

Agenda Item No: 10A

NMWRD Board of Trustees Agenda Supplement

<u>Meeting Date:</u>	February 12, 2019
<u>Item:</u>	Approve Ordinance 19-02 adopting a Sexual Harassment Policy
<u>Staff Recommendation:</u>	Motion to approve Ordinance 19-02, a ordinance establishing a policy prohibiting sexual harassment.
<u>Staff Contact:</u>	Mohammed M. Haque, District Manager

Background:

During a recent phone conversation our legal counsel, Vic Filippini asked if the District had passed a policy prohibiting sexual harassment per the public acts that were passed by the Illinois state legislature last year. I informed him that at the time the act was passed the District felt that our existing policies in our Employee Policy Manual covered the requirements of the act. Vic requested a copy of our manual, which I provided to him. Upon his review, he indicated that he felt that while our manual did include language that prohibited sexual harassment, the public act had some very specific items that he felt would be best served by passing a more thorough ordinance.

A copy of that ordinance and policy are enclosed. In conjunction with this policy, we are going to have our labor attorney, Clark Baird & Smith review our full employee policy manual for some additional updates and reviews. That will be initiated in the next week.

Recommendation:

It is staff's recommendation that the Board of Trustees approve Ordinance 19-02, a ordinance establishing a policy prohibiting sexual harassment.

Votes Required to Pass:

Simple Majority

NORTHERN MORAINÉ WASTEWATER RECLAMATION DISTRICT

ORDINANCE NO. 19-02

**AN ORDINANCE APPROVING AN AMENDED POLICY
PROHIBITING SEXUAL HARASSMENT**

WHEREAS, the Northern Moraine Wastewater Reclamation District (the "**District**") has established a policy addressing allegations of sexual harassment in the "General Employment Policies" section of the District's Employee Manual ("**Policy**"); and

WHEREAS, the District desires to amend its Policy to bring it into conformity with recent amendments to Illinois law;

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the Northern Moraine Wastewater Reclamation District, as follows:

Section 1. The Policy is hereby amended as set forth in **Exhibit A** attached hereto, and such amended Policy is hereby adopted as the "Policy Prohibiting Sexual Harassment" for the Northern Moraine Wastewater Reclamation District, superseding any other policy regarding the same.

Section 2. This ordinance shall be in full force and effect upon its passage, approval, and publication in the manner provided by law.

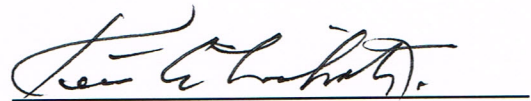
PASSED THIS 12th day of February, 2019.

AYES: 5

NAYS: 0

ABSENT: 0

APPROVED THIS 12th day of February, 2019.



President

ATTEST:

Deborah Martin
District Clerk



EXHIBIT A

Policy Prohibiting Sexual Harassment

POLICY PROHIBITING SEXUAL HARASSMENT¹

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 conduct which affects individuals of all genders and sexual orientations. It is a policy of the Northern Moraine Wastewater Reclamation District ("**District**") to prohibit harassment of any person by any District official, agent, employee, agency or office on the basis of sex or gender. All District officials, agents, employees, and 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, 775 ILCS 5/2-101(E), 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

¹ The provisions of this policy will apply only insofar as they do not conflict with any state or federal law.

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."

The protections against sexual harassment as set forth in this Policy includes sexual harassment by nonemployees, but the District's responsibility to protect employees from sexual harassment involving nonemployees shall only apply if the District officers becomes aware of the conduct, at which point reasonable corrective measures shall be undertaken.

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 District Manager, or the chief executive officer of the District.

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

- *Resolution Outside District.* 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 District 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. A complaint with the IDHR or the EEOC must be filed within 300 days of the alleged incident(s) unless it is a continuing offense.

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 District. 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 District official, agent, employee or office shall take any retaliatory action against any District employee due to an 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 District employee that is taken in retaliation for a District employee's involvement in protected activity pursuant to this policy.

As further provided in Section VI, retaliation is prohibited even if the report is unsubstantiated, so long as the report was made in good faith. 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, or other employee that the 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, or other 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 within 300 days after the alleged retaliation, or otherwise in accordance with the procedures established by the relevant agency.

The IDHR and EEOC can be contacted as follows:

Illinois Department of Human Rights
100 W. Randolph St., Suite 10-100
Chicago, IL 60601
(312) 814-6200

Equal Employment Opportunity Commission
500 West Madison Street, Ste. 2800
Chicago, Illinois 60661-2511
(312) 353-2713

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 District 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 District 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 District 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.

A nonemployee of the District who conducts business with the District may be disqualified from obtaining further District business as a result of any incident of sexual harassment of District employees.

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, but does not include a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false 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 District 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.