

ORDINANCE NO. 2020-1005

AN ORDINANCE ADOPTING A POLICY PROHIBITING HARASSMENT FOR VILLAGE OF COBDEN,  
UNION COUNTY, ILLINOIS

Adopted by the  
Village Board of Trustees  
of the  
Village of Cobden  
on this 15th day of June, 2020

Published in pamphlet form by the authority of the Village Board of Trustees of the Village of Cobden,  
Union County, Illinois, on this 16th day of June, 2020

ORDINANCE NO. 2020-1005

AN ORDINANCE ADOPTING A POLICY PROHIBITING SEXUAL HARASSMENT FOR VILLAGE OF COBDEN, UNION COUNTY, ILLINOIS

WHEREAS, the Illinois General Assembly previously enacted Public Act 100-0554, an Act concerning government, which became effective November 16, 2017;

WHEREAS, pursuant to the Act, the VILLAGE OF COBDEN adopted an ordinance adopting its policy to prohibit sexual harassment;

WHEREAS, the Illinois General Assembly enacted Public Act 101-0221, an Act concerning employment, which became effective August 9, 2019, requiring the amendment of sexual harassment policies;

WHEREAS, all prior existing sexual harassment policies of the VILLAGE OF COBDEN shall be superseded by the Policy Prohibiting Sexual Harassment adopted by this ordinance; and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 VILLAGE OF COBDEN the following:

Section 1. The Policy Prohibiting Sexual Harassment, included as Exhibit A to this ordinance, is hereby adopted.

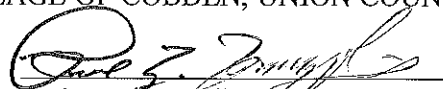
Section 2. This ordinance shall be in full force and effect on July 1, 2020.

PASSED THIS 15<sup>TH</sup> DAY OF JUNE, 2020.


  
Karen M. Winzenburger, Village Clerk

NAME	AYE	NAY	ABSTAIN	ABSENT	CONFLICT
Jean A. Britt	X				
Patrick C. Brumleve	X				
Todd Dietterle	X				
Larry Hackethal	X				
Austin Sellars	X				
David Stewart	X				

APPROVED BY THE VILLAGE PRESIDENT OF THE VILLAGE OF COBDEN, UNION COUNTY, ILLINOIS, THIS 15TH DAY OF JUNE, 2020.

  
Paul Z. Tomazzoli, Village President

ATTEST:

  
Karen M. Winzenburger, Village Clerk

**VILLAGE OF COBDEN  
PROHIBITING SEXUAL HARASSMENT<sup>1</sup>**

*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 VILLAGE OF COBDEN to prohibit harassment of any person by any municipal official, municipal agent, municipal employee, municipal agency or municipal office on the basis of sex or gender. All municipal officials, municipal agents, municipal employees and municipal agencies or municipal 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:

- Submission to such conduct is made a term or condition of an individual's employment, either explicitly or implicitly; or
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- 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, but is not limited to:

- Verbal Harassment: sexual innuendos, suggestive comments, insults, humor, jokes about: sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates; or, statements of a sexual nature about other employees, even outside of their presence.
- Non-verbal Harassment: 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 Harassment: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.

- Textual/Electronic Harassment: “sexting” (electronically sending messages with sexual content, including pictures or video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (email/text/picture/video messages, intranet/online postings, blogs, instant messages and posts on 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 harassment 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 manager or administrator or the chief elected official of the municipality.

The employee experiencing what she/he 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

300 days of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must also be filed within 300 days.

- *Allegations of Sexual Harassment made against an elected official of the governmental unit by another elected official of a governmental unit.* In addition to the methods of reporting included above, an elected official may request an independent review of a complaint of sexual harassment by another elected official. The request shall be made to the human resources director, the city manager or administrator or the chief elected official of the municipality. The official receiving the request shall take immediate action in keeping with the procurement process of the municipality to retain a qualified individual or entity for the independent review of the allegations of sexual harassment in violation of this policy. The outcome of the independent review shall be reported to the corporate authorities.

Documentation of any incident may be submitted with any report (what was said or done, the date, the time and the location), 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 office shall take any retaliatory action against any municipal employee or official due to a municipal employee's or official's:

- Disclosure or threatened disclosure of any violation of this policy; or
- Providing information related to an investigation or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy; or
- Assistance with or participation in a proceeding to enforce the provisions of this policy.

For 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 or official'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, and this policy prohibits 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:

- Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of any officer, member, agency or other employee that the employee reasonably believes is in violation of a law, rule or regulation; or
- 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, agency or other employee; or
- Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act or this policy.

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, 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 she/he has opposed that which she/he reasonably and in good faith believes to be sexual harassment in employment, because she/he 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 within 300 days 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 agreements, 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 disciplinary actions 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 to accomplish an outcome other than stopping sexual harassment or stopping 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 disciplinary action 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 Illinois 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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<sup>i</sup> 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 and Public Act 101-0221.

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

Before adopting any ordinance, municipal officials should consult with their retained legal counsel or other qualified attorney.

**ACKNOWLEDGEMENT**

By signing below, I acknowledge that I have received a copy of the VILLAGE OF COBDEN Policy Prohibiting Sexual Harassment (“Policy”) and understand that it is my responsibility to read and become familiar with its contents. I further understand that it is my responsibility to ask questions of my supervisor and/or other responsible official if I do not understand any of the information contained in the Policy and that I am required to abide by and observe all of the information, rules, policies and procedures explained therein.

I acknowledge that nothing in the Policy constitutes a contract or promise of employment.

I agree to abide by and observe all of the information, rules, policies, and procedures set forth in the Policy and understand that the Village of Cobden’s rules, policies and procedures may be changed from time to time, with or without notice, and that this Policy supersedes and replaces any and all prior manuals or policies.

I further certify that I have carefully read and reviewed the content of the Policy, and completed Sexual Harassment Prevention Training pursuant to the Illinois Human Rights Act, 775 ILCS 5/2-109.

**Training Participant Information:**

\_\_\_\_\_  
Printed Name - First, Middle Initial, Last

\_\_\_\_\_  
Municipality/Work Location

\_\_\_\_\_  
Training Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

This form will be kept by the municipality as an internal record of training compliance to be made available for the Illinois Department of Human Rights upon request.



STATE OF ILLINOIS        )  
  )  
COUNTY OF UNION        )

CERTIFICATE

I, Karen M. Winzenburger, certify that I am the duly elected and acting Village Clerk of the Village of Cobden, Union County, Illinois.

I further certify that on June 15, 2020, the Village Board of Trustees of the Village of Cobden, Illinois, passed and adopted **ORDINANCE NO. 2020-1005 – AN ORDINANCE ADOPTING A POLICY PROHIBITING HARASSMENT FOR VILLAGE OF COBDEN, UNION COUNTY, ILLINOIS.**

The pamphlet form of Ordinance No. 2020-1005 including the ordinance and a cover sheet thereof, was prepared and a copy of such ordinance was posted in the Village Hall for a period of at least ten days commencing on the 16th day of June, 2020. Copies of such ordinance were also available for public inspection upon request in the office of the Village Clerk.

Dated at Cobden, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Karen M. Winzenburger  
Village Clerk