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A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA; AMENDING THE CAREER SERVICE SYSTEM RULES AND REGULATIONS TO INCLUDE A SEXUAL HARASSMENT POLICY, AS SET FORTH AND ATTACHED HERETO IN EXHIBIT "A"; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Pembroke Pines is strongly opposed to sexual harassment in the work place; and

WHEREAS, the City Commission of the City of Pembroke Pines deems it to be in the best interest of citizens and residents of Pembroke Pines to amend the Career Service System Rules and Regulations to adopt a Sexual Harassment Policy.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF PEMBROKE PINES, FLORIDA, THAT:

Section 1. The foregoing "WHEREAS" clauses are true and correct and are hereby ratified and confirmed by the City Commission.

Section 2. The Career Service System Rules and Regulations are amended to include a Sexual Harassment Policy as set forth and attached hereto in Exhibit "A".

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 5. This Resolution shall become effective immediately upon its passage and adoption.

Proposed Resolution No. 91-R-42

RESOLUTION NO. 2030

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PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF
PEMBROKE PINES, FLORIDA, THIS 19th DAY OF June,
1991.

CITY OF PEMBROKE PINES, FLORIDA

BY: Charles W. Flanagan
CHARLES W. FLANAGAN, MAYOR

ATTEST:

Eileen M. Tesh
EILEEN M. TESH
CITY CLERK

FLANAGAN AYE

BOSARGE AYE

Proposed by Commission

ARMSTRONG AYE

LEG. NOTE

FEKETE AYE

I HEREBY CERTIFY that I
have approved the form
of this RESOLUTION.

THIBAUT AYE

Steven L. Josias
STEVEN L. JOSIAS
CITY ATTORNEY

SLJ/MSK:s11
rescs\shpolicy
06/12/91

§ 1604.11 Sexual harassment.

(a) Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment 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 unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) Applying general title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of

their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

(Title VII, Pub. L. 88-352, 78 Stat. 253 (42 U.S.C. 2000e et seq.))

[45 FR 74677, Nov. 10, 1980]

The principles involved here continue to apply to race, color, religion or national origin.

CITY OF PEMBROKE PINES

OVERVIEW OF SEXUAL HARASSMENT LAW

Title VII of the 1964 Civil Rights Act as amended requires that men and women must be treated equally in all job matters. In other words, discrimination in employment (such as hiring, firing, pay, promotion, benefits) based on sex is illegal. This law is enforced by the Equal Employment Opportunity Commission (EEOC), which is a federal agency.

On November 10, 1980, the new EEOC Guidelines on sexual harassment became effective. These amended Guidelines reaffirmed EEOC's position that sexual harassment is a form of sex discrimination and therefore is an "unlawful employment practice" under Title VII of the Civil Rights Act. In short, sexual harassment is illegal.

Equal Employment Opportunity Commission's Amended Guidelines on Sexual Harassment.

(For the purpose of the following discussion, the term "Guidelines" refers specifically to 1604.11 of the Commission's Amended Guidelines on Discrimination Because of Sex)

The Guidelines establish the criteria for determining when unwelcome sexual conduct, whether verbal or physical, constitutes sexual harassment and defines the circumstances under which an employer is liable for such conduct. The provisions of each of the seven sections of the Guidelines are examined in the following section.

1. Section 1604.11(a) The first section of the Guidelines states that harassment on the basis of sex is a violation of 703 of Title VII. Sexual harassment is sex discrimination. This section states that unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when any one of the following three criteria is met:

A. Submission to Such Conduct is Made Either Explicitly or Implicitly a Term or Condition of an Individual's Employment.

Example: If a laborer complains to the foreman that the workers on the job direct sexually suggestive remarks and gestures to the laborer and the foreman tells the laborer that such conduct is to be expected as part of the job, then submission to the sexually harassing conduct is made an explicit term or condition of employment.

Because submission to such sexual conduct is an additional term or condition of employment, one not imposed on employees of the opposite sex, it is sex discrimination and, specifically, sexual harassment.

B. Submission to or Rejection of Such Conduct by an Individual is Used as the Basis for Employment Decisions Affecting Such Individual.

Example: If an employee's promotion depends on his or her granting certain sexual favors and the promotion is denied because the employee refuses to do so, then the employee is the victim of sexual harassment. The same result is reached if the employee does submit and consequently receives the promotion.

Basing any employment decision on whether the affected individual submits to or rejects unwelcome sexual conduct is sexual harassment.

C. Such Conduct Has the Purpose or Effect of Unreasonably Interfering With an Individual's Work Performance or Creating an Intimidating, Hostile, or Offensive Work Environment.

Example: If certain employees make sexual remarks, jokes, or gestures in the presence of or directed toward other employees, that conduct may make the work atmosphere intimidating or threatening for the other employees.

In the example, the objectionable conduct may not be such that submission to it constitutes a term or condition of employment, and submission to or rejection of the conduct may not be the basis of an employment decision. Nonetheless, the conduct is sexual harassment. It unreasonably interferes with an employee's work performance or creates a negative work environment.

2. Section 1604.11(b) This section recognizes that an action which is sexual harassment in one set of circumstances may, in another context, not be.

Example: A secretary works for two supervisors, and each invites the secretary on repeated but separate occasions to go out for a drink or dinner after work. The first supervisor indicates that the secretary's job depends on the secretary having a sexual relationship with the supervisor, and the secretary considers the invitation to be unwelcome and does not accept it. However, she gladly accepts the invitations of the second supervisor, with whom the secretary has an outside social relationship unrelated to their business relationship in the office. The first action may be sexual harassment while the second is not.

Submission to a specific form of sexual conduct may be an unlawful condition of continued employment in one case. In another case, similar submission may be part of a voluntary personal relationship having no employment consequences.

3. Section 1604.11(c) This section imposes strict liability on the employer for sexual harassment committed by it, its agents, or supervisory employees. The strict liability standard applied here is in keeping with Title VII principles and the general standard of employer responsibility for acts of agents and supervisors.

An employer is responsible for harassment by its supervisory personnel whether or not it knew about the actions, and whether or not it approved or disapproved of such behavior.

4. Section 1604.11(d) This section defines an employer's liability for sexual harassment of an employee by a fellow worker. This section provides that the employer is responsible for the unlawful conduct where the employer, or its agents, or its supervisory employees knew or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action. In contrast to the provisions of the preceding section holding an employer strictly liable for sexual harassment committed by it, its agents, or supervisory employees, this section does not impose strict liability on the employer for co-worker sexual harassment.

5. Section 1604.11(e) This section provides that an employer may also be responsible for the sexual harassment of an employee by a non-employee, when the harassment occurs in the line of work and where the employer knows or should have known about it and fails to take immediate and appropriate action.

Example: An employer contracted to have the office duplicating machine serviced, which was frequently necessary. The employee who was responsible for operating the machine dreaded service calls because the service representative who repaired and maintained the machine made sexual advances toward the employee whenever the service representative was in the office and the employee found the service representative's unwelcome behavior increasingly disturbing. When the service representative told the employee that the service representative would be unable to make a rush repair unless the employee "cooperated" by going out with the service representative, the employee complained to the supervisor. The employer may be responsible in such circumstances if he/she failed to take corrective measures within their control once the employer knew or had reason to know of the sexual harassment.

6. Section 1604.11(f) This section emphasizes the Commission's position that the best means of eliminating sexual harassment is preventing its occurrence. Toward that end, the section provides that an employer should take all necessary steps to prevent sexual harassment and suggests several kinds of action an employer can take, including: affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, and informing employees how to pursue their Title VII right to be free from sexual harassment.

7. Section 1604.11(g) This section states that an employer may be liable for unlawful sex discrimination against persons who were qualified for but denied an employment opportunity or benefit which was granted to another person because that individual submitted to the employer's sexual advances.

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CITY OF PEMBROKE PINES
SEXUAL HARASSMENT POLICY

I. POLICY STATEMENT

It is the policy of the City of Pembroke Pines that no employee be harassed by another employee or supervisor on the basis of sex and that no personnel action be taken affecting an employee (either favorably or unfavorably) on the basis of conduct that is not related to work performance. Such conduct may include submitting to sexual advances, refusing to submit to sexual advances, protesting sexual overtures, or raising a complaint concerning the alleged violation of this policy.

II. THE REASON FOR THIS POLICY

The purpose of this policy is not to regulate our employee's personal lives or morality. The policy was formulated to protect our employees - both males and females - against unsolicited and unwelcomed sexual overtures or conduct, either physical or verbal. It prohibits employee misconduct that may upset employee morale and interfere with employee's work and efficiency. Some forms of misconduct may even constitute a violation of equal employment opportunity law.

III. THE TYPE OF CONDUCT COVERED BY THIS POLICY

- A. Sexual harassment does not refer to occasional compliments of a socially acceptable nature or welcome social relationships.
- B. The policy prohibits any demand for sexual favors that is accompanied by a promise of favorable job treatment or a threat concerning the employee's employment.
- C. The policy prohibits subtle pressure for sexual favors, including implying or threatening that an applicant's or employee's cooperation of a sexual nature (or refusal thereof) will have any effect on the person's employment, job assignment, wages, promotion, or on any other conditions of employment or future job opportunities.
- D. The policy prohibits behavior that is not welcomed by the employee and is personally offensive such as, but not limited to:
 - 1. Sexual flirtations, advances, or propositions.

EXHIBIT "A"

2. Verbal abuse of a sexual nature, sexually related comments and joking, graphic, or degrading comments about an employee's appearance, or the display of sexual objects or pictures.
3. Any uninvited physical contact or touching, such as patting, pinching, or brushing against another's body.

IV. VIOLATIONS OF THIS POLICY

Violations of this policy will not be permitted. Any employee or supervisor who violates this policy will be subject to discipline up to and including discharge.

V. COMPLAINTS

There are two (2) methods for filing a Complaint under this Policy:

A. INFORMAL PROCEDURE

1. When an employee perceives that sexual harassment has occurred, that employee may choose to hold an informal discussion with their immediate supervisor or with their supervisor's boss to attempt to resolve the situation at that level. However, choosing this procedure does not preclude an employee from initiating the Formal Procedures outlined below.
2. Upon the supervisor gaining knowledge of possible sexual harassment, the supervisor shall review the situation and implement corrective actions if necessary. A report outlining all facts of the situation and corrective action implemented, if any, shall be submitted through the Department Head to the Director of Personnel in all cases.
3. The employee perceiving the sexual harassment or the individual accused of sexual harassment may informally appeal the decision with their Department Head.

B. FORMAL PROCEDURE

1. Formal procedures may be initiated:
 - a) Through the employee's immediate supervisor. This avenue should be used unless the Complaint is against that supervisor. If this is the case, then,

EXHIBIT "A"

- b) Through supervisor's boss. If the Complaint is against the Department Head, then Formal Procedures may be initiated through the Director of Personnel.
2. When an employee perceives that sexual harassment has occurred, a written complaint must be completed by the employee. Complaints of sexual harassment must be in writing in order to initiate these procedures. Each complaint is handled on a case by case basis. An employee desiring to discuss the situation in informal discussions prior to formally filing a complaint may do so through the channels outlined above.
 3. The City shall respond to a written complaint of sexual harassment in a timely and reasonable manner. If possible, the City will provide an administrative response within thirty (30) days from receipt of the written Complaint. Administrative responses shall indicate subsequent corrective actions, if any, to the employee filing the Complaint and to the individual(s) involved in the sexual harassment.
 4. The person accepting the written Complaint shall assist the employee in regaining their composure, if necessary, and then promptly:
 - a. Provide information on these procedures to the employee filing the Complaint.
 - b. Notify their Department Head of the Complaint.
 - c. Notify the Director of Personnel of the Complaint.
 - d. Begin coordinating and conducting the investigation process in a timely manner.
 5. The investigation process shall begin with an interview with the employee filing the Complaint. The employee's immediate supervisor (or next level of supervision if the complaint is against the Supervisor) shall conduct the interview. The employee's Department Head and the Director of Personnel, or designees, shall also be present. The purpose of the interview is to clarify all points of the written Complaint, to collect additional information from the employee, and to determine if immediate action is necessary. All interviews shall be tape recorded.

EXHIBIT "A"

6. If the employee perceives the situation to be threatening, that employee may request authorization to use accrued Annual Leave or Leave Without Pay or a job transfer. Approvals will be determined on a case by case basis.
7. The investigation shall conclude after evidence from all parties involved is obtained and a decision can be made to confirm or deny the allegations. A written report of findings and a recommendation will be submitted from the supervisor through the Department Director to the Director of Personnel.
8. If an individual is found to have violated the City's Sexual Harassment Policy, a recommendation shall be made for corrective action by the Department Head of the employee who filed a Complaint. Corrective action, up to and including discharge, shall be based upon the severity of the situation and shall be authorized swiftly and fairly by the City Manager.
9. The information regarding the Complaint shall be maintained in confidence to the extent allowed by law.
10. The employee who filed the Complaint and the individual against whom the Complaint was filed shall be notified in writing by the Director of Personnel of the results of the investigation and the administrative response and any subsequent actions taken.
11. If either person is not satisfied with the decision, they may appeal the decision to the City Manager within five (5) working days from receipt of the written decision. All appeals shall be in writing. In such instances, the City Manager shall review the information and respond with a final decision.

EXHIBIT "A"