

**DATE:** May 3, 2010  
**TO:** Council Members  
**FROM:** Carol A. Antonucci, City Clerk

The following claims have been filed in the Office of the City Clerk during the month of April 2010. The claims were subsequently referred to the Office of the Corporation Counsel.

**NOTICE OF CLAIM**

**ALLEGED DAMAGE**

Murray, Patrick F.  
Niagara Ave #605

Personal injuries caused by fall at Wrobel 800  
Towers parking lot

Guerin, Linda  
261 Hyde Park Blvd

Automobile damage caused by Police  
Department during stand-off

Davis, Jerrica  
5604 Frontier Ave.

Automobile damage caused by a broken  
manhole cover

CCS Companies for Traveler's Ins.  
a/s/o Richard and Debra Prohaska

Automobile damage caused by fallen City  
tree limb

Tierney, Betty  
2932 Lockport Rd.

Personal injuries caused by slip and fall on  
ice

Fusarelli, Frank  
5044 Marywood

Damages from blocked sewer line caused by  
City tree roots

Rachwal, Irene J.  
443-22<sup>nd</sup> St

Personal injuries due to fall in street

Ortman, Charles J  
760 Page Ave  
Lewiston, NY 14092

Automobile damage caused by pothole

Mehzir, Patricia and James  
588 Briarwood Lane  
Lewiston, NY 14092

Personal injuries and loss of services due to  
fall on City property

Carlino-Dinger, Sharon L.  
638-30<sup>th</sup> St.

Automobile damage caused by pothole

Hall, Alma  
507 Hyde Park Blvd.

Damage to automobile caused by sink hole  
on City street

McClellan, Mark D  
8305 Buffalo Ave. Apt. D-2

Damage to automobile caused by City fire  
truck

DeBiew, Warren  
32 Sunnydale Dr  
Tonawanda, NY

Personal injuries caused by fall on stairs of  
City parking ramp

Davis, Constance  
1028 South Ave. Apt. 10

Damages and personal injuries caused by  
Niagara County/City of Niagara Falls vehicle

**SUMMONS AND COMPLAINT**

Andrzejewski, Robert  
427-18<sup>th</sup> St.

Index No.: 140368

Pecoraro, Russell  
c/o John J. Mattio, Esq.  
1520 Pine Ave  
PO Box 2127, NMS

Index No.: 10-56492

**SUMMONS**

Maurer, Susan  
C/O William Mattar  
6720 Main St., Suite 100  
Williamsville, New York 14221-5986

Index No.: 140381

Bertozzi, Jessica  
C/O Keith N. Bond Esq.  
Walsh, Roberts & Grace  
400 Rand Building  
14 Lafayette Sq.  
Buffalo, NY 14203

Index No.: 140534

## Item #2

The following is a report of the licenses issued and collections made in the Office of the City Clerk during April 2010.

		<u>CONTROLLER</u>	<u>TOTAL</u>
A1255-001		\$	\$
A012	Vital Statistics	\$ 5,904.00	5,904.00
A1255-004		\$	\$
A013	Copies of Records	\$ 561.25	561.25
A1255-004		\$	\$
A013	Certificates of Marriage	\$ 550.00	550.00
A2501-006		\$	\$
A042	Tour Agency	\$ 1,400.00	1,400.00
A2501-006		\$	\$
A042	Tour Agency Additional Site	\$ 800.00	800.00
A2501-006		\$	\$
A042	Tour Attendant	\$ 400.00	400.00
A2501-006		\$	\$
A042	Tour Driver/Guide	\$ 500.00	500.00
A2501-011		\$	\$
A044	Peddler	\$ 500.00	500.00
		\$	\$
A2501-016-A047	BOILERS	\$ 400.00	400.00
A2501-016		\$	\$
A047	Stationary Engineers Test Fee	\$ 40.00	40.00
A2542-000		\$	\$
A053	Dogs/N County Treasurer	\$ 332.12	332.12
A2542-000		\$	\$
A053	Dogs/NYS Agr.& Mkts	\$ 135.00	135.00
A2542-000		\$	\$
A053	Additional Dogs	\$ 1,994.38	1,994.38
A2545-001		\$	\$
A054	Marriage License/NYSHD	\$ 1,237.50	1,650.00
A2550-001		\$	\$
A056	Loading Zone	\$ 55.00	55.00
A1255-002		\$	\$
A123	Commissioners of Deeds	\$ 20.00	20.00
A2545-010		\$	\$
A128	Petroleum - Retail	\$ 70.00	70.00
A2501-599		\$	\$
A130	Pawnbroker/Secondhand Dealer	\$ 300.00	300.00
A2545-023		\$	\$
A318	Hunters/NYS DEC RAU	\$ 938.17	938.17
A2545-023		\$	\$
A318	Hunters Fees	\$ 54.83	54.83
A1255-003		\$	\$
A499	Notary Fee	\$ 24.00	24.00
A1255-005		\$	\$
A528	Dog Release	\$ 500.00	500.00
TA63008		\$	\$
A597	Marriage Performance	\$ 875.00	875.00

A1255-006-						\$	
A696						126.00	126.00

<b>TOTAL:</b>						\$	
						<u>\$2,642.79</u>	<u>\$15,486.96</u>
							<u>18,129</u>

Check #	<u>47437</u>	Niagara County Treasurer	\$ 332.12
Check #	<u>47475</u>	NYS Dept.of Arg. & Mkts	\$ 135.00
Check #	<u>47435</u>	NYS Health Department	\$1,237.50
		NYS DEC	\$
Check #	<u>ET</u>	RAU	938.17

Item #3

**SUBJECT: LETTER OF AWARD - SIDEWALK REPLACEMENTS AT VARIOUS LOCATIONS - 2010**

The following is the result of bids received on May 3, 2010, for the above referenced project:

<u>CONTRACTOR</u>	<u>BASE BID</u>
Ventry Concrete Construction, Inc. 1890 Pierce Ave. Niagara Falls NY 14301	\$200,000.00
Valeri Concrete Construction, Inc. Master's Edge, Inc.	\$203,000.00 \$221,125.00

It is the recommendation of the undersigned that this contract be awarded to the low bidder, Ventry Concrete Construction, Inc. in the amount of \$200,000.00. Funds are available under Public Works Code A5110.0200.0300.000, and all costs are totally reimbursable by New York State CHIPS Funds.

Additionally, the Contractor has agreed to extend the unit prices of his bid to complete sidewalk replacements for the Niagara Falls Water Authority, in the amount of \$20,000.00, under the Niagara Falls Water Board budget, pending authorization by the Niagara Falls Water Board Meeting this month. Therefore, the City Of Niagara Falls and the Niagara Falls Water Board will enter into a contract with Ventry Concrete Construction, Inc., to total \$220,000.00

Will the Council vote to so approve and authorize the Mayor to execute a contract for the City Of Niagara Falls portion of this work, in a form acceptable to the Corporation Counsel?

Item #4

**Project Grant #0386-09-0049**

A contract for the above referenced project was awarded to Greater Niagara Mechanical, Incorporated, 7311 Ward Road, North Tonawanda N.Y., on August 14, 2009 in an amount of \$86,800.00.

During the course of work the City directed the contractor to provide additional services and to include an alternate product. The additional service was for sewer inspection to insure the existing sewer was in proper working order before placement of the Condensing Unit's concrete pad. The alternate product was an electrical "Line Hide" feature which allows us to meet the requirements of SHIPO regarding their funding of the project.

Therefore, it is the recommendation of the undersigned that Change Order #1 in the amount of \$1,050 be approved. Sufficient funds presently exist in Code H0904.2004.0904.0443.000

Will the council vote to so approve?

Item #5

**SUBJECT: Installation of Air Conditioning at the LaSalle Library  
CHANGE ORDER #1 - Consultant Services Agreement  
Project Grant #0386-09-0049**

A contract for the above referenced project design was awarded to Watts Architecture & Engineering, P.C. 95 Perry St. Buffalo NY 14203., on September 21, 2009 in the amount of \$12,800.00.

During the course of work, the City directed Watts to provide design support for an alternate product that allowed achievement of SHIPO requirements, design cooling for two additional rooms not originally anticipated and period construction inspection services.

Therefore, it is the recommendation of the undersigned that Change Order #1 in the amount of \$4,290.00 be approved. Sufficient funds presently exist in Code H0904.2004.0904.0443.000.

Will the council vote to so approve?

Item #6

**SUBJECT:** Bid #21-10 Landscaping & Maintenance of Medians and Traffic Circle

We respectfully request you award the above referenced bid as follows:

TO: A-1 Landcare, Inc.  
1527 Ridge Road  
Lewiston, NY 14092

FOR: Landscaping and maintenance of the medians along: \$93,346.00  
Niagara Street, John B. Daly Boulevard, Rainbow  
Boulevard and the traffic circle, including Alternate 1 thru 4:

The City Purchasing Agent certifies that all bids were solicited in accordance with Section 103 of the General Municipal Law.

Notice that bids were to be received was advertised in the Niagara Gazette and bids were sent to Six (6) vendors. Six (6) bids were received. The above referenced company submitted the lowest bid.

Funds for this expenditure are available in the Capital budget code:  
H0912.2009.0449.599.

Item #7

**SUBJECT:** Bid #18-10 Police Mobile Command Center

We respectfully request you award the above referenced bid as follows:

TO: Dodgen Industries, Inc.  
1505 13<sup>th</sup> Street  
Humboldt, IA 50548

FOR: Police Mobile Command Center \$183,785.00

The City Purchasing Agent certifies that all bids were solicited in accordance with Section 103 of the General Municipal Law.

Notice that bids were to be received was advertised in the Niagara Gazette and bids were sent to six (6) vendors. Four (4) bids were received. The above referenced company submitted the lowest bid. Bids were also received from Nomad GCS (\$189,946.00), Snowfighting Equipment & Consultants of Buffalo, Inc. (\$194,370.00) and Charino's Custom Rides (\$204,865.00).

Funds for this expenditure are available in Grant Code: S3120.2816.0230.000.

**SUBJECT: LETTER OF AWARD FOR REPAVING OF 72<sup>ND</sup> STREET FROM BUFFALO AVENUE TO NIAGARA FALLS BOULEVARD R.P. #166 AND WATER MAIN REPLACEMENT FROM BUFFALO AVENUE TO STEPHENSON AVENUE W.C. #882**

The following was the result of bids received on May 10, 2010, for the above referenced project:

<b><u>CONTRACTOR</u></b>	<b><u>BASE BID</u></b>
Accadia Site Contracting, Inc.	\$ 2,564,587.50
5636 Transit Road	
Depew NY 14043	
Yarussi Construction Inc.	\$ 2,669,360.00
Mark Cerrone, Inc.	\$ 2,798,476.00
CATCO	\$ 2,799,492.80
North America Construction Co.	\$ 3,148,845.00
Sicar Management	\$ 3,295,714.00
Man O'Trees	\$ 3,343,000.00

It is the recommendation of the undersigned that this project be awarded to Accadia Site Contracting, Inc. at its Base Bid of \$2,564,587.50. Funding is available through Funding Code H0921.2009.0921.0449.599.

Will the Council vote to so approve and authorize the Mayor to execute a contract in a form acceptable to the Corporation Counsel?

**RE:                   City Council Agenda Item:  
                         Homeless Prevention and Rapid Re-Housing Program  
                         Caseworker Sub-recipient Agreement**

**Council Members:**

In September 2009, City Council approved an allocation of \$50,000 per year for up to three years for YWCA of Niagara, Inc. and Community Missions of Niagara Frontier, Inc. (\$25,000.00 each) to hire part-time caseworkers to process HPRP applicants. The City opted to utilize these agencies to approve the HPRP applicants because the City does not have this expertise. The benefits to the approved applicants are paid by the City with HPRP funds through the Leased Housing Program.

The YWCA and Community Missions decided to pool the grants together and hire one full-time caseworker instead of two part-time caseworkers. The full time caseworker, who is employed by the YWCA, is working out of Carolyn's House. The caseworker has received significantly more applications than expected, resulting in a backlog of clients awaiting assistance through the HPRP program.

We are proposing that funding be increased to the YWCA to hire an additional caseworker to process the HPRP applicants. The total grant to the YWCA will be up to \$85,000.00 per year for a two-year period. The grant will be used to pay the salaries and benefits of two caseworkers, and up to \$5,000.00 per year in administrative expenses. Funds are available to pay for this grant under the HPRP grant which the City received from HUD.

Will the Council vote to approve the grant revision and increase as set forth herein, and authorize the Mayor to execute any documents necessary to effectuate the same?

Item #10

RE: Amendment to Consultant Agreement with Wendel Duchscherer for Planning Design and Engineering Services for LaSalle Waterfront Park

Council Members:

The Council previously approved an agreement with Wendel Duchscherer to provide planning services for the LaSalle Waterfront Park site at 6611 Buffalo Avenue.

As part of this project, the consultants and City personnel held three community meetings to receive the input of the community as to what amenities should be included in the park. This input is included in the final design.

It is requested that the Council approve an amendment to the agreement in the amount of \$102,000 that will provide for the preparation of bidding documents and services during the construction of the project.

Funding is available from Greenway Funds approved for this project.

Will the Council so approve and authorize the Mayor to execute a Change Order in a form acceptable to the Corporation Counsel?

**Item #11**

RE: Double-Sided Identification System

Council Members:

The City Clerk is recommending that the City purchase a double-sided identification system maker for use in the City Clerk's Office. This will facilitate the issuance of identification badges/cards to the various licensees and vendors throughout the City. The total cost for this identification card maker and maintenance will not exceed \$7,000. Funding is available from Casino Interest.

Will the Council so approve?

**Item #12**

RE: Reorganization in City Clerk's Office

Council Members:

As a result of a retirement anticipated to occur on or about August 1, 2010, the City Clerk is recommending restructuring certain positions in the office. Attached hereto is a summary of the positions proposed to be reorganized. The net savings to the City Clerk's budget as a result of this reorganization is approximately \$2,109.

Will the Council so approve?

Item #13

RE: Holiday Lights

Council Members:

The City has been asked once again by the United Way of Niagara to sponsor the holiday lights demonstration in Hyde Park during the holiday season. The City has been asked to contribute the sum of \$30,000 this year as it did last year. The City has also been asked by the United Way of Niagara to consider sponsorship of this event in year 2011 contingent upon the City's identification of a source of funds. Funding for the City's 2010 contribution is available through Tourism Fund balance.

Will the Council approve funding this event for 2010 and also consider funding this event for 2011 contingent upon the City's identification of a source of funds?

Item #14

RE: Temporary MW-2 Positions

Council Members:

The Director of DPW has identified a need for the creation of four temporary MW-2 positions in the DPW Streets Maintenance Division. These temporary positions will last for 26 weeks. The cost will be \$14,364.32 inclusive of FICA and pension costs. This amount is the difference between the current salaries of three seasonal employees and one MW-1 position and the cost of the four MW-2 positions. These positions are needed so that the individuals in those positions can drive and use the smaller paving roller during the paving season. Funding is available from Special Projects Fund balance.

Will the Council so approve?

Item #15

RE: City Court Cleaning Supervision

Council Members:

The DPW Director and the Chief Court Clerk are requesting a change in an MW-2 position at City Court to a MW-3 position. This allows a supervisor to be on site for each shift to supervise the cleaners assigned to the Court occupied space. The cost will be the responsibility of the Maintenance and Operation budget that City Court pays for.

Will the Council so approve?

Item #16

RE: Request for Approval to Settle and Pay Claim of Marsha Thomas  
1815 Ontario Avenue, Niagara Falls, New York

Council Members:

Date Claim Filed:	November 19, 2009
Date Action Commenced:	N/A
Date of Occurrence:	November 6, 2009
Location:	South Avenue between 18 <sup>th</sup> and 22 <sup>nd</sup> Streets
Nature of Claim:	Vehicle damage.
Status of Action:	Claim stage.
Recommendation/Reason:	Best interests of City to pay.
Amount to be Paid:	\$435.65
Make Check Payable to:	Marsha Thomas
Conditions:	General Release to City, approved by Corporation Counsel.

It is the recommendation of this Department that the above claim be paid under the terms set forth above. Will the Council so approve?

Item #17

RE: Request for Approval to Settle and Pay Traci L. DaCosta  
1127 85<sup>th</sup> Street, Niagara Falls, NY 14304

Council Members:

Date Claim Filed:	October 26, 2007
Date Action Commenced:	September 8, 2008
Date of Occurrence:	August 21, 2007
Location:	Intersection of 19 <sup>th</sup> Street and Walnut Avenue
Nature of Claim:	Personal injuries sustained in an accident with City vehicle.
City Driver:	Frank Tedesco
Status of Action:	Pre-trial stage.
Recommendation/Reason:	Best interests of City to pay claim.
Amount to be Paid:	\$150,000.00
Make Check Payable to:	Traci L. DaCosta and Paul William Beltz, P.C.
Conditions:	Stipulation of Discontinuance and General Release to City, approved by Corporation Counsel.

It is the recommendation of this Department that the above action be paid under the terms set forth above. Will the Council so approve?

RE: Request for Approval to Settle and Pay Ronald A. Hawes  
1425 Ferry Avenue, Niagara Falls, NY 14301

Council Members:

Date Claim Filed:	July 27, 2007
Date Action Commenced:	April 30, 2008
Date of Occurrence:	May 4, 2007
Location:	2004 LaSalle Avenue, Niagara Falls, NY
Nature of Claim:	Personal injuries sustained in an accident involving a City tree.
Status of Action:	Pre-trial stage.
Recommendation/Reason:	Best interests of City to pay.
Amount to be Paid:	\$12,000.00
Make Check Payable to:	Ronald A. Hawes and Lipsitz Green Scime Cambria, LLP
Conditions:	Stipulation of Discontinuance and General Release to City, approved by Corporation Counsel.

It is the recommendation of this Department that the above action be paid under the terms set forth above. Will the Council so approve?

NEW YORK STATE OFFICE OF REAL PROPERTY SERVICES  
16 SHERIDAN AVENUE, ALBANY, NY 12207-2714

CERTIFICATE OF BASE PERCENTAGES, CURRENT PERCENTAGES AND  
CURRENT BASE PROPORTIONS PURSUANT TO ARTICLE 19, RPTL, FOR THE  
LEVY OF TAXES ON

\* \* \* \* \*  
ASSESSMENT ROLL  
2010 \* \* \* \*

## Section I

## DETERMINATION OF BASE PERCENTAGES

(A)	(B)	(C)	(D)
1989	1989	Estimated Market Value	Base Percentages
Taxable	Class	Equalization Rate	(C/sum of C)
Assessed Value			A/(B/100)
Class			

Homestead

587.116.100  
89.89

Nonhomestead	379,459,055	88.82	427,222,534
Total	907,217,717		1,014,338,634
			42.11833

## DETERMINATION OF CURRENT PERCENTAGES

(E) Prior Year Taxable Assessed Value Including Special Franchise	(F) Prior Year Class Equalization Rate	(G) Estimated Market Value E/(F/100)	(H) Current Percentages (G/sum of G)
869,473,315.00	84.60	1,027,746,235	69.61930
408,127,067.00	91.00	448,491,282	30.38070
Total		1,277,600,382	100.00000
Homestead		1,476,237,518	
Nonhomestead			

### DETERMINATION OF CURRENT BASE PROPORTIONS

Section III	(I) Local Base Proportion for the 1990 Assessment Roll	(J) Updated Local Base	(K) Prospective Current Base	(L) Adjusted Base Proportion	(M) % difference between prior used for	(N) Maximum Current Base Proportion	(O) Current Base Proportions
Class							
Homestead	40.12162	48.25775	52.77008	<b>54.42545</b>		52.77008	
Nonhomestead	59.87838	43.19133	47.22992	<b>45.57455</b>	3.63	47.22992	
Total	100.00000	91.44909	*	100.00000	*	100.00000	*
*	*	*	*	*	*	*	*

Class

	I*(H/D)	(J/sum of J)	(K/L)	(L*1.05)
Homestead	40.12162	48.25775	52.77008	<b>54.42545</b>
Nonhomestead	59.87838	43.19133	47.22992	<b>45.57455</b>
Total	100.00000	91.44909	*	100.00000

RESOLUTION RELATIVE TO AMENDING CHAPTER 923  
OF THE CODIFIED ORDINANCES ENTITLED "PARKS"

By: Council Chairman Samuel Fruscione

BE IT RESOLVED by the City Council of Niagara Falls, New York that Chapter 923 of the Codified Ordinances entitled "Parks" is hereby amended by amending Section 923.03 to read as follows:

923.03 RECREATIONAL REGULATIONS.

The following provisions shall apply within any parks in the City to aviation, bathing, boating, coasting, games, picnics, horses, meetings, exhibitions, parades, skating and sledding:

(c) Boating. Boating is permitted in Hyde Park Lake. Such boating shall be limited to recreational rowboats, canoes and kayaks provided such rowboats, canoes and kayaks are not powered by gasoline driven motors or engines. Fishing boats powered by electric motors are also permitted. With respect to all other park waters in the City, with the exception of [Excepting] holders of boating privileges, no person shall place or operate or have for hire any boat, canoe or raft, in any park waters in the City, without the written permit of the Director of Parks. All boats used under the permit or boating privileges shall be plainly marked as to their capacity, and no person shall exceed the maximum marked capacity. This subsection shall not apply to bodies of water bordering on parks or to toy boats used by children.

...

Bold and Underlining indicate **Additions**.  
Bold and Brackets indicate **[Deletions]**.

Item #21

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The following have requested City Council approval for Commissioner of Deeds for a term from July 1, 2010 to June 30, 2012.

This is in accordance with provision of the Niagara Falls City Charter, Article II, Section 7, Subdivision 5.

Feathers, Nichole	City Court
Valery, Nancy L.	City Court
Kunecki, Julie	Department of Code Enforcement
Zona, Anita M.	Department of Human Resources
Bancroft-Billings, Jeffrey	NFPD
DeMarco, John	NFPD
Dobrasz, Daniel Jr.	NFPD
Freeman, Roger	NFPD
Bray, Angela	Niagara Falls Human Rights Commission
Hague, Pastor Richard	Niagara Falls Human Rights Commission
Marin, Miguel	Niagara Falls Human Rights Commission
Stypa, Jeanette	Niagara Falls Human Rights Commission
Williams, Richard J.	Niagara Falls Human Rights Commission
Bradberry, William James	2500 Hyde Park Blvd., Niagara Falls, NY 14305
Churakos, Stephanie	564 Oak Run Drive, Lewiston, NY 14092
Curcione, Frances	3302 Walnut Ave., Niagara Falls, NY 14301
D'Aloise, Nicholas A. Jr.	621-4 <sup>th</sup> St., Niagara Falls, NY 14301
Kennedy, Jean M.	1423 Wyoming Ave., Niagara Falls, NY 14305
Peploe, Kevin	669-78 <sup>th</sup> Street, Niagara Falls, NY 14304
Stedman, Kandie	231 Niagara St., Lockport, NY 14094
Raybon, Jemelie E.	1716 Ferry Ave., Niagara Falls, NY 14301
Walker, Linda D.	1821-16 <sup>th</sup> St., Niagara Falls, NY

RESOLUTION RELATIVE TO AMENDING CHAPTER 341  
OF THE CODIFIED ORDINANCES ENTITLED  
"VENDORS & PEDDLERS"

By: Council Chairman Samuel Fruscione

BE IT RESOLVED by the City Council of Niagara Falls, New York that Chapter 341 of the Codified Ordinances entitled AVendors & Peddlers@ is hereby amended as follows:

Chapter 341 is hereby amended to include a supplemental map attached hereto designating three (3) additional vending locations to the Official Map of Designated Vending Locations.

Bold and Underlining indicate **Additions**.  
Bold and Brackets indicate **[Deletions]**.

RESOLUTION 2010-

RESOLUTION RELATIVE TO AMENDING CHAPTER 178 OF THE CODIFIED  
ORDINANCES ENTITLED "CITY OF NIAGARA FALLS DISCRIMINATION AND  
HARASSMENT POLICY"

By: Council Chairman Samuel Fruscione  
Council Member Robert Anderson, Jr.  
Council Member Steve Fournier  
Council Member Kristen Grandinetti  
Council Member Charles Walker

BE IT RESOLVED by the City Council of Niagara Falls, New York  
that Chapter 178 of the Codified Ordinances entitled "City of Niagara  
Falls Discrimination and Harassment Policy" is hereby rescinded and  
Chapter 178 of the Codified Ordinances entitled "City of Niagara Falls  
Policy Against Discrimination and Harassment" is hereby adopted to read  
as follows:

Chapter 178

CITY OF NIAGARA FALLS  
POLICY AGAINST DISCRIMINATION AND HARASSMENT

Section 178.01 INTRODUCTION

The City of Niagara Falls [believes in the dignity of the individual and] recognizes the right of all persons to equal opportunities and recognizes that all employees have the right to work in an environment free from discrimination and harassment [any person to equal opportunities]. In this regard, it is the City's responsibility and [the City has had a longstanding] practice to [of] protect[ing] and safeguard[ing] the rights and opportunities of any person who might seek or obtain employment with the City [without being subjected to illegal discrimination or harassment in the workplace]. Solely for the purposes of this policy, the term "employee" shall also include a volunteer.

Section 178.02 POLICY STATEMENT

The City shall not tolerate employment discrimination. The City's policy is to provide equal employment opportunity without regard to [In addition to prohibiting illegal discrimination on the basis of] age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status. All employment decisions shall be non-discriminatory, including decisions regarding hiring, promotions, terminations and other terms and conditions of employment. The City also prohibits the discriminatory harassment of its employees or officers in any form. [or other unlawful conduct, the City of Niagara Falls also prohibits the illegal harassment of its employees or officers in any form.] The City will take all steps necessary to prevent and stop the occurrence of any illegal discrimination or harassment in the workplace. Specifically:

(a) No person employed by the City shall discriminate against any person in employment, potential employment, or terms and conditions of employment based on age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status. [This policy applies to all City officers and employees and all individuals who serve as contractors to the City. Depending on the extent of the exercise of control, this policy may be

applied to the conduct of those who are not officers, employees or contractors of the City with respect to illegal discrimination or illegal harassment of City officers or employees in the workplace.]

(b) No person employed by the City shall be subjected to workplace harassment, as set forth in Section 178.03. [The City and this discrimination and harassment policy prohibit conduct that is illegal under State or federal law including, but not limited to, the inappropriate forms of behavior described in Section 178.03 of this policy under the section entitled "Definition of Sexual Harassment."]

(c) No person employed by the City shall be subjected to retaliation on the ground that he or she complained about prohibited discrimination or harassment or testified, provided information, or otherwise assisted in any investigation of alleged prohibited conduct as set forth in Section 178.04. [Department heads and supervisory personnel are responsible for ensuring a work environment free from unsolicited, unwelcome, and intimidating unlawful discrimination or harassment. These individuals must take immediate and, if authorized, appropriate corrective action when allegations of discrimination or harassment come to their attention to assure compliance with this policy. Should a department head or supervisor not be authorized to take corrective action, the matter shall be referred to the individual or body, as the case may be, having the authority to discipline.]

(d) This policy applies to all City officers and employees and all individuals who serve as contractors to the City. (Note: Existing language was previously (a). [Depending on the extent of the exercise control,] [t]his policy may be applied to the conduct of those who are not officers, employees or contractors of the City [with respect to illegal discrimination or illegal harassment of City Officers or employees in the workplace] over whom the City exercises sufficient control. This Policy applies to any City facility and all work related settings and locations where City employees are assigned to work. [A person who is found to have committed an act of unlawful discrimination or harassment or other inappropriate behavior will be subject to disciplinary action in accordance with the provisions of a negotiated labor agreement or State law, as may be appropriate. Additionally, retaliation against someone who has complained about prohibited discrimination or harassment is strictly prohibited as is retaliation against an individual who cooperates with an investigation of a discrimination or harassment complaint. Any such retaliatory conduct is illegal and will result in disciplinary action against the retaliator, if that person is an officer or employee of the City. Intimidation, coercion, threats, reprisals, or discrimination against any person for complaining about unlawful discrimination or harassment, as described in this policy, is prohibited.]

(e) The City and this discrimination and harassment policy prohibit conduct that is illegal under State or federal law. (Note: Existing language was previously (b). [All City officers and employees will be held responsible and accountable for avoiding or eliminating the conduct prohibited by this policy. City employees are encouraged to report violations of this policy to their supervisor or to a member of the discrimination/harassment committee. This committee shall consist of a minimum of three (3) members: The Corporation Counsel or his/her designee, the Director of Human Resources or his/her designee, any additional member(s) designated by the Mayor and/or City Administrator.]

(f) Conduct which may not rise to the level of a violation of law may nonetheless violate this policy.

Section 178.03 [DEFINITIONS] PROHIBITION AGAINST WORKPLACE HARASSMENT  
In accordance with Section 178.02, workplace harassment shall be prohibited.  
Specifically:

(a) DISCRIMINATORY HARASSMENT

It shall be prohibited for an employee of the City to engage in harassment of another employee based on age, race, creed, color, national

origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status.

(1) [Unwelcome] Prohibited conduct includes verbal, non-verbal or physical conduct that denigrates or shows hostility toward an individual or group because of [which is directed at a person because of] their age, race, creed, color, national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status when such conduct:

- a. [Such conduct] has the purpose or effect of unreasonably interfering with the individual's terms, conditions and/or privileges of employment; [work performance];  
or
- b. [Such conduct creates or] has the purpose or effect [intention] of creating an intimidating, hostile, or offensive working environment; or
- c. Otherwise adversely affects an individual's employment benefits, conditions, or opportunities. [Such conduct unreasonably interferes with one's ability to participate in or benefit from City programs or activities.]

(2) Specific forms of behavior that the City would consider discriminatory harassment include, but not limited to, epithets, slurs, negative stereotyping, or threatening, intimidating or hostile speech or acts, or written graphic material displayed or circulated in the workplace, that denigrates or shows hostility towards an individual or group because of their age, race, creed, color national origin, sex, sexual orientation, gender identity or expression, religion, disability, predisposing genetic characteristics, marital status, military status, or domestic violence victim status.

(3) Conduct which may not rise to the level of a violation of law may nonetheless violate this policy.

(b) SEXUAL HARASSMENT

It shall be prohibited for an employee of the City to engage in sexual harassment of another employee of the City.

(1)

Prohibited conduct includes sexual advances that are not welcome, requests for sexual favors, and other verbal or physical conduct with sexual overtones constitute sexual harassment when:

- a. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's work; or
- b. Submission to, or rejection of, such conduct by an individual is used as the basis for workplace decisions such as promotion, transfer, or termination [affecting such individual]; or
- c. 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.

(2) Sexual harassment refers to behavior of a sexual nature that an individual does not welcome; that is personally offensive; that fails to respect the rights of others; that lowers morale and that, therefore has the purpose or effect of interfere[es]ing with an individual's work performance and effectiveness; or that creates an intimidating, hostile, or offensive working environment. Specific forms of behavior that the City would consider sexual harassment include, but are not limited to, the following:

- a. Sexual Advances: Demands, direct or indirect, for sexual favors as a condition of employment, for favorable employment decisions, or for any other reason.
- b. Verbal Harassment: Hostile or abusive verbal language related to a person's sex, including sexual innuendos; slurs; suggestive, derogatory, or insulting comments or sounds; staring;

whistling; jokes of a sexual nature even when not directed toward a specific individual, conversations with obvious sexual overtones, even when not directed toward a specific individual; sexual propositions; and threats. (Note: Existing language was previously (a) [Included would be any sexual advance that is unwelcome or any demand for sexual favors.]

c. Non-Verbal Harassment: Abusive written language, showing, [or] displaying or circulating, including by the use of email, pornographic or sexually explicit jokes, objects or pictures, graphic commentaries, leering or obscene gestures in the workplace [such] that [it] unreasonably interfere[s] with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

(Note: Existing language was previously (b)

d. Physical Harassment: Any physical contact which is not welcome, including touching, kissing, embracing, petting, pinching, coerced sexual intercourse, assault, or persistent brushing up against a person's body. (Note: Existing language was previously (c)

(3) A victim of sexual harassment does not have to be the opposite sex of the harasser. The harasser does not have to be victim's immediate supervisor. The harasser could be an agent of a supervisor, another supervisor, a co-worker, or even someone not on the payroll of the City who might have occasion to appear at a work site or enter a City building or facility. A victim of discriminatory or sexual harassment does not necessarily have to be the person harassed but could be anyone affected by the offensive conduct directed at another person or not directed at any specific person.

(4) Conduct which may not rise to the level of a violation of law may nonetheless violate this policy.

#### Section 178.04 PROHIBITION AGAINST RETALIATION

It shall be prohibited for an employee of the City to engage in retaliation against an individual on the ground that the individual complained about prohibited discrimination or harassment or testified, provided information, or otherwise assisted in any investigation of alleged prohibited conduct as defined by law or this Policy.

Retaliation occurs when an employee suffers an adverse employment action, such as a demotion, discharge, or significant change in work assignment, or when other action is taken that might discourage a reasonable worker from opposing a discriminatory practice or making or supporting a charge of discrimination. Intimidation, coercion, threats, reprisals, or discrimination against any person for complaining about discrimination or harassment, as described in this Policy, is also prohibited. Any such retaliatory conduct is illegal and will result in disciplinary action against the retaliator.

#### Section 178.0[4]5 [OVERVIEW] COMPLAINT OVERVIEW PROCESS

(a) Any City officer or employee is encouraged to report an incident of suspected discrimination or harassment or retaliation as soon as possible to either a department head, the City Administrator, the Director of Personnel [Human Resources], the EEO Officer for Compliance and Workforce Diversity, or to the discrimination/harassment committee which shall consist of a minimum of three (3)members: The Corporation Counsel or his/her designee; the Director of Personnel or his/her designee; the EEO Officer for Compliance and Workforce Diversity or his/her designee; and any additional member(s) designated by the Mayor and/or City Administrator. [as soon as possible after an alleged incident. A victim does not have to be the opposite sex of the harasser. The harasser does not have to be victim's

immediate supervisor. The harasser could be an agent of a supervisor, another supervisor, a co-worker, or even someone not on the payroll of the City who might have occasion to appear at a work site or enter a City building or facility. A victim of sexual harassment does not necessarily have to be the person at whom unwelcome sexual conduct is directed. Such an individual could be someone who is affected by such conduct when it is directed towards another person, thereby creating a hostile work environment. Such conduct is unlawful and is prohibited by the City and by this policy.]

(b) Should an officer or employee believe that he or she has been discriminated against or harassed and would like guidance as to how to file [proceed in filing] a complaint, that individual should review the City's discrimination and harassment complaint procedure or contact the EEO Officer for Compliance and Workforce Diversity or any member of the discrimination/harassment committee.

(c) Should an individual file a complaint, the procedures set forth below must be followed, [of the discrimination/harassment committee must be followed], including filing a complaint within [the time limit of] 180 calendar days of the alleged conduct. The procedures describe the steps to be taken when an employee has filed a complaint, detail the responsibilities of all involved parties, and provide the time frames for actions to be taken.

(d) All complaints will be handled in a timely and confidential manner. In no event will information concerning a complaint be released by the City to any third party or to anyone within City government who is not directly involved with or in the investigation. Confidentiality will be maintained throughout the investigatory process. All complainants, respondents and witnesses in an investigation shall be informed of this confidentiality policy. A breach of this confidentiality policy [prohibition] will result in disciplinary action.

(e) The investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. The particular facts of the allegations will be examined individually, with a review of the nature of the behavior and the context in which the incident or incidents occurred. [Confidentiality will be maintained throughout the investigatory process. The discrimination/harassment committee will also investigate cases in which a supervisor requests or requires assistance.]

(f) An individual who believes that he or she has been unjustly charged with illegal discrimination or harassment in violation of this policy will be afforded every opportunity to offer and present information in defense of the complaint. Any information will be confidential.

(g) All employees are required to cooperate fully with any investigation of alleged violations of this Policy or the law. Any employee who fails to cooperate with an investigation, obstructs an investigation, or interferes with the administration of any remedial or disciplinary action taken as a result of such investigation is subject to discipline.

(h) A person who participates in this procedure may do so without fear of retaliation. Retaliation against anyone who has filed a complaint under this policy or cooperates with an investigation is prohibited and may be a violation of federal or state law. Any such retaliation will result in disciplinary action by the City. (Note: Existing language was previously (g)

(i) A person who is found to have committed an act of illegal discrimination, [or] harassment, or retaliation or otherwise to have violated this policy will be subject to disciplinary action in accordance with the provisions of a negotiated labor agreement or State law, as may be appropriate. (Note: Existing language was previously (h)

(j) Nothing in this policy, including the complaint procedures, shall in any way limit [should be construed to limit] an individual's existing right to file a complaint with the Niagara Falls Human Rights Commission, the New York State Division of Human Rights, [or] the United States Equal Employment Opportunity Commission, or any other government agency, or to take any legal action which he or she may deem advisable. However, filing a complaint with the City or reporting allegations of discrimination,

harassment, or retaliation to the City shall not toll any filing requirements set forth by these agencies or otherwise required by law.

Section 178.06[5]

PROCEDURES FOR REPORTING A DISCRIMINATION OR [AND]  
HARASSMENT COMPLAINT [PROCEDURE]

(a) [STEP ONE]

GENERAL PROCESS

(1) [An aggrieved person] If an employee feels that he or she is a victim of discrimination or harassment, the employee, hereafter referred to as the complainant, [will] may meet with his or her department head to discuss an allegation of illegal discrimination or harassment [and] or may file a complaint directly with the EEO Officer for Compliance and Workforce Diversity or the Discrimination/Harassment Committee. [of discrimination or harassment. If a complaint is filed, the department head shall send a signed complaint on a form available from the City to the discrimination/harassment committee. Should an individual feel uncomfortable raising an issue of alleged illegal discrimination or harassment with a department head, any other department head or a member of the discrimination/harassment committee may be approached. Verbal complaints may be handled informally.]

(2) Any written complaint must contain information about the alleged discrimination or harassment such as the name, address, phone number of complainant, date and description of the incident(s), and should be filed on a "Complaint of Discrimination or Harassment" form. This form is available from the City and attached to this Policy.

(3) [Any] The written complaint should be submitted as soon as possible but no later than [must be filed by a complainant within] 180 calendar days after the alleged violation to: [of an alleged act of illegal discrimination or harassment on a form available from the City.] (Note: This was previously #2)

Discrimination and Harassment Committee and  
EEO Officer for Compliance and Workforce Diversity  
c/o City of Niagara Falls Department of Human Resources  
Room 14, City Hall  
745 Main Street  
Niagara Falls, NY 14302-0069  
(716) 286-4430

(4) Anonymous complaints will be accepted and investigated to the extent possible. Employees, however, must be aware that a complainant's decision not to provide his or her identity may limit the ability to conduct a thorough investigation.

(5) The complainant may withdraw his or her complaint at any time by filing a "Withdrawal of Discrimination or Harassment Complaint" notice in writing [on a form available from the City]. This form is available from the City and attached to this Policy. (Note: This was previously #3)

(b) [STEP TWO] PROCESSING COMPLAINTS

(1) If an employee brings his or her complaint to a department head, the department head may seek initially to resolve and rectify the matter but shall also report the allegations to the EEO Officer for Compliance and Workforce Diversity. A department head shall have five (5) business days to try to resolve the allegations by (a) gathering and assessing the facts deemed necessary to resolve it; (b) interviewing the person alleged to have committed the discrimination or harassment, hereafter referred to as the respondent, and the complainant separately; and (c) using whatever other methods

are deemed necessary or appropriate to attempt to resolve the complaint. [When a written complaint is filed, the department head or committee member shall have 15 working days to try to resolve the allegation informally by 1) gathering and assessing the facts deemed necessary to resolve it; 2) meeting with the alleged abuser and the complainant separately; and 3) using whatever other methods deemed necessary or appropriate to attempt to resolve the complaint.]

(2) Within five (5) business days from the date of the complaint, a department head must forward to the EEO Officer for Compliance and Workforce Diversity in writing the complaint or allegations and any resolution. If no resolution is reached within five (5) business days, the department head must refer the case and any information gathered to the EEO for Compliance and Workforce Diversity for further investigation.

(3) Regardless of whether the complaint is written or verbal, [if a resolution is achieved by a] the department head, [he or she] will prepare a statement outlining the complaint and any resolution reached[that the complaint has been resolved]. If a resolution is reached, all parties must sign the statement prepared by the department head which shall be sent to the EEO Officer for Compliance and Workforce Diversity [discrimination/harassment committee]. The case will be considered closed subject to an independent review by the EEO Officer for Compliance and Workforce Diversity, who may re-open the case in his or her discretion if he or she deems warranted. (Note: This existing language was previously #2)

(4) If a complaint is filed directly with[not resolved, it will be turned over to] the Discrimination/Harassment Committee or the EEO Officer for Compliance and Workforce Diversity, or is not resolved at the department level within the specified time frame, the committee will investigate the complaint. Specifically, the Committee shall interview the complainant, call witnesses to appear before the Committee, and review any other evidence the Committee feels credible and probative of the [allegation or] allegations. Notice of the complaint must be given to the respondent [accused], who shall also be afforded an opportunity to appear before the Committee, with or without counsel, if he or she so desires. Barring extraordinary circumstances, the Committee will have fifteen (15) business [working] days to investigate the complaint and an additional fifteen (15) business [working] days to render a [decision] recommended determination and any proposed remedial action, where appropriate. (Note: Existing language was previously in #3)

(5) Written notice of the Committee's recommendations [decision] will be given to both the complainant and the [accused] respondent, and filed with the EEO Officer for Compliance and Workforce Diversity. (Note: Existing language was previously in #4)

(6) All complaints involving harassment, discrimination, and retaliation will be independently reviewed by the EEO Officer for Compliance and Workforce Diversity, who will make a final recommendation to the Mayor or his/her designee for approval.

CITY OF NIAGARA FALLS

**COMPLAINT OF DISCRIMINATION OR HARASSMENT**

Name of Complainant: \_\_\_\_\_

Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Date of Hire: \_\_\_\_\_ Job Title: \_\_\_\_\_

[YOUR] Department: \_\_\_\_\_

Department Head: \_\_\_\_\_

Name **[AND TITLE]** of Person **[(s)]** Complained Of:

Date **[(s)]** of Incident(s): \_\_\_\_\_ Time: \_\_\_\_\_

Description of Incident(s): **(Use additional sheets if necessary)**

Are you still employed by or volunteering for the City of Niagara Falls: \_\_\_\_\_

Action you are seeking: \_\_\_\_\_

SIGNATURE

\_\_\_\_\_ DATE \_\_\_\_\_

**Forward Original to: DISCRIMINATION/HARASSMENT COMMITTEE**

**Forward copy to: EEO OFFICER FOR COMPLIANCE AND WORKFORCE DIVERSITY**

CITY OF NIAGARA FALLS

**WITHDRAWAL OF DISCRIMINATION OR HARASSMENT COMPLAINT**

Name of complainant: \_\_\_\_\_  
Date complaint filed: \_\_\_\_\_  
Department Head notified: \_\_\_\_\_

I HEREBY WITHDRAW THIS COMPLAINT AND AGREE THAT NO FURTHER ACTION IS REQUIRED ON IT.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_