

**ORDINANCE NO. 2018-1**

**A ORDINANCE ESTABLISHING A POLICY TO PROHIBIT SEXUAL HARASSMENT  
IN THE TOWNSHIP OF OSWEGO, ILLINOIS**

WHEREAS, OSWEGO Township, KENDALL, County, Illinois is a non- home rule unit of local government pursuant to Article VII, § 8 of the 1970 Illinois Constitution; and

WHEREAS, the Illinois General Assembly enacted Public Act 100-554 (the “Act”), effective November 16, 2017, which is a comprehensive revision of State statutes regulating policies prohibiting sexual harassment; and

WHEREAS, the Act requires that, no later than 60 days after the effective date of this amendatory Act of the 100th General Assembly, November 16, 2017, each governmental unit shall adopt an ordinance or Ordinance establishing a policy to prohibit sexual harassment; and

WHEREAS, the Board of Trustees has determined that, as a governmental unit, it must comply with the Act by passage of this Ordinance.

WHEREAS, because the Act provides for the imposition of significant penalties for violations of said local regulations, it is necessary to adopt the required regulations by Ordinance rather than by Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF OSWEGO TOWNSHIP, KENDALL COUNTY, ILLINOIS, THAT THE FOLLOWING ORDINANCE ESTABLISHING A POLICY TO PROHIBIT SEXUAL HARASSMENT BE AND HEREBY IS ADOPTED:

**SECTION I: Adoption of Policy Prohibiting Sexual Harassment.**

The Policy Prohibiting Sexual Harassment, included as Exhibit A to this Ordinance, is hereby adopted.

**SECTION II: Existing Policies.**

All prior existing sexual harassment policies of OSWEGO Township that conflict with the policy contained in Exhibit A hereto shall be superseded by the Policy Prohibiting Sexual Harassment adopted by this Ordinance;

**SECTION III. Severability.**

It is the intention of the Board of Trustees that this Ordinance and every provision thereof shall be considered separable, and the invalidity of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

**SECTION IV: Effective Date.**

This Ordinance shall be in full force and effect from and after its passage.

ADOPTED this 9<sup>th</sup> day of January, 2018 pursuant to a roll call vote by the Board of Trustees of OSWEGO Township, KENDALL County, Illinois.

**BOARD OF TRUSTEES**

	<b><u>AYE</u></b>	<b><u>NAY</u></b>	<b><u>ABSENT</u></b>
Allyson Jacobsen	✓	_____	_____
Diane Selmer	✓	_____	_____
William Small	✓	_____	_____
Donna Stanley	✓	_____	_____
Brian LeClercq	✓	_____	_____

  
Town Clerk

  
Chairman

**EXHIBIT A**  
**OSWEGO TOWNSHIP POLICY**  
**PROHIBITING SEXUAL HARASSMENT**

**SECTION I: Definitions.**

- A. “Employee” means a person employed by the OSWEGO TOWNSHIP, whether on a fulltime or part-time basis or pursuant to a contract, whose duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed, but does not include an independent contractor.
- B. “Employer” means the OSWEGO TOWNSHIP.
- C. “Officer” means a person who holds, by election or appointment, an office in OSWEGO TOWNSHIP, regardless of whether the officer is compensated for service in his or her official capacity.
- D. “Sexual Harassment” means any unwelcome sexual advances, requests for sexual favors or any conduct of a sexual nature when:
  - 1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment;
  - 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - 3. Such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.
- E. “Working environment” is not limited to a physical location an employee is assigned to perform his or her duties.

**SECTION II: Prohibition on Sexual Harassment.**

- A. Each Employee and officer of Employer has the responsibility to refrain from sexual harassment in the workplace and is prohibited from engaging in conduct that constitutes sexual harassment.
- B. Conduct which may constitute sexual harassment includes:
  - 1. Verbal: sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
  - 2. Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually

suggestive bodily gestures, “catcalls”, “smacking” or “kissing” noises.

3. Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
  4. Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
  5. Textual/Electronic: “sexting” (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).
- C. The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is subtler and depends, to some extent, on individual perception and interpretation. The courts will assess sexual harassment by a standard of what would offend a “reasonable person.”

### **SECTION III: Reporting an Allegation of Sexual Harassment**

- A. An employee who either observes or believes herself/himself to be the object of sexual harassment should deal with the incident(s) as directly and firmly as possible by clearly communicating her/his position to the offending employee and her/his supervisor, OR THE DESIGNEE OF OSWEGO TOWNSHIP.
- B. It is not necessary for sexual harassment to be directed at the person making a complaint.
- C. During the occurrence of an incident of sexual harassment or following reporting, the Employer may document or record each incident. (what was said or done, the date, the time, and the place). Additionally, the Employer may collect and/or compile related written records such as letters, notes, memos, electronic messages, and telephone messages.
- D. All charges, including anonymous complaints, will be accepted and investigated regardless of how the matter comes to the attention of the Employer. However, because of the serious implications of sexual harassment charges and the difficulties associated with their investigation and the questions of credibility involved, the claimant’s willing cooperation is a vital component of an effective inquiry and an appropriate outcome.

- E. Proper methods of reporting conduct believed to be sexual harassment include the following:
1. Electronic/Direct Communication. If there is sexual harassing behavior in the workplace, the harassed employee should directly and clearly express her/his objection that the conduct is unwelcome and request that the offending behavior stop. The initial message may be verbal. If subsequent messages are needed, they should be put in writing in a note or a memo.
- F. Contact with Supervisory Personnel. At the same time direct communication is undertaken, or in the event the employee feels threatened or intimidated by the situation, the problem must be promptly reported to the immediate supervisor OR THE DESIGNEE OF OSWEGO TOWNSHIP.
- G. If the harasser is the immediate supervisor; the problem should be reported to the next level of supervision OR THE DESIGNEE OF OSWEGO TOWNSHIP.
- 1.
- H. Formal Written Complaint. An employee may also report incidents of sexual harassment directly to OR THE DESIGNEE OF OSWEGO TOWNSHIP.
1. THE DESIGNEE OF OSWEGO TOWNSHIP will counsel the reporting employee and be available to assist with filing a formal complaint. The Employer will fully investigate the complaint and advise the complainant and the alleged harasser of the results of the investigation.
  2. Resolution Outside Employer. The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every complaint and incident so that problems can be identified and remedied internally. However, an employee has the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) about filing a formal complaint with those entities. An IDHR complaint must be filed within 180 days of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must be filed within 300 days.
- I. All reports shall be received and handled as confidential to the extent permitted by law and subject to any disclosure requirements pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*).
- J. The employee experiencing what he or she believes to be sexual harassment must not assume that the Employer is aware of the conduct. If there are no witnesses and the victim fails to notify a supervisor or other responsible officer, the Employer will not be presumed to have knowledge of the harassment.

#### **SECTION IV: Prohibition Against Retaliation for Reporting Sexual Harassment**

- A. An Employee shall not be retaliated against by the Employer or the Employees or Officers of the Employer due to the Employee's:
  - 1. Disclosure or threatened disclosure of any violation of this policy,
  - 2. The provision of information related to or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy, or
  - 3. Assistance or participation in a proceeding to enforce the provisions of this policy.
- B. No individual making a report will be retaliated against even if a report made in good faith is not substantiated.
- C. The Employer will take reasonable steps to protect from retaliation any Employee or Officer who is a witness.
- D. Supervisors must ensure that no retaliation will result against an employee making a sexual harassment complaint.
- E. Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (5 ILCS 430/15-10) provides whistleblower protection from retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:
  - 1. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation,
  - 2. Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any officer, member, State agency or other State employee, or
  - 3. Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act.
- F. Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. In addition, an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. (740 ILCS 174/15(b)).

- G. According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act.
- H. An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge – due within 180 days (IDHR) or 300 days (EEOC) of the alleged retaliation.

## **SECTION V: Consequences**

- A. In addition to any and all other discipline that may be applicable pursuant to the Employer's policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreement, any person who violates this policy or the Prohibition on Sexual Harassment contained in 5 ILCS 430/5-65, may be subject to a fine of up to \$5,000 per offense, applicable discipline or discharge by the Employer and any applicable fines and penalties established pursuant to local ordinance, State law or Federal law. Each violation may constitute a separate offense. Any discipline imposed by the Employer shall be separate and distinct from any penalty imposed by any ethics commission and any fines or penalties imposed by a court of law or a State or Federal agency.
- B. False and frivolous charges refer to cases where the accuser is using a sexual harassment complaint to accomplish some end other than stopping sexual harassment. It does not refer to charges made in good faith which cannot be proven. A false and frivolous charge is a severe offense that can itself result in disciplinary action. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to discipline or discharge pursuant to applicable township policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements.
- C. Any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission, an inspector general, the State Police, a State's Attorney, the Attorney General, or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to \$5,000 against any person who intentionally makes a false, frivolous or bad faith allegation.

**SECTION VI. Severability.**

It is the intention of the Board of Trustees that this policy and every provision thereof shall be considered separable, and the invalidity of any section, clause, or provision of this policy shall not affect the validity of any other portion of this policy.

**Acknowledgment of Receipt and Understanding of Policy Prohibiting Sexual Harassment**

- A. Please acknowledge receipt and review of this policy by completing the following form and returning it to THE DESIGNEE OF OSWEGO TOWNSHIP.

I have read and I understand the Policy Prohibiting Sexual Harassment. I understand that if I ever have any questions or concerns I can speak to my supervisor or Township Attorney. I have signed and dated this acknowledgment to confirm my receipt and understanding of the policy.

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

Signature: \_\_\_\_\_

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