Ordinance #O.18.16

An Ordinance **ADOPTING A POLICY PROHIBITING SEXUAL HARASSMENT FOR THE CITY OF GALENA.**

Adopted by the City Council of the City of Galena this 24th Day of September 2018.

Published in pamphlet form by authority of the City Council of the City of Galena, Jo Daviess County, Illinois, this 24th Day of September 2018.

STATE OF ILLINOIS )
) City of Galena
COUNTY OF JO DAVIESS )

CERTIFICATE

I, Mary Beth Hyde, certify that I am the duly elected municipal clerk of the City of Galena, JoDaviess County, Illinois.

I further certify that on the 24th Day of September 2018, the Corporate Authorities of said municipality passed and approved Ordinance No. O.18.16 entitled **AN ORDINANCE ADOPTING A POLICY PROHIBITING SEXUAL HARASSMENT FOR THE CITY OF GALENA,** which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. O.18.16 including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the municipal building, commencing the 25th Day of September 2018 and commencing for at least ten (10) days thereafter.

Dated at Galena, Illinois, this 25th Day September 2018.

Mary Beth Hyde

Mary Beth Hyde
City Clerk

(Seal)

**ORDINANCE #O.18.16**

**AN ORDINANCE ADOPTING A POLICY PROHIBITING SEXUAL HARASSMENT**

**FOR THE CITY OF GALENA**

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**WHEREAS,** the Illinois General Assembly has recently enacted Public Act 100-0554, an Act concerning government, which became effective immediately, dated November 16, 2017;

**WHEREAS,** pursuant to the Act, each governmental unit shall adopt an ordinance or resolution establishing a policy to prohibit sexual harassment;

**WHEREAS,** all prior existing sexual harassment policies of the City of Galena shall be superseded by the Policy Prohibiting Sexual Harassment adopted by this Ordinance; and

**WHEREAS,** should any section or provision of this Ordinance or the adopted Policy Prohibiting Sexual Harassment be declared to be invalid, that decision shall not affect the validity of this Ordinance or adopted Policy Prohibiting Sexual Harassment as a whole or any part thereof, other than the part so declared to be invalid;

**NOW, THEREFORE,** be it ordained by the corporate authorities of the City of Galena the following:

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

**SECTION II.** This ordinance shall be in full force and effect on the 24th day of September 2018.

Passed on this 24th day of September, A.D., 2018, in open Council.

**AYES:** Allendorf, Bernstein, Fach, Hahn, Kieffer, Westemeier, Renner

**NAYS:** None

Terry Renner

**TERRY RENNER, MAYOR**

Mary Beth Hyde

**ATTEST: MARY BETH HYDE, CITY CLERK**

Exhibit A

# POLICY PROHIBITING SEXUAL HARASSMENT[i]

## *I. PROHIBITION ON SEXUAL HARASSMENT*

It is unlawful to harass a person because of that person's sex. The courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991. All persons have a right to work in an environment free from sexual harassment. Sexual harassment is unacceptable misconduct which affects individuals of all genders and sexual orientations. It is a policy of the City of Galena to prohibit harassment of any person by any municipal official, municipal agent, municipal employee or municipal agency or office on the basis of sex or gender. All municipal officials, municipal agents, municipal employees and municipal agencies or offices are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.

## *II. DEFINITION OF SEXUAL HARASSMENT*

This policy adopts the definition of sexual harassment as stated in the Illinois Human Rights Act, which currently defines sexual harassment as:

Any unwelcome sexual advances or 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.

Conduct which may constitute sexual harassment includes:

- 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.
- Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
- Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- 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).

The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle 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."

## *III. PROCEDURE FOR REPORTING AN ALLEGATION OF SEXUAL HARASSMENT*

An employee who either observes sexual harassment 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 immediate supervisor. It is not necessary for sexual harassment to be directed at the person making the report.

Any employee may report conduct which is believed to be sexual harassment, including the following:

- *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.

- *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 of the person making the report, a department head, a director of human resources, an ethics officer, the city administrator, or the mayor.

  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 municipality will not be presumed to have knowledge of the harassment.

- *Resolution Outside Municipality*. The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every report and incident so that problems can be identified and remedied by the municipality. However, all municipal employees have the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) for information regarding 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.

Documentation of any incident may be submitted with any report (what was said or done, the date, the time and the place), including, but not limited to, written records such as letters, notes, memos and telephone messages.

All allegations, including anonymous reports, will be accepted and investigated regardless of how the matter comes to the attention of the municipality. 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.

## *IV. PROHIBITION ON RETALIATION FOR REPORTING SEXUAL HARASSMENT ALLEGATIONS*

No municipal official, municipal agency, municipal employee or municipal agency or office shall take any retaliatory action against any municipal employee due to a municipal 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.

For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any municipal employee that is taken in retaliation for a municipal employee's involvement in protected activity pursuant to this policy.

No individual making a report will be retaliated against even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation.

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.

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)).

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.

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.

## *V. CONSEQUENCES OF A VIOLATION OF THE PROHIBITION ON SEXUAL HARASSMENT*

In addition to any and all other discipline that may be applicable pursuant to municipal 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 municipality 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 municipality shall be separate and distinct from any penalty imposed by an ethics commission and any fines or penalties imposed by a court of law or a State or Federal agency.

## *VI. CONSEQUENCES FOR KNOWINGLY MAKING A FALSE REPORT*

A false report is a report of sexual harassment made by an accuser using the sexual harassment report to accomplish some end other than stopping sexual harassment or retaliation for reporting sexual harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report 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 municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements.

In addition, 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.

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[i] This policy was drafted using the Illinois Department of Human Rights Sexual Harassment Model Policy and has been modified to conform to Public Act 100-0554.