

**PERSONNEL
COMMITTEE**

Monday, June 3, 2019

6:30 PM

McFarland Municipal Center
Conference Room A

AGENDA

1. CALL TO ORDER, ROLL CALL.
2. PUBLIC APPEARANCES.
3. APPROVAL OF MINUTES.
 - a. Discussion and action regarding the minutes of the meeting held on May 6, 2019.
4. BUSINESS.
 - a. Discussion and action to make a recommendation to the Village Board regarding revisions to Chapter 29 on Harassment within the Personnel Policy Manual.
 - b. Discussion regarding building inspector position and contracted service.
5. SCHEDULE NEXT MEETING DATE.
 - a. Monday, July 1, 2019 at 6:30 pm.
6. ADJOURNMENT.

This meeting notice constitutes an official meeting of the above referenced group and was posted in accordance with all applicable laws related to Open Meetings Law. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals. For additional information or to request this service, contact the McFarland Municipal Center at (608) 838-3153 or cassandra.suettinger@mcfarland.wi.us.

VILLAGE OF MCFARLAND
Personnel Committee Minutes

Monday, May 6, 2019 - 6:30 PM

1. CALL TO ORDER, ROLL CALL.

President Czebotar called the regular meeting of the Personnel Committee to order at 6:31 PM in Conference Room A of the McFarland Municipal Center.

Members present: Village President Brad Czebotar, Village Trustee Clair Utter, Steve Kilpatrick, Ken Machtan, Peter Morehouse, and Chris Spanos.

Members not present: Trish Howen.

Staff Present: Police Chief Craig Sherven and Village Administrator Matt Schuenke.

2. PUBLIC APPEARANCES.

None.

3. APPROVAL OF MINUTES.

a. Discussion and action regarding minutes of the meeting held on April 1, 2019.

The minutes of the meeting held on April 1, 2019 were approved by unanimous consent with Utter abstaining.

4. BUSINESS.

a. Discussion and action to make a recommendation to the Village Board regarding revisions to Chapter 29 on Harassment within the Personnel Policy Manual.

The Committee reviewed a revised draft of Chapter 29 on Harassment within the Personnel Policy Manual. The Village Labor Attorney has reviewed their desired changes and provided additional revisions for the Committee to consider. The Committee evaluated all of these proposed revisions and provided feedback to the Administrator to work with the Labor Attorney to finalize. The final draft of the proposed policy revision will be brought back to the June Committee meeting for final review prior to recommendation to the Village Board.

5. SCHEDULE NEXT MEETING DATE.

a. Monday, June 3, 2019 at 6:30 pm.

6. ADJOURNMENT.

Motion by Utter, second by Morehouse, to adjourn at 7:37 pm.

Pursuant to law, written notice of this meeting was given to the public and posted on the public bulletin boards in accordance with Open Meetings Law.

Respectfully submitted,
Matthew G. Schuenke
Village Administrator



VILLAGE BOARD SUMMARY SHEET

MEETING DATE: Monday, June 3, 2019

SECTION: Business

DEPARTMENT: Administration

CONTACT: Matt Schuenke, Village Administrator

AGENDA ITEM: Discussion and action to make a recommendation to the Village Board regarding revisions to Chapter 29 on Harassment within the Personnel Policy Manual.

PREVIOUS ACTION:

The Committee has discussed this issue over the course of several meetings since December of 2017.

The Committee also looked at a revised version of this policy at its meeting on March 4, 2019 and May 6, 2019.

ISSUE SUMMARY:

Please find enclosed an updated Chapter 29 of the Personnel Policy Manual on Harassment following our last meeting. Also included is an email explaining the final issues we wanted evaluated and her response to those items. My direction from our meeting is in blue and the Attorney's response/explanation to each is in red. All changes mentioned are carried forward also in the draft document.

FINANCIAL/BUDGET IMPACT:

None.

VILLAGE PLAN REFERENCE:

McFarland Personnel Policy Manual

ORDINANCE REFERENCE:

None.

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

Presented for discussion, and if agreeable a recommendation to the Village Board.

ATTACHMENTS:

1. McFarland PPM - Chapter 29 Harassment 05282019 mgs
2. Attorney Response to Policy Revision Draft

CHAPTER 29 – UNLAWFUL HARASSMENT, DISCRIMINATION AND RETALIATION

29.01 Purpose

The Village is committed to providing a professional work environment. This means that the Village will not tolerate any form of unlawful harassment, discrimination, or retaliation, including conduct as defined in this policy directed at an employee or applicant for employment because of his or her sex (including sexual orientation, gender identity, transgender status, and pregnancy), race, color, national origin, age, ancestry, disability/handicap, religion, creed, ancestry, genetic information or history, marital status, participation in the military reserve and veteran status, arrest and conviction record, or any other legally protected characteristic.

The purpose of this policy is to provide procedures for reporting, investigating and resolving complaints of unlawful harassment, discrimination and retaliation. The Village will not tolerate unlawful harassment, discrimination or retaliation by any employee, elected or appointed officeholder, or non-employees who conduct business with the Village. The Village considers harassment, discrimination and retaliation of others to be forms of serious misconduct worthy of discipline up to and including termination or removal, and other remedial response designed to end the prohibited behavior.

Individuals protected under this policy include all employees and applicants. Any unwelcome conduct that originates from a non-employee (e.g., elected officeholders, contractors or visitors) will be investigated in accordance with this policy under the authority of the Village Board.

29.02 Discrimination

Discrimination may include, but is not limited to, any negative conduct or action: (1) directed toward or about any employee; or (2) taken with respect to any employee because of that employee's race, color, religion, age, sex, national origin, disability or handicap, veteran status, ancestry, marital status, or any other characteristic protected by applicable federal, state or local law.

29.03 Sexual Harassment

Sexual harassment may include, but is not limited to, any unwelcome or unwanted sexual advances, requests for sexual favors, or other acts of a sexual or sex-based nature between members of the same or opposite sex where: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) an employment decision is based on an individual's acceptance or rejection of such conduct; or (3) such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Sexual harassment is not limited to sexual advances or expressions of sexual desire. It may also include expressions of hostility or dislike or other inappropriate conduct toward another based on that individual's sex or gender. The offender or victim of sexual harassment may be of any gender and sexual harassment can occur between persons of the same or opposite gender.

Commented [MS1]: No changes recommended follow legal review. The term and use of "offensive" in this context is a technical legal term used by the courts in identifying harassment.

29.04 Discriminatory Harassment

Discriminatory harassment may include, but is not limited to, any conduct relating to an individual's race, color, religion, age, national origin, disability or handicap, veteran status, ancestry, marital status, or any other characteristic protected by applicable federal, state or local law, where the conduct: (1) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

Commented [MS2]: No changes recommended follow legal review. The term and use of "offensive" in this context is a technical legal term used by the courts in identifying harassment.

Examples of inappropriate or offensive conduct, prohibited harassment or discrimination include, but are not limited to:

- Unwanted sexual advances, flirtations, innuendo, explicit sexual propositions or demands for sexual favors in exchange for favorable treatment or continued employment.
- Threats or insinuations that the individual's employment, wages, promotional opportunities, job or shift assignments or other conditions of employment may be adversely affected by not submitting to sexual advances.
- Sexually oriented kidding, teasing, practical jokes or horseplay, jokes about gender specific traits, sexually suggestive or obscene body language or gestures.
- Display of sexually suggestive, obscene or offensive printed or visual material including viewing or displaying such material on a computer via the Internet, e-mail or other electronic means.
- Physical contact, such as touching, patting, pinching or brushing against another's body.
- Teasing or jokes referring to race, national origin, ethnicity, age, or any other protected characteristic.
- Vulgar, obscene or other inappropriate language.
- Referring to an individual's race, age, physical or mental condition, particularly when making decisions affecting the individual in the workplace or which affect the individual's ability to perform his or her job.

This list describing discrimination, harassment and inappropriate conduct is not exhaustive. Because inappropriate conduct is not on this list does not mean the conduct is not harassing, discriminatory or inappropriate. The Village retains the right in all situations to discipline an employee we find has engaged in harassing, discriminatory, retaliatory or other inappropriate conduct regardless of whether the conduct is specifically described above.

29.05 Retaliation

Retaliation against any employee for filing a harassment, discrimination or retaliation complaint, or for assisting, testifying or participating in the investigation of such a complaint, is prohibited by the Village and may be prohibited by state and federal law.

Retaliation is a form of misconduct. Employees who are found to have retaliated against a complainant or witness will be subject to discipline separate from, and in addition to, any discipline determined to be appropriate as a result of the Village's findings on the initial complaint. Because of the Village's commitment to prohibiting retaliatory behavior, employees should expect that consequences for retaliation will likely result in discipline up to and including discharge.

29.06 Reporting Procedures

(1) Whenever an employee perceives conduct to be harassing or discriminatory, several options are available to address the problem.

- (a) Any employee experiencing or observing harassment, discrimination, or retaliation is encouraged, but not required, to inform the person that his or her actions are unwelcome and offensive and that the person should stop such behavior. This initial contact can be either verbal or in writing. The employee should document all incidents in order to provide the fullest basis for investigation if needed.
- (b) Any employee who believes that he or she is being harassed, discriminated, or retaliated against, or who witnesses such conduct is expected to report the incident as soon as possible to their immediate Supervisor. This is so that necessary preventive steps can be considered and taken to end any prohibited harassment, discrimination, or retaliation, and so that appropriate investigation and correction may be started [according to Section 29.08](#). Supervisors receiving reported incidents of harassment shall notify their immediate Supervisor and the Village Administrator.
- (c) Any employee who believes that he or she is being harassed, discriminated, or retaliated against or who witnesses such conduct, and has reported this conduct to their immediate Supervisor, may also report the incident as soon as possible to the following individuals if no or unsatisfactory action was taken by the Supervisor to address the harassment alleged:
 - 1. Village Administrator;
 - 2. Village Clerk/Treasurer;
 - 3. Village Board President or Village Administrator, if such conduct is engaged in by an elected or appointed officeholder of the Village; and/or
 - 4. Village Board President ~~or Chief of Police~~, if such conduct is engaged in by the Village Administrator.

(d) An employee who believes he or she is being harassed, discriminated, or retaliated against by an immediate Supervisor, may report the matter to any of the individuals identified in subsection (c).

(2) An employee who becomes aware that another employee is being harassed, shall promptly report those concerns as described in the immediately preceding paragraph. All employees, whether victims of harassment or not, are expected to bring violation of this policy to the attention of the Village by informing one of the individuals described above.

(3) Any unwelcome conduct that originates from a non-employee (e.g., elected officeholders, contractors or visitors) should also be reported.

The Village will determine the appropriate course of action to promptly and thoroughly address the complaint, including any immediate remediation of the behavior. The Village may initiate an investigation or have the victim and the accused engage in conciliatory efforts to resolve the matter if acceptable to the victim.

29.07 The Conciliation Process

(1) The conciliation process is a means to address potential~~ly~~ complaints and concerns under this policy quickly and in an informal manner. This process is not appropriate for all situations and will not resolve all issues. It may be initiated before or after the employee has filed an internal complaint. The conciliation process is voluntary, and may be used only when agreed upon by the parties directly concerned: the complainant(s), management, and the accused.

(2) Conciliation seeks to resolve problems by allowing the affected parties to present their issues and then assisting them in arriving at effective, reasonable solutions agreeable to all. When solutions have been identified, management will follow up to ensure that the implementation has been carried out and is effective

29.08 Harassment Complaint and Investigation Process

(1) A Village employee may file report a complaint either verbally or in writing. Employees are encouraged to follow the process of first reporting their complaints to their Supervisor, however it is recognized that in some instances, including if their complaint is regarding their supervisor, they may feel they need to report elsewhere. In that instance, Employees may be asked for their reasons in choosing to report differently. No employee will be penalized in any way for that choice. Employees are not required to discuss their complaints with their direct supervisors.

(2) If it is determined that an investigation is required, the investigation will be conducted promptly, thoroughly and impartially. The investigation of harassment complaints will normally be conducted by the Village Administrator ~~and/or the Village's labor attorney~~ or a designee.

(3) The confidentiality of the investigation, the identity of the individual who submits a report, witnesses and the target of the complaint will be maintained throughout the investigatory process to the extent consistent with a thorough and impartial investigation.

(4) Private interviews will be conducted with the person filing the complaint, the alleged victim of the behavior (if different), the accused employee(s), and any witnesses.

(5) Findings will be documented and maintained in a secure location. Such records will not become part of a personnel file unless discipline is administered or an employee's status is changed as a result of the complaint being filed.

(6) When the investigation is complete, to the extent appropriate, the person filing the report, the alleged victim (if different), and the person alleged to have committed the harassment will be informed of the findings.

(7) The Village will take immediate and proportional corrective action designed to end any prohibited behavior occurring, which may include appropriate disciplinary action, up to and including termination.

~~(8) The complainant or employees accused of harassment may file an appeal with the Village Administrator or the Village Board President if they disagree with the investigation or disposition.~~

29.09 External Complaint Procedures

The internal complaint process is not meant to be a substitute for an employee's right to file a formal complaint with either the Equal Rights Division or the Equal Employment Opportunity Commission. However, the filing of a complaint with an external agency does not relieve the employee of the responsibility to also file an internal complaint pursuant to the Village's anti-harassment policy. The Village has a responsibility under the law to investigate claims of harassment and to take appropriate remedial measures, and is unable to do so unless the matter is brought to our attention through our own, internal complaint procedure.

Additional procedures for reporting complaints of harassment are available to employees through:

The Equal Rights Division, Department of Workforce Development, 201 East Washington Avenue, P.O. Box 8928, Madison, WI 53708, Telephone: (608)266-6860. File within 300 days of the last violation.

The U.S. Equal Employment Opportunity Commission, 310 West Wisconsin Avenue, Suite 800, Milwaukee, WI 53203, Telephone: (414)297-1111. File within 300 days of the last violation.

From: [Jill Pedigo Hall](#)
To: [Matt Schuenke](#)
Date: Thursday, May 23, 2019 3:51:49 PM
Attachments: [McFarland PPM - Chapter 29 Harassment 05232019 JPH response changes.DOCX](#)

Hi Matt,

Please see my responses in red below and a couple of track changes I inserted into the attached. (also commented on below) Please reach out if you have any questions or want to discuss this before next meeting. Have a great holiday weekend!

Best regards,

Jill

Jill Pedigo Hall |
Direct: 608-661-3966 | jhall@vonbriesen.com

From: Matt Schuenke <Matt.Schuenke@mcfarland.wi.us>
Sent: Tuesday, May 7, 2019 8:40 AM
To: Jill Pedigo Hall <jhall@vonbriesen.com>
Cc: Cassandra Suettinger <Cassandra.Suettinger@mcfarland.wi.us>
Subject: RE: Policy

Jill,

We made some significant progress last night. They accepted nearly all of the revisions we were working on with the last draft. I have a few points to follow up on here and then they want to see it one more time before their next meeting.

Attached is the last version you drafted with all of the changes we were working on "accepted". The changes and comments I introduce in the attachment are as a result of their discussion last night, but everything else we were previously working on is ok. Here are their remaining issues:

- Section 29.03 – Sexual Harassment: They have a decently lengthy about the use of the word "offensive" in the last sentence of this section. They realize its broad for a reason but thought it might be too broad. It would seem to suggest that anytime anyone might be offended for any reason, they could file a complaint which in the Committee's opinion might provide an environment for unreasonable or unwarranted complaints. However, they recognize legally this type of language might be necessary and wanted to see if there was a way to tighten it up or if they could better understand its necessity in this context. **This is a technical legal term that is used by courts in identifying harassment. I would not expect that people would see it in the common sense term "offended". However, the term "abusive" is**

also used by the courts. Realistically, an investigation will always be done (relative to the significance of any complaint and those complaints about being “offended” will be quickly winnowed out. I think that by including the examples, you alleviate the issue because it shows what is offensive. Court decisions talk about what a reasonable person would find “objectively offensive” and “subjectively offensive” so the term has legal import. Again, I think the examples should help alleviate the concerns. (Same response below.)

- Section 29.04 – Discriminatory Harassment: Same issue as the previous section regarding the use of “offensive”.
- Section 29.06(1)(b) – Reporting Procedures: Two items with this subsection...
 - Subsection (a) above this gives the two parties the option to work it out while subsection (b) escalates that to the immediate supervisor if that doesn’t happen. Their concern was, what if the complaint is against the Supervisor? Should be have more language added to this subsection (or the next) to clarify for the individual desiring to make a complaint what they should do if their complaint is against their immediate supervisor? I apologize for that omission. I normally include that section but may have been a bit stymied by too much track changing. See track change addition 29.06(1)(d).
 - I added a link to the end of the second sentence to the investigation section. There was concern within this section as a whole that it goes beyond simply reporting, but as we discussed last night, if they want to have a progressive laddering of how complaints are received there has to be a reason for which they escalate which the policy outlines. Please see my suggested addition to 29.08(1) that is offered as an alternative to the sentence you identified. I think it better expresses the idea.
- Section 29.06(1)(c)(4) – Reporting Procedures: They remain opposed to the Chief being a reporting entity even if it is just for someone in my position. They could not separate the idea that he was simply an outlet to take a report if someone could not do so with the Village President. Understood. It is simply critical to provide employees with multiple avenues of reporting.
- Section 29.08(1) – Harassment Complaint and Investigation Process: I called this second sentence out as it seems to contradict the first bullet above under Section 29.06(1)(b) regarding reporting to the supervisor. I think its fine, just wanted to be mindful of it as we consider changes above this point. See my comments above and suggested changes.
- Section 29.08(2) – Harassment Complaint and Investigation Process: They are ok with the idea that the Labor Attorney would assist in investigations or even conduct them in some cases; however, they wanted to make sure the policy is clear that the Administrator leads the process as the Village’s personnel officer. What someone in my position does to make sure they have the resources they need to properly conduct the investigation is subject to my position’s discretion, so they suggested taking the reference out to the labor attorney and including only designee. Not something I advocated for but something one of the Committee members requested. This is a good suggestion. As Administrator, you have the authority to designate, which might include an attorney so the language change does not affect

the process.

- Section 29.08(8) – Harassment Complaint and Investigation Process: They were pretty insistent that there should not be an appeal process. We didn't have this language before and adding it in now the way it was done feels too subjective. The thought process is that if I am a person that had a harassment complaint levied upon him, and the investigation resulted in discipline then the disciplinary process would take over as the "appeal". If there is not discipline, then how are the Administrator and more importantly the President going to be able to objectively apply their decision without having to redo the investigation. Based on how the policy is written, if there is a formal complaint I will know about it as soon as its filed so I'm almost compromised from the start. The President would be outside of it the whole time in theory, and having someone appeal whatever corrective action is levied seems to circumvent all the protections put into place by this policy. **Actually, this is old language that I thought the Village wanted so left it in. I would not normally recommend an appeal process and think it inappropriate in a harassment investigation but again, left it in because I thought it was desired by the Village.**

Please review and let me know what you think. We have some time with this. Their next meeting is on June 3rd and then I'll bring it to the Village Board on June 10th. If you could get back to me by May 24th, then that would give us some time to discuss any of these issues further if need be.

Thanks,
Matt



VILLAGE BOARD SUMMARY SHEET

MEETING DATE: Monday, June 3, 2019

SECTION: Business

DEPARTMENT: Administration

CONTACT: Matt Schuenke, Village Administrator

AGENDA ITEM: Discussion regarding building inspector position and contracted service.

PREVIOUS ACTION:

None.

ISSUE SUMMARY:

Earlier this year the Building Inspector retired and the recruitment to fill his replacement was unsuccessful. This is a very necessary service and continuity was important, so we turned to a contracted service for a contracted 6 month period to better evaluate the future of the position. We wanted to first be able to learn more about how the operations of a contracted service differed from that of an employee in the position, and also evaluate the market to see if an adjustment was needed to the position grade to attract qualified candidates. The key is "qualified" and its not easy to find candidates that have all the necessary certifications to be an inspector and the pool for such people has been gradually shrinking. Contracting is currently the more expensive option but as compared a higher salary for the position, that variance seems to dissipate.

We are working with a consultant to update the market analysis within the Compensation and Classification Study. This work is not complete yet but four responses have been provided from comparable communities regarding the Building Inspector position. Three of these communities are already contracting out this service with one having an employee in house. The salary range for the comparable is higher than where we are at presently which would bring it closer to what the contract costs on an annual basis.

FINANCIAL/BUDGET IMPACT:

The salary range for the Comparable is \$61,625 to \$76,562 which would generate a mid-point around \$69,094. Our current min is \$54,727.43 to a max of \$71,082.75 with a mid-point of \$62,905.09. This is Grade 15 which also contains the Senior Outreach Director. The most comparable Grade we have is 17 which would lay out \$61,492 to \$79,869 with \$70,680 at market rate. If we were to be competitive and depending on what additional feedback we get in the market analysis, we might have to consider going another level higher to 18. The Administrative Captain and Street/Utilities Superintendent is at Grade 17 while the Sergeants



are at Grade 18 (the Director for this Department is at Grade 20).

The key question is if we want to continue the employee route for the Building Inspector position. If you plug the market rate in at Grade 17 to the wage and benefit calculation, you would expect a total gross cost around \$98,441 which is about \$10,000 more than we have budgeted for that position in 2019. We've spent \$8,659.62 for services rendered in February, \$9,053.98 in March, and \$8,083.82 in April. It is a small sample size but that averages about \$8,599.14 per month for the service or for the year around \$103,200. This leaves a difference between a two grade market adjustment and continuing the contracted service of about \$4,700. If we have to go to Grade 18 then that variance will be gone and its likely the gross cost for the employee will exceed the annual cost of the contract.

VILLAGE PLAN REFERENCE:

McFarland Compensation and Benefits Manual
McFarland Compensation and Classification Study

ORDINANCE REFERENCE:

None.

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

The current contract will expire near the end of July and there are some benefits of contracting out this way as its demand oriented. This item is presented for discussion regarding possible next steps to add in making a decision.

ATTACHMENTS:

None