph T. Zikuski  
Assistant Chief of Police

**GENERAL ORDERS 2008**

<u>G.O. #</u>	<u>Subject</u>	<u>Initials/Date</u>
01-08	SEXUAL HARASSMENT POLICY (RE-ISSUED)	JTZ 3/19/08

# Appendix D



# Department of Personnel and Safety

*Mayor, Richard C. David*

*Patricia A. Keppler, Director of Personnel and Safety*

I have been presented with and had explained to me and had the opportunity to ask questions about the following Policies and Procedures:

- Occupational Medicine Work Place Injuries
- Code of Ethics
- Smoking
- Computer, E-mail, Internet and Cell phone use
- Family Medical Leave Act
- Sexual Harassment
- Physical Security
- Drug and Alcohol
- Workplace Violence

\_\_\_\_\_  
Signature of Employee

3/3/14  
\_\_\_\_\_  
Date

# Appendix E

Interview Sheet

Name: \_\_\_\_\_

Rank: \_\_\_\_\_

Date: \_\_\_\_\_

1. Introduction – My task is to review the following for the City of Binghamton:

- a. Discrimination policies
- b. Harassment policies
- c. Training programs
- d. Incidents involving interviewee
- e. Incidents about which interviewee is aware
- f. Actions taken

2. Policies – Familiarity

- a. G.O. 400(6) – Duty to Report Violations \_\_\_\_\_
- b. G.O. 400(24) – Respect to Fellow Employees \_\_\_\_\_
- c. G.O. 400(25) – Harassment in the Working Environment \_\_\_\_\_
- d. G.O. 400(46) – Discussions / Religious, Racial, or Political \_\_\_\_\_
- e. G.O. 401 – Sexual Harassment Policy \_\_\_\_\_

Procedures \_\_\_\_\_

3. Policies – Receipt

- a. Receipt of policies \_\_\_\_\_

b. First receipt \_\_\_\_\_

c. Subsequent receipts \_\_\_\_\_

4. Discrimination / Harassment Training

a. Initial training \_\_\_\_\_

b. Subsequent Training \_\_\_\_\_

c. Nature of Training \_\_\_\_\_

Suggestions

5. Have you ever been discriminated against? \_\_\_\_\_

a. Nature of discrimination \_\_\_\_\_

b. When \_\_\_\_\_

c. By whom \_\_\_\_\_

d. Did you report it \_\_\_\_\_

e. To whom \_\_\_\_\_

f. What action taken \_\_\_\_\_



6. Have you ever been harassed? \_\_\_\_\_

a. Nature of harassment \_\_\_\_\_

b. When \_\_\_\_\_

c. By whom \_\_\_\_\_

d. Did you report it \_\_\_\_\_

e. To whom \_\_\_\_\_

f. What action taken \_\_\_\_\_

7. Have you ever seen any member of the BPD being discriminated? \_\_\_\_\_
- a. Nature of discrimination \_\_\_\_\_
  - b. When \_\_\_\_\_
  - c. Who was discriminated against \_\_\_\_\_
  - d. By whom \_\_\_\_\_
  - e. Did you report it \_\_\_\_\_
  - f. To whom \_\_\_\_\_
  - g. What action taken \_\_\_\_\_

8. Have you ever seen any member of the BPD being harassed? \_\_\_\_\_
- a. Nature of harassment \_\_\_\_\_
  - b. When \_\_\_\_\_
  - c. Who was harassed \_\_\_\_\_
  - d. By whom \_\_\_\_\_
  - e. Did you report it \_\_\_\_\_
  - f. To whom \_\_\_\_\_
  - g. What action taken \_\_\_\_\_

## 9. Suggestions

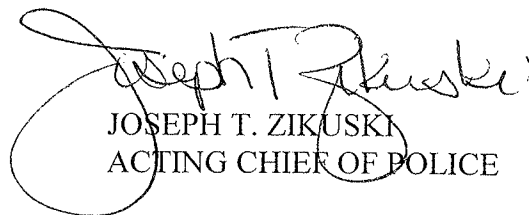
# Appendix F

CITY OF BINGHAMTON INTER-DEPARTMENT CORRESPONDENCE  
A.O. #39-08

DATE: June 17, 2008  
TO: All Relief's – All Divisions  
FROM: JOSEPH T. ZIKUSKI, ACTING CHIEF OF POLICE  
SUBJECT: Corp. Counsel  
COPIES: All Relief's, All Divisions, Clipboard & File

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Effective immediately, no Police Department Personnel are to go to Corporation Counsel to discuss Compensation or any other matters with out the permission of the Chief or Assistant Chief of Police.

  
JOSEPH T. ZIKUSKI  
ACTING CHIEF OF POLICE

# Appendix G

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**SUBJECT:**

**ANTI-DISCRIMINATION, HARASSMENT, AND RETALIATION POLICY**

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POLICY

All officers of the Binghamton Police Department will adhere to the Anti-Discrimination, Harassment, and Retaliation Policy as set forth by the City of Binghamton.

CITY OF BINGHAMTON  
Anti-Discrimination, Harassment, and Retaliation Policy

- I. The City of Binghamton is committed to providing and maintaining a work environment free from all forms of bias, prejudice, or harassment based upon race, color, religion, creed, alienage, national origin, age, marital, veteran or citizenship status, physical or mental disability, handicap, pregnancy, sex, sexual orientation, genetic predisposition, carrier status, political beliefs, or any other legally protected characteristic or status. Therefore, the City will not tolerate conduct by any employee that harasses, disrupts, or interferes with another's work performance or which creates an intimidating, offensive, or hostile environment. In keeping with this commitment, the City prohibits sexual harassment, including sexual harassment by a person of the same sex, gender-based harassment, or other illegal harassment, in all areas of employment, including, by way of example, recruitment, hiring, training, promotion, discipline, separations, benefits and compensation.
- II. Title VII of the Civil Rights Act of 1964 and other federal statutes together with the N.Y.S. Human Rights Law and Binghamton Human Rights Law prohibits employment discrimination on the basis of, but not limited to, race, color, sex, age, national origin, disability, marital status, and other protected classifications. Sexual harassment is included among the prohibitions.

According to the federal Equal Employment Opportunity Commission (EEOC), and the N.Y.S. Division of Human Rights, sexual harassment consists of unwelcome sexual advances, requests for sexual favors or other verbal or physical acts of a sexual or sex-based nature where:

- A. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- B. an employment decision is based on an individual's acceptance or rejection of such conduct; or



- C. such conduct interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.

**Discrimination, harassment, and/or retaliation based on the protected classifications are unlawful, and such prohibited conduct exposes not only the City of Binghamton, but may also expose any individual engaging in such prohibited conduct, to significant liability under the law.**

Examples of conduct that would be considered harassment or related retaliation are set forth in section IV and V. of this policy.

It is also unlawful to retaliate or take reprisal in any way against anyone who has articulated any concern about harassment or discrimination, whether that concern relates to harassment of, or discrimination against, the individual raising the concern or against another individual.

As part of its Anti-Discrimination, Harassment, and Retaliation Policy, the City of Binghamton is also issuing Procedures for Making Harassment and Retaliation Complaints (Section III.) which outlines how any individual can lodge a complaint with appropriate City official and how that complaint will be handled.

The City of Binghamton and its officials are under a duty to investigate and eradicate any form of harassment or discrimination or retaliation. Discrimination and/or harassment of anyone by any City of Binghamton official or employee will not be tolerated. Similarly, the condoning of any discrimination and/or harassment by any City of Binghamton official or employee will not be tolerated.

Whenever a charge or allegation of discrimination and/or harassment is found to have merit or substance, appropriate corrective action will be taken. **The range of appropriate corrective actions may begin with a non-disciplinary counseling and will include up to the removal or discharge of the city official or employee by the appointing authority.** Corrective action taken against any City official or employee will be reasonably calculated to end the discrimination and/or harassment and ensure that retaliation will not occur. Factors guiding the particular disciplinary action taken may include the following:

- A. the nature and severity of the discrimination and/or harassment conduct;
- B. the pervasiveness of the conduct involved;
- C. the harassing party's employment record;
- D. any prior sanctions of the harasser for discrimination and/or harassment; and,
- E. any other factors the investigating official deems relevant and necessary.

All factors considered in reaching the decision of whether and how to discipline an employee accused of discrimination and/or harassment will be documented.

- III. PROCEDURES FOR MAKING DISCRIMINATION HARASSMENT AND/OR RETALIATION COMPLAINTS
- A. The City of Binghamton is dedicated to providing its employees with a reliable mechanism for reporting incidents of discrimination, harassment, and retaliation. The City of Binghamton therefore designates, in addition to department heads, the Executive Assistant to the Mayor, the Director of Personnel and Safety, the Corporation Counsel and the Assistant Corporation Counsel as City officials to whom such complaints may be made. Anyone seeking to discuss an incident of discrimination, harassment, and/or retaliation may contact any of these City officials directly, should they so choose.
  - B. Anyone who has observed discrimination, harassment or retaliation should report it to one of the designated personnel above. Persons making the complaint need not be the victim or target.
  - C. Only those who have an immediate need to know, including the alleged target of harassment or retaliation, the alleged harasser or retaliator, and any witnesses, will be informed of the identity of the complainant. All parties contacted in the course of investigating a complaint will be advised that all parties involved in a complaint are entitled to respect, and that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint or who has provided evidence in connection with a complaint, is a separate offense under this policy. The investigating official in their said capacity, shall strive towards, and use all best efforts to hold, all information gleaned from their investigation in as much confidentiality as their continued investigation allows.
  - D. The complaint process will be administered consistent with state labor law and City employees who are represented by a union remain free at all times to utilize grievance procedures contained in their collective bargaining agreement to process a complaint of discrimination, harassment, and/or retaliation.
  - E. All complaints will be investigated expeditiously and the investigating City official will produce a written report, which, together with the investigation file, will be promptly transmitted to the Offices of the Corporation Counsel and the Director of Personnel and Safety. The Corporation Counsel and the Director of Personnel and Safety will thereafter recommend remedial measures based upon the results of the investigation, and said City Counsel and the Director of Personnel and Safety deem necessary, will promptly consider and act upon such recommendation. When a complaint is made, the City official receiving the complaint will have the duty of immediately forwarding said complaint to the confidential attention of the Office of the Mayor of the City of Binghamton, the Corporation Counsel and the Director of Personnel and Safety.
  - F. An effective anti-harassment policy requires the support and example of City

management personnel in positions of authority. The City of Binghamton's agents or employees who engage in discrimination, harassment, and/or retaliation or who fail to cooperate with a City - sponsored investigation of discrimination, harassment, and/or retaliation may be severely sanctioned by suspension or dismissal. By the same token, officials who refuse to implement remedial measures, obstruct the remedial efforts of other City of Binghamton employees, and/or retaliate complainants or witnesses may be immediately subject to discipline by the City which may include suspension or dismissal.

- G. An important objective of this policy is to prevent a working environment from developing which because of such prohibited conduct unreasonably interferes with an employee's work or is intimidating, hostile or offensive. It is therefore essential and required that employees immediately report conduct which is believed to be in violation of this policy. Such timely reporting is necessary so that a complaint can be investigated while information is most available, a problem can be remedied before a harassing situation develops, and the potential for the spread of harmful rumors can be reduced. Failure to timely report improper conduct may result in a loss of administrative, municipal, state, and/or federal statutory rights.

#### IV. STATEMENT OF PROHIBITED CONDUCT – SEX BASED

Conduct which the City of Binghamton considers a violation of the City's Anti-Discrimination, Harassment, and Retaliation Policy related to sex or gender includes but is not limited to:

- A. Physical assaults of a sexual nature, such as:
1. Rape, sexual battery, molestation or attempts to commit these assaults;
  2. intentional physical conduct which is sexual in nature such as touching, pinching, patting, grabbing brushing against, or poking another employees body;
- B. Unwanted sexual advances, propositions or other sexual comments such as:
1. sexually-oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience directed at or made in the presence of any employee who indicates or has indicated in any way that such conduct in his or her presence is unwelcome;
  2. Preferential treatment or promise of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and
  3. subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the

employee's job more difficult because of that employee's gender.

- C. Sexual or discriminatory displays or publications anywhere in the City of Binghamton's workplace by City of Binghamton employees, such as:
1. displaying pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic, or bringing into the City of Binghamton work environment or possessing any such material to read, display or view at work. A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed or in clothes that are not suited to or ordinarily accepted for the accomplishment of routine work in and around the workplace and who is posed for the obvious purpose of displaying or drawing attention to primary or secondary sexual organs of his or her body; or
  2. reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning or pornographic; or
  3. Displaying signs or other materials purporting to segregate an employee by sex in any area of the workplace (other than restrooms and semi-private lockers/ changing rooms).
- D. Retaliation for sexual harassment complaints such as:
1. disciplining, changing work assignments of, intentionally providing inaccurate work information to, or refusing to cooperate or discuss work-related matters with any employee because that employee has complained about or resisted harassment, discrimination or retaliation; or
  2. Intentionally pressuring, falsely denying, lying about or otherwise covering up or attempting to cover up conduct such as that described in any item above.
- E. Other acts:
1. The above is not to be construed as an all-inclusive list of prohibited acts under this policy.
  2. Sexual harassment is unlawful and hurts other employees. Any of the prohibited conduct described herein is sexual harassment of anyone at whom it is directed or who is otherwise subjected to it. Sexually-oriented acts or sex-based conduct have no legitimated business purpose; accordingly, the employee who engages in such conduct should be and will be made to bear the full responsibility for such unlawful conduct.

F. False accusations:

1. Use of the complaint procedures outlined above to falsely accuse a City employee shall be deemed a form of sexual harassment which shall be subject to discipline. However, regardless of the outcome of the investigation, no adverse action will be taken against any employee making a good faith claim of harassment.

V. STATEMENT OF PROHIBITED CONDUCT – OTHER

Discrimination, harassment, and/or retaliation on the basis of any other protected characteristic is also strictly prohibited. Under this policy, discrimination and harassment are verbal or physical conduct that denigrates or shows hostility or aversion toward an individual, his/her relatives, friends or associates because of his/her race, color, religion, creed, alienage, national origin, age, marital, veteran or citizenship status, physical or mental disability, handicap, pregnancy, sex, sexual orientation, genetic predisposition, carrier status, political beliefs, or any other legally protected characteristic or status 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 of written graphic material that denigrates or shows hostility or aversion toward an individual or group (including through e-mail social media).

Behavior such as telling jokes, making religious slurs, using offensive "slang" or other derogatory terms toward anyone in the above legally protected groups or mimicking one's speech, accent or disability are examples of prohibited conduct and will not be tolerated in our organization. Harassing individuals by making derogatory comments regarding protected statuses or characteristics and any other words or conduct that might create a hostile or offensive working atmosphere are also prohibited. Each manager/supervisor has a responsibility to maintain the workplace free of any form of discrimination or harassment.

This policy covers conduct in the workplace, at social functions sponsored by the organization (such as holiday dinners, picnics, sporting events, etc.), and business functions (such as conventions, sales conferences, trade shows, etc.)

VI. SUPERVISOR RESPONSIBILITIES

Each manager/supervisor has a responsibility to maintain the workplace free of discrimination, harassment, and retaliation. No manager/supervisor shall threaten or insinuate, either explicitly or implicitly, that an employee's refusal to submit to sexual advances will adversely affect the employee's employment, evaluation, wages,

advancement, assigned duties, shifts, or any other condition of employment or career development. Discriminatory, harassing, or retaliatory conduct in the workplace, whether committed by managers/supervisors, nonmanagerial employees or outside individuals (vendors, customers, etc.) is prohibited.

Each supervisor and manager has a particular responsibility to keep the work-place free of any form of harassment, and in particular, sexual harassment. No supervisor or manager is to threaten or insinuate, either explicitly or implicitly, that an employee's refusal or willingness to submit to sexual advances will affect the employee's terms or conditions of employment.

#### VII. WAIVER

Employees should be aware that failure to report incidents of sexual, gender or other discrimination, harassment, or retaliation may result in the waiver of such claims.

25. C. The Binghamton Police Department adheres to the Anti-Discrimination, Harassment, and Retaliation Policy as set forth for the City of Binghamton, fully documented in G.O. 401.