MEMORANDUM

TO: The Honorable City Commission

FROM: Hans Ottinot, City Attorney

DATE: December 20, 2012

RE: Approving Revised Sexual and Other Harassment Policy

RECOMMENDATION:

The attached Resolution is recommended for approval.

REASONS:

The City’s policy on discrimination requires minor amendments to ensure consistency with federal and state law.
RESOLUTION NO. 2012-____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA APPROVING A REVISED SEXUAL AND OTHER HARASSMENT POLICY ATTACHED HERETO AS EXHIBIT "A"; PROVIDING THE CITY MANAGER AND THE CITY ATTORNEY WITH THE AUTHORITY TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the law is constantly changing regarding workplace discrimination; and

WHEREAS, the City’s discrimination policy requires certain revisions to ensure consistency with federal, state, and local laws; and

WHEREAS, the City Commission wishes to amend the City’s sexual harassment policy.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, AS FOLLOWS:

Section 1. Approval of the Revised Sexual Harassment Policy. The City Commission hereby approves the revised Sexual Harassment Policy attached hereto as Exhibit "A".

Section 2. Authorization of the City Manager and City Attorney. The City Manager and City Attorney are hereby authorized to do all things necessary to effectuate this Resolution.

Section 3. Effective Date. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this ____ day of December 2012.

________________________________________
Norman S. Edelcup, Mayor

ATTEST:

________________________________________
Jane A. Hines, City Clerk, CMC
AND LEGAL SUFFICIENCY:

Hans Ottino, City Attorney

Moved by: ____________________________
Seconded by: __________________________

Vote:

Mayor Edelcup       (Yes)   (No)
Vice Mayor Aelion   (Yes)   (No)
Commissioner Gatto  (Yes)   (No)
Commissioner Levin  (Yes)   (No)
Commissioner Scholl (Yes)   (No)
City of Sunny Isles Beach

Personnel Policy and Procedure

Policy Name: SEXUAL & OTHER HARASSMENT
Policy Number: 809:1
Effective Date: 8/1/05
Revision Date: 12/10/12
Prepared By/Title: Human Resources Director
Approved By/Title: City Manager

POLICY:

It is the policy of the City to ensure that all employees are able to work in an environment which is free from all forms of harassment and discrimination on the basis of race, color, age, sex, pregnancy, national origin, ancestry, citizenship status, religion, marital status, familial status, sexual orientation, genetic information, disability, and any other characteristic protected by federal, state or local law. Harassment and discrimination of any form is prohibited and will result in disciplinary action up to and including termination. The City also prohibits retaliation against any individual who has opposed unlawful discrimination or harassment, or participated in any manner in an investigation, proceeding or hearing regarding unlawful discrimination or harassment. Harassment of any kind will not be tolerated. The City Manager or his/her designee is charged with the overall responsibility for the administration of this policy. The City’s basic goal is the equal and fair treatment of all employees.

Further, the City desires to establish and maintain a respectful and professional work environment. Harassment based on an employee's legally protected characteristic is destructive in nature and does not further the business mission of the City. The City is committed to maintaining a work environment free of harassment by any employee, vendor, customer, supplier, volunteer or anyone else. The City will not tolerate any sexually related or any other conduct by any employee, vendor, customer, volunteer or supplier which harasses, disrupts, embarrasses, intimidates, offends or threatens another person on the basis of a legally protected characteristic. All personnel are responsible for maintaining a work place that is free of any form of harassment and intimidation. Any employee, vendor, customer, volunteer or supplier who after an investigation is determined to have violated this policy shall be subject to the disciplinary measures available to the City up to and including termination of employment and/or cessation of contact with the City. Appropriate follow-up steps will be taken.

SCOPE:

All City employees.
PROCEDURES:

I. **Guidelines the City will follow and definitions and examples of harassment.**

A. All employees are expected to act in ways which establish a respectful professional work environment free of sexual and other harassment and discrimination. Each department head is responsible for monitoring employee conduct as well as the conduct of the department’s customers, vendors, volunteers and suppliers. All employees have a duty to report any suspected sexual or other harassment and discrimination to the appropriate department head even if they are not the victim. If an employee does not feel comfortable reporting the suspected harassment to the department head, the employee should make the report to the City Manager or City Attorney. An employee’s employment with the City will not be affected in any way by making a good faith report of suspected harassment nor shall any retaliation against such employee be tolerated.

B. Harassment can take many forms. It may be, but is not limited to, slurs, offensive remarks, signs, jokes, pranks, intimidation, physical contact, threats of violence, or violence because of a legally protected characteristic. Any form of harassment related to an individual’s legally protected characteristic is a violation of this policy and will be treated as a disciplinary matter.

C. For purposes of this policy, sexual harassment includes:

1. Unwelcome sexual advances, requests for sexual favors, and other physical, verbal or visual conduct of a sexual nature constitute sexual harassment when:

   a. The conduct creates an intimidating, hostile or offensive work environment;

   b. The conduct has the purpose or effect of interfering with an employee’s work performance;

   c. Submission to that conduct is an explicit or implicit term or condition of employment or continued employment; or

   d. Submission to or rejection of the conduct is used as a basis for employment decisions affecting an employee, such as promotion, demotion or evaluation.

2. Sexual harassment also includes any other sexually related behavior by an employee which is unwelcome by another person. Such conduct may include, but is not limited to:

   a. Repeated sexual flirtations, advances, staring or propositions;
b. Verbal abuse of a sexual nature including sexually related comments or jokes, kidding or teasing, requests for sexual favors, sexual innuendos, graphic or degrading comments about a person’s appearance or sexually degrading words to describe that person;

c. Sexually suggestive comments or movements directed toward that person, and suggestive or obscene gestures;

d. Any uninvited physical contact which is sexual or offensive in nature, such as petting, pinching, groping or constant brushing against another’s body;

e. Any display of sexually suggestive pictures or objects in the workplace;

f. Using the computer to access websites, newsgroups, CDs, floppy disk, email or any other resource that contains material that is of a sexual nature.

3. Sexual harassment also includes gender-based harassment of a person of the same sex as the harasser.

D. Harassment by an employee directed to a vendor, customer, volunteer, supplier or other non-employee whom the employee knows or is in contact with because of the employee’s employment with the City is prohibited. This policy also prohibits conduct which witnesses reasonably believe constitutes harassment of another based on the employee’s legally protected characteristic.

II. The prevention of sexual harassment and other forms of harassment based on legally protected characteristics in the workplace is everyone’s responsibility

All personnel are responsible for maintaining a workplace that is free of harassment and intimidation. Any employee who experiences or witnesses any form of harassment in the workplace has an affirmative obligation to report such conduct to his or her supervisor immediately. If, after an investigation, it is determined that harassment has occurred and it is determined that an employee failed to fulfill their affirmative obligation to report such conduct, such a failure may be grounds for discipline.

A. Supervisor or Department Head responsibility.

In addition to the aforementioned responsibilities, supervisors and/or department heads are also responsible for taking the following steps to prevent sexual and other forms of harassment:

1. Assure that all subordinates and new hires have received a copy of the City’s Sexual & Other Harassment Policy and have signed an acknowledgement that they have received and read the policy.
2. Discuss the City’s Sexual & Other Harassment Policy with subordinate employees and reinforce with them the City’s policy to establish and maintain a respectful and professional work environment.

3. Assure subordinate employees that they should not tolerate demeaning or hostile treatment of any kind and especially that of a sexual nature.

4. Inform all subordinate employees of the harassment complaint process including an employee’s right to bypass an offending staff member, and;

5. Immediately report any complaints, observations or concerns of harassment or violations of this policy to the City Manager or in the Manager’s absence, the City Attorney. When receiving a complaint of harassment, supervisors and/or department heads should instruct the complaining employee that anything they say may be reported to the investigation officials. If the employee refuses to discuss the harassment unless it is held confidential, the supervisor and/or department head should not guarantee such confidentiality. If the employee still refuses to discuss the harassment further; the supervisor and/or the department head must report it to either the City Manager or the City Attorney. Failure of a supervisor and/or department head to follow or implement any of the foregoing may be grounds for discipline up to and including discharge.

III. Complaint procedures to be utilized by the employee.

A. Initial Complaint.

Any person who believes that they have been sexually or otherwise harassed in the workplace shall immediately report the offending behavior, either orally or in writing, directly to any of the following individuals;

1. The City Manager;
2. The City Attorney;
3. The Human Resources Director;
4. Your Supervisor or Department Head; or
5. Any supervisor or manager with whom you feel comfortable speaking.

You do not need to confront the harasser before doing so. An investigation will be commenced at once, and, if appropriate, prompt and remedial disciplinary action will be taken. All reports of harassment will be promptly investigated with due regard for the privacy of everyone involved. Any employee found to have harassed a fellow employee or subordinate will be subject to disciplinary action, up to and including discharge. The City will also take any additional action necessary to correct appropriately the situation. The City of Sunny Isles Beach will not retaliate, and specifically prohibits retaliation, against any employee who makes a good faith report of alleged harassment, even if the employee was in error.
B. Witnessing harassment of any kind.

Any employee witnessing harassment of any kind shall immediately file a complaint and report the harassment to any of the individuals listed above.

As our employee, you are responsible for keeping our work environment free of harassment. Any employee who becomes aware of an incident of harassment, whether by witnessing the incident or being told of it, must report it to one of the persons listed above immediately. When City of Sunny Isles Beach becomes aware that harassment might exist, it is obligated by law to take prompt and appropriate remedial action, whether or not the victim wants to do so. A report or complaint of harassment does not have to be in writing, although written form is preferable.

REMEMBER, IF YOU EXPERIENCE OR BECOME AWARE OF HARASSMENT (SEXUAL OR OTHERWISE), REPORT IT IMMEDIATELY TO YOUR SUPERVISOR OR DEPARTMENT HEAD. IF YOU DO NOT FEEL COMFORTABLE REPORTING THE HARASSMENT TO YOUR SUPERVISOR, OR DEPARTMENT HEAD, REPORT IT TO THE HUMAN RESOURCES DIRECTOR, CITY ATTORNEY OR THE CITY MANAGER. ONLY IF MANAGEMENT KNOWS ABOUT THE SITUATION CAN WE TAKE CORRECTIVE ACTION.

ALL EMPLOYEES HAVE A DUTY TO FILE A COMPLAINT AND REPORT ANY SUSPECTED INCIDENT OF SEXUAL OR OTHER FORM OF HARASSMENT. FAILURE TO FILE A COMPLAINT AND REPORT SEXUAL OR OTHER FORM OF HARASSMENT TO THE APPROPRIATE CITY OFFICIALS MAY RESULT IN DISCIPLINE UP TO AND INCLUDING TERMINATION OF EMPLOYMENT.

C. Nature of Investigation.

1. Once the City Manager, or the City Attorney, receives a complaint, the complaint shall be investigated within five (5) working days of notification. The investigation shall include an interview with the employee(s) who made the complaint and the person(s) toward whom the complaint was directed. Any other persons who have information regarding the alleged harassment may also be interviewed.

2. The City Manager, or his/her designee, or the City Attorney, or his/her designee, shall prepare a written investigation report within fifteen (15) working days of the notification of the suspected harassment unless extenuating circumstances prevent him/her from doing so. The investigation report shall include a finding that harassment has occurred, did not occur, or there is inconclusive evidence as to whether it did occur. The result of the investigation shall be sent to the employee(s) to whom the suspected harassment was directed and the employee(s) suspected of the harassment. The results of the investigation will also be reported to the person who filed the complaint.
3. If the investigation determines that harassment or a violation of this policy has occurred, the City will take prompt remedial and/or disciplinary action against the offender up to and including termination of employment. In addition, a copy of the investigation report and any disciplinary action which results from the determination will be placed in the offending employee’s personnel file.

D. Appeal of Findings.

Any employee wishing to appeal the findings of an investigation may do so by submitting a request for review to the City Manager or his/her designee within fifteen (15) working days of receiving the report of the investigation. If the complaint was about the City Manager, the request for review will be submitted to the City Attorney. The City Manager or his/her designee (or the City Attorney or his/her designee, if conditions warrant) shall notify all the other parties who were informed of the investigation results that an appeal has been filed within three (3) working days of the receipt of the appeal. The City Manager or his/her designee (or the City Attorney or his/her designee, if conditions warrant) shall interview the employee(s) who filed the appeal and may interview all other persons deemed necessary and will reach a conclusion as expeditiously as possible. If the complaint was initially investigated by the City Manager, then the Manager shall designate an individual to review the initial investigation and reach a conclusion. If the complaint was initially investigated by the City Attorney, then the City Attorney shall designate an individual to review the initial investigation and reach a conclusion. This appeal process stands alone and separate from the City’s Dispute Resolution Procedure Policy, which is not appropriate for issues covered by this policy.

E. Assurances.

No retaliatory action of any kind will be taken toward an individual for filing a complaint based upon a reasonable belief that a violation of this policy has occurred, for requesting a review of the determination of any investigation, or for participating in the investigation of a complaint pursuant to this policy. Every complaint will be expeditiously investigated at the direction of the City Manager, the City Attorney, or their designees depending on who initially receives the complaint. Disciplinary actions shall be brought against any employee who files false allegations of harassment with malicious intent.

F. Conclusion of Investigation

If, after an appropriate investigation, it is determined that harassment or a violation of this policy has occurred, the City will take prompt and appropriate remedial and/or disciplinary action, up to and including discharge, against the offender(s). Additionally, follow up steps will be taken, if appropriate or required, to ensure that the harassment has in fact stopped.

FORMS: Acknowledgment and Certification by Employee
City of Sunny Isles Beach

SEXUAL & OTHER HARASSMENT POLICY

ACKNOWLEDGMENT AND CERTIFICATION BY EMPLOYEE

I understand that the City of Sunny Isles Beach will not tolerate sexual and other forms of harassment or discrimination, which include comments or behaviors based on race, color, sex, pregnancy, religion, age, marital status, familial status, sexual orientation, national origin, ancestry, citizenship status, genetic information, disability, or any other characteristic protected by federal, state or local law. I understand that if hired and if I experience harassment or observe it, I have the affirmative obligation to report it immediately. I also understand that harassment and violations of this policy can be the basis for disciplinary action up to and including immediate discharge. I hereby certify that I have read the City's policy on sexual and other harassment, and I understand my rights and responsibilities with respect to that policy which is attached to this acknowledgment.

Printed Name ___________________________ Signature ___________________________

Date ___________________________