

**JULY 15, 2020**  
**REGULAR TOWN BOARD MEETING**  
**VIA ZOOM CONFERENCING**  
**Meeting ID: 929 4118 4947**  
**Password: 937445**

**Town Hall**

**7:00 P.M.**

Greg Post, Supervisor led the pledge to the flag.

Because of the Novel Corona virus (COVID-19) Pandemic and the State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1 issued March 12, 2020 suspending the Open Meeting Law, the Town of Batavia Town Board meeting was held electronically via ZOOM video conference/call conference instead of a public meeting open for the public to attend in person.

**Roll Call**

**Present:** Supervisor Post  
Deputy Supervisor Underhill  
Councilwoman White  
Councilwoman Michalak  
Councilman Zambito

**Others**

**Present:** Town Clerk Morasco  
Building Inspector Gerould  
Planning Board Chair Jasinski  
Alecia Kaus, Video News Service

The Supervisor called the meeting to order at 7:02 P.M.

**June 17, 2020 Regular Town Board Meeting:** Motion Deputy Supervisor Underhill, second Councilman Zambito to approve the minutes as written.

**Ayes:** Underhill, Zambito White, Michalak, Post  
**MOTION CARRIED by unanimous vote (5-0)**

**June 30, 2020 Special Town Board Meeting:** Motion Councilman Zambito, second Councilwoman Michalak to approve the minutes as written.

**Ayes:** Zambito, Underhill, Michalak, White, Post  
**MOTION CARRIED by unanimous vote (5-0)**

**RESOLUTION NO. 116:**

Councilwoman White offered the following:

**PROFESSIONAL SERVICES**  
**REFUNDING BONDS - UNDERWRITER**  
**ROOSEVELT & CROSS, INCORPORATED**

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**WHEREAS**, on March 18, 2020 the Town Board adopted a “Refunding Bond Resolution”, authorizing the issuance of refunding bonds to be offered and sold at private sale under arrangements that are to be in general accord with the Refunding Financial Plan; and

**WHEREAS**, the Town solicited RFP’s with the assistance of the Town’s municipal advisor for an Underwriter to market the Towns refunding bonds; and

**WHEREAS**, two proposals were received and reviewed; and

**WHEREAS**, Municipal Solutions recommended Roosevelt & Cross, Incorporated (recommendation letter attached).

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Town of Batavia Town Board hereby accepts Roosevelt & Cross, Incorporated proposal as underwriter for the refunding bond transactions.

**Second by:** Deputy Supervisor Underhill

**Ayes:** White, Underhill, Michalak, Zambito, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 117:**

Deputy Supervisor Underhill offered the following:

**TRAINING WORKSHOP**

**RESOLVED**, the Batavia Town Board hereby authorizes the following personnel to attend training workshops:

Marcy Crandall- Water Well Rehabilitation and Maintenance Asset Management

Andrew Young- CE Online 5 Class Trainings, Code of Ethics, Fair Housing, Agency, Home Inspections, and House Construction, was February 27 – March 4, 2020. Total of 22.5 hours. There was no cost to the Town for this training.

**Second by:** Councilwoman White

**Ayes:** Underhill, White, Michalak, Zambito, Post

**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 118:**

Supervisor Post offered the following:

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**NON-HAZARDOUS WASTE SERVICE AGREEMENT**  
**TRASH AND RECYCLING**  
**WASTE MANAGEMENT OF NEW YORK, LLC**

**WHEREAS**, the Town Highway Superintendent solicited for oral quotes for non-hazardous waste removal service for the Town's trash and recycling, and

**WHEREAS**, Waste Management of New York, LLC submitted a quote agreement of \$133.96 per month for three-years, for weekly pickups and an initial one-time delivery fee of \$115.00; and

**WHEREAS**, the Town Highway Superintendent recommends the Town enter into said agreement (recommendation attached);

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the agreement between the Town of Batavia and Waste Management of New York, LLC for non-hazardous waste removal service, at a cost of one hundred, thirty-three dollars and ninety-six cents (\$133.96) per month for weekly pickups, plus a one-time delivery fee of \$115.00, a copy of which is annexed hereto and made a part of the minutes; and be it further

**RESOLVED**, the Supervisor is hereby authorized to execute said agreement.

**Second by:** Deputy Supervisor Underhill  
**Ayes:** Post, Underhill, Michalak, Zambito, White  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 119:**

Councilwoman Michalak offered the following:

**ACQUIRE INTEREST IN PARCEL OF LAND**  
**FOR WATER UTILITY SERVICE**

**WHEREAS**, the Town of Batavia is seeking to acquire an interest in a parcel of land from Dipak G. Rathod for the purpose of installing, constructing, operating, repairing and maintaining meter pit and water service along Hopkins Road; and

**WHEREAS**, a permanent easement for a portion of parcel # 10.-2-60.12 has been prepared and executed by Dipak G. Rathod at a cost of \$10.00; and

**WHEREAS**, Town Engineer has reviewed the Permanent Easement for the interest in the parcel and recommends the Town Board approve said easement.

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**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby approves the permanent easement from Dipak G. Rathod, for a portion of parcel # 10.-2-60.12 at cost of \$10.00, a copy of which is annexed hereto and made a part of the minutes, and be it further

**RESOLVED**, that the Town Supervisor is hereby authorized and directed to sign all documents necessary to record the documents in the Genesee County Clerk's Office.

**Second by:** Deputy Supervisor Underhill  
**Ayes:** Michalak, Underhill, Zambito, White, Post  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 120:**

Councilman Zambito offered the following:

**PURCHASE OF VM WARE ESSENTIAL KIT**

**WHEREAS**, the Town of Batavia was awarded the Local Government Records Management Improvement Fund (LGRMIF) Grant for Shared Services document conversion and access; and

**WHEREAS**, an amendment to the LGRMIF Shared Services Grant budget was requested and approved by New York State for VM Ware Essential Kit, less the subscription costs; and

**WHEREAS**, Dell EMC submitted a quote to purchase VM Ware Essentials Kit for 3 Hosts and Subscription at a cost of \$522.61 (attached).

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby authorizes the purchase VM Ware Essential Kit for 3 Hosts and VM Ware Subscription from Dell at a cost of \$522.61, and be it

**FURTHER RESOLVED**, the expenditure will be from line items:

A1460.200	\$459.00
A1410.401	\$ 63.61

**Second by:** Councilwoman White  
**Ayes:** Zambito, White, Michalak, Underhill, Post  
**APPROVED by unanimous vote (5-0)**

**RESOLUTION NO. 121 :**

Councilwoman White offered the following:

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**RESOLUTION TO INTRODUCE PROPOSED LOCAL LAW NO. 2 of 2020**  
**AND TO SCHEDULE A PUBLIC HEARING**

**WHEREAS**, the Town Board of the Town of Batavia, New York desires to consider adopting legislation to enact Local Law 2 of 2020, Discrimination and Harassment Policy and repeal Local Law 2 of 2019, Sexual Harassment Policy by the Town of Batavia, also known as “A Local Law to Adopt a Discrimination and Harassment Policy for the Town of Batavia”.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Batavia, New York that proposed Local Law No. 2 of 2020 entitled "A Local Law to Adopt a Discrimination and Harassment Policy for the Town of Batavia", which proposed Local Law is now in its final form as appears by a copy thereof hereto attached, be and the same hereby is introduced for adoption; and

**BE IT FURTHER RESOLVED** that said proposed Local Law be laid upon the desks of the members of this Town Board on this date and remain there and a copy thereof be kept on file in the office of the Town Clerk until August 19, 2020 and that a public hearing be held before this Town Board on the 19<sup>th</sup> day of August, 2020 at 7:00 p.m. at the Batavia Town Hall, 3833 West Main Street Road, Batavia, New York, on the advisability of enacting said proposed Local Law; and

**BE IT FURTHER RESOLVED** that a copy of said proposed Local Law be mailed to each member of the Town Board not in attendance at this meeting in a postpaid, properly addressed and securely closed envelope in a post box within the Town of Batavia, New York not less than ten (10) calendar days, exclusive of Sunday, prior to the date of said public hearing; and

**BE IT FURTHER RESOLVED** that the Town Clerk shall cause notice of said public hearing to be published once in The Daily News at least five (5) days prior to the date of said public hearing, which notice shall contain the time and place of said hearing, the title and purpose thereof, as well as a statement that a copy of said proposed Local Law is on file in the Town Clerk's Office.

**Second by:** Councilwoman Michalak

**Ayes:** White, Michalak, Zambito, Underhill, Post

**APPROVED by unanimous vote (5-0)**

Local Law Filing

New York State Department of State  
41 State Street, Albany, NY 12231

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(Use this form to file a local law with the Secretary of State.)

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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~  
~~City~~ of Batavia, Genesee County, New York  
~~Town~~  
~~Village~~

Local Law No. 2 of the year 2020.

A local law known as Local Law to Adopt a Discrimination and Harassment Policy for the Town of  
Batavia  
(Insert Title)

Be it enacted by the Town Board of the  
(Name of Legislative Body)

~~County~~  
~~City~~ of **Batavia, Genesee County, New York** as follows:  
~~Town~~  
~~Village~~

**SECTION I. TITLE AND AUTHORITY**

This local law is entitled “A Local Law to Adopt a Discrimination and Harassment Policy for the Town of Batavia,” and is adopted pursuant to authority granted in the Municipal Home Rule Law of the State of New York.

**SECTION II. REPEAL OF FORMER SEXUAL HARASSMENT POLICY**

The Sexual Harassment Policy of the Town of Batavia, codified at Chapter 51 of the Code of the Town of Batavia, is hereby repealed in its entirety.

**SECTION III. ADOPTION OF DISCRIMINATION AND HARASSMENT POLICY OF THE TOWN OF BATAVIA**

The Town of Batavia hereby adopts the following Discrimination and Harassment Policy, to wit:

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**TOWN OF BATAVIA**  
**POLICY AGAINST DISCRIMINATION AND HARASSMENT**

**SECTION 1: PURPOSE**

The Town of Batavia believes in the dignity of the individual and recognizes the rights of all people to equal employment opportunities in the workplace. In this regard, the [Municipality], (hereinafter “Municipality”), is committed to a policy of protecting and safeguarding the rights and opportunities of all people to seek, obtain and hold employment without subjugation to harassment or discrimination in the workplace. It is the Municipality’s policy to provide an employment environment free from harassment and discrimination based on race, color, gender, religion, religious creed, sex, familial or marital status, age, national origin or ancestry, physical or mental disability, genetic information/predisposition or carrier status, military or veteran status, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender, pregnancy (including childbirth and related medical conditions, and including medical conditions related to lactation) citizenship, domestic violence victim’s status or any other characteristics protected by applicable federal, state or local law.

**A. Scope of Policy** This Policy applies to all Municipality employees and all personnel in a contractual or other business relationship with the Municipality including, for example, applicants, temporary or leased employees, interns (whether paid or unpaid), volunteers, visitors, independent contractors, contractors, subcontractors, vendors, consultants or other persons providing services pursuant to a contract in the workplace, including employees of independent contractors, contractors, subcontractors, vendors, consultants or others providing services pursuant to a contract in the workplace. In the remainder of this Policy, the term “employees” refers to this collective group. This Policy applies with equal force on Municipality property as it does at Municipality-sponsored events, programs, and activities that take place off Municipality premises.

**B. Policy Objectives** By adopting and publishing this Policy, it is the intention of the Municipality’s governing body to:

- (1) Notify employees about the types of conduct that constitute harassment and discrimination prohibited by this Policy;
- (2) Inform employees about the complaint procedures established by the Municipality that enable any employee who believes (s)he is the victim of harassment or discrimination to submit a complaint which will be investigated by the Municipality;
- (3) Clearly advise all supervisory staff, managers, and employees that harassment and

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discrimination is strictly prohibited, and no such person possesses the authority to harass or discriminate; and

- (4) Notify all employees that the Municipality has appointed Compliance Officers who are specifically designated to receive complaints and ensure compliance with this Policy.

NOTE: The title and office location of each Compliance Officer designated to receive and investigate complaints are listed below in *Section 11* of this Policy. Any change in the designated Compliance Officers shall be distributed in writing to all current employees and shall be posted.

**SECTION 2: DEFINITIONS**

**“Prohibited Discrimination of Employees”**

Prohibited discrimination of employees can take the form of any adverse employment action against an employee, by either a Municipality employee or official or a third party engaged in activities sponsored by the Municipality which is based upon the employee’s protected characteristic. Prohibited discrimination of employees also includes harassment based on a protected characteristic even where there is no tangible impact upon the employee’s employment opportunities and/or employment benefits. The phrase “prohibited discrimination” as used in this Policy includes all forms of prohibited discrimination and harassment based on a protected characteristic, including “Sexual Harassment” as defined below.

**“Harassment”**

Harassment is strictly prohibited and includes, but is not limited to, conduct that is unwelcome and has the purpose or effect of unreasonably interfering with a person’s work performance, or creating an intimidating, hostile or offensive working environment. Such harassment of employees is prohibited by this Policy if it is based on a protected characteristic or directed at an individual because of a protected characteristic. In this regard, individuals subject to this Policy should be mindful that conduct or behavior that is acceptable, amusing or inoffensive to some individuals may be viewed as unwelcome, abusive or offensive to others.

**“Sexual Harassment”**

Sexual harassment is strictly prohibited. It is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is

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directed at an individual because of that individual's sex when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual (e.g., promotion, transfer, demotion, termination); or
- (3) Such gender-based conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or of creating an intimidating, hostile or offensive working environment, even if the reporting individual is not the intended target of the sexual harassment.

The foregoing includes offensive comments, jokes, innuendoes or other statements of a sexual or gender-based nature as well as favoritism between a supervisor and subordinate based on an intimate/sexual relationship or desire for the same.

**Who can be the target of harassment?**

Harassment can occur between any individuals, regardless of their sex, gender or other protected status. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

**Where can harassment occur?**

Unlawful harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

**“Prohibited Behavior and Examples of Harassment, including Sexual Harassment”**

Specific forms of behavior the Municipality considers harassment or sexual harassment are set forth below. Every conceivable example cannot be delineated herein, and thus the descriptions below should not be interpreted in any way as being all-inclusive.

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- **Verbal:** Abusive verbal language including jokes, comments, teasing or threats related to an employee's protected characteristic, sexual activity and/or body parts whether or not said in that person's presence including, but not limited to: sexual innuendos; slurs; suggestive, derogatory, or insulting comments or sounds; whistling; jokes; propositions; threats; comments on a person's appearance that make the person feel uncomfortable because of his or her protected characteristic; sex stereotyping, continuing to ask someone for dates or to meet after work after the person has made it clear that he or she does not want to go; comments about an employee's anatomy or protected characteristic that are unwelcome, unreasonably interfere with an employee's work performance, or create an intimidating, hostile or offensive work environment; and unwelcome advances or demands based on someone's protected characteristic.
- **Nonverbal:** Abusive written language showing or displaying pornographic or sexually explicit objects or pictures; graphic commentaries based on a protected characteristic; derogatory cartoons or caricatures; luring or obscene gestures in the workplace; staring at a person's body in a sexually suggestive manner; gestures or motions based on a protected characteristic; sending material through the Municipality e-mail system or other electronic communication devices (e.g. voice mail) or using the Municipality's mail, computers or cell phones to view material that is demeaning or derogatory based on one's protected characteristic.
- **Physical:** Unwelcome physical conduct, including but not limited to: hitting, pushing, shoving, slapping, petting, pinching, grabbing, holding, hugging, kissing, tickling, massaging, displaying private body parts, coerced sexual intercourse, rape or assault or attempts to commit these assaults, persistent brushing up against a person's body, unnecessary touching and flashing or other unwelcome physical conduct.
- **Other:** Hostile actions taken against an individual because of an individual's sex, sexual orientation, gender identity and the status of being transgender or because of any other protected characteristic, such as: interfering with, destroying or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform the job; sabotaging an individual's work; bullying, yelling, or name-calling.

Any employee who feels discriminated against or harassed should report so that any violation of this Policy can be corrected promptly. Any harassing conduct, even if a single incident, can be addressed under this Policy.

**SECTION 3: POLICY**

The Municipality prohibits harassment and discrimination based on any characteristic protected by applicable law and will not tolerate any form of unlawful discrimination or harassment. The

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Municipality will take all steps necessary to prevent and stop the occurrence of unlawful discrimination and/or harassment, including sexual harassment, in the workplace.

All employees, including but not limited to, Municipality officials and supervisory personnel, are responsible for ensuring a work environment free from prohibited harassment and discrimination. All employees will be held responsible and accountable for avoiding or eliminating inappropriate conduct that may give rise to a claim of harassment or discrimination. Employees are encouraged to report violations to Department Head, one of the Compliance Officers listed in *Section 11* of this Policy in accordance with the Complaint Procedure set forth in this Policy. Department Heads and/or Compliance Officers must take immediate and appropriate corrective action when suspected instances of prohibited harassment and/or discrimination come to their attention to assure compliance with this Policy as well as report the suspected misconduct to the Municipality's designated Compliance Officers. Furthermore, if any employee believes that any member of management has violated this policy or has not properly responded to and/or handled a report or concerns of discrimination or harassment, the employee should immediately contact one of the Municipality's designated Compliance Officers.

Each employee is assured pursuant to *Section 6* of this Policy, that retaliation against an individual who makes a complaint or report under this Policy is absolutely prohibited and constitutes, in and of itself, a violation of this Policy. Employees who engage in retaliation against any employee for making a good faith complaint of harassment or discrimination, for opposing in good faith any practices forbidden by applicable anti-discrimination laws or for filing a good faith complaint with, or otherwise participating in any manner in an internal workplace investigation or an external investigation, proceeding or hearing conducted by any federal or state agency charged with enforcing employment discrimination laws shall be subject to discipline, up to and including termination of employment. Any employee who believes he/she has been retaliated against in violation of this policy should report violations to one of the Compliance Officers listed in *Section 11* of this Policy in accordance with the Complaint Procedure set forth in this Policy.

Any questions regarding the scope or application of this Policy should be directed to one of the Compliance Officers listed in *Section 11* of this Policy.

**SECTION 4: POLICY ENFORCEMENT**

**A. Complaint Procedure for Employees**

**1. Notification Procedure**

Prompt reporting of complaints or concerns is encouraged so that timely and constructive action can be taken before relationships become strained. Reporting of all perceived incidents of prohibited discrimination and/or harassment is encouraged and essential, regardless of the offender's identity or position. An employee or other individual who feels aggrieved because of harassment or

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discrimination shall contact his or her Department Head or a Compliance Officer listed in *Section 11* of this Policy, or another administrator. Likewise, anyone who witnesses or becomes aware of instances of harassment or discrimination should report such behavior to his or her Department Head or a Compliance Officer listed in *Section 11* of this Policy, or another administrator.

**2. Making a Complaint**

Complaints are accepted orally and in writing. All employees are encouraged to use the Municipality's "Complaint of Alleged Discrimination" form as prepared from time to time by the Town Clerk. Additional complaint forms can be obtained from a Compliance Officer, with no questions asked. Because an accurate record of the allegedly objectionable behavior is necessary to resolve a complaint of prohibited discrimination or harassment, the Municipality encourages employees to place complaints in writing, even if originally made orally. If an employee has any questions or difficulty filling out the complaint form, she/he can obtain assistance from any one of the Compliance Officers or the Department Head to which he/she complained. All complaints should include: the name of the complaining party, the name of the alleged offender(s), date(s) of the incident(s), description of the incident(s), names of witnesses to the incident(s) and the signature of the complaining party.

Once the complaining party has completed and dated a complaint, with or without the assistance of one of the Municipality's Compliance Officers or a Department Head, the written complaint, or oral complaint as the case may be, should be promptly forwarded to one of the Municipality's Compliance Officers.

Complainants are expected to cooperate with the Municipality's investigation procedures by providing all relevant information relating to the complaint, as are other supervisory and non-supervisory employees having relevant or related knowledge or information.

**3. Supervisory Responsibilities**

All Department Heads who receive a complaint or information about suspected harassment or discrimination, observe what may be harassing behavior or for any reason to suspect that harassment is occurring, are required to report such suspected harassment or discrimination to one of the Municipality's Compliance Officers.

In addition to being subject to discipline if they engaged in harassing conduct themselves, Department Heads will be subject to discipline for failing to report suspected harassment or otherwise knowingly allowing harassment to continue.

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Department Heads will also be subjected to discipline for engaging in any retaliation.

**B. Time for Reporting a Complaint**

Prompt reporting of all complaints is strongly encouraged. All employees should be aware that appropriate resolution of complaints and effective remedial action oftentimes is possible only when complaints are promptly filed.

**C. Confidentiality and Privacy**

The Municipality shall keep complaints as confidential as is consistent with a thorough investigation, applicable collective bargaining agreements, and other laws and regulations regarding employees. To the extent complaints made under this Policy implicate criminal conduct, the Municipality may be required by law to contact and cooperate with the appropriate law enforcement authorities.

**D. Acknowledgement of Complaint**

Upon receipt of an oral or written complaint, the Compliance Officer should endeavor to contact promptly the complainant to confirm that the complaint has been received. If the complainant does not receive such confirmation promptly, she/he is encouraged to contact a Compliance Officer or his/her Department Head to whom the complaint was made to ensure its receipt. The purpose of this acknowledgment procedure is to ensure that all complaints are received by authorized individuals, carefully processed and promptly investigated.

**SECTION 5: INVESTIGATION PROCEDURES**

**A. Timing of Investigations**

The Municipality will promptly investigate all allegations of discrimination and harassment prohibited by this Policy. The Municipality will also attempt to complete investigations under this Policy promptly. The length of the investigation will depend upon the complexity and particular circumstances of each complaint.

**B. Method of Investigation**

Investigations will provide all parties due process, and reach reasonable conclusions based on the evidence collected. Investigations will be conducted by Municipality Compliance Officers, Municipality's legal counsel, and/or other impartial persons designated by the Municipality. The primary purposes of all investigations under this Policy will be to determine:

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- Did the conduct complained of occur?;
- Did the conduct complained of violate this Policy?; and
- What remedial measures or preventative steps, if any, shall be taken?

Investigations will necessarily vary from case to case and may typically include the following: fact-finding interviews, including of the accuser and the accused; document request, review and preservation, depositions, observations, or other reasonable methods. Municipality investigators should pursue reasonable steps to investigate each complaint in a thorough and comprehensive manner. Any notes, memoranda, or other records created by Municipality employees or agents conducting an investigation under this Policy shall be deemed confidential and privileged to the extent allowed by law.

Investigators will typically create a written documentation of the investigation (such as a letter, memo or email), which contains the following:

- A list of all documents reviewed, along with a detailed summary of relevant documents;
- A list of names of those interviewed, along with a detailed summary of their statements;
- A timeline of events;
- A summary of prior relevant incidents, reported or unreported; and
- The basis for the decision and final resolution of the complaint, together with any remedial actions.

**C. Notification to Complaining Party and the Accused Party**

The results of the investigation shall be communicated in writing to both the person filing the complaint and the accused party.

**D. Remedial Measures**

This Policy is intended to prevent all forms of unlawful discrimination and harassment and put an end to any prohibited discrimination that is found to have occurred. While disciplinary action may be appropriate in certain instances, punitive measures are not the exclusive means for responding to prohibited discrimination or harassment. During the pendency of any investigation being conducted pursuant to this Policy, remedial measures may be taken if appropriate and necessary.

Any individual who is found to have engaged in prohibited discrimination or harassment or conduct which may be prohibited by this Policy, may receive education, training, counseling, warnings, discipline, or other measures designed to prevent future violations of this Policy. Disciplinary action may include: warnings, suspension, or discharge from employment or such disciplinary action as may be permitted by applicable collective

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bargaining agreements and law. Any third party found to have engaged in discrimination or harassment of an employee may be barred from Municipality property.

**SECTION 6: PROHIBITION AGAINST RETALIATION AND ABUSE OF THE POLICY**

Unlawful retaliation can be any action that could discourage an employee from coming forward to make a complaint or support a discrimination or harassment claim. Adverse action need not be job-related or occur in the workplace to constitute retaliation (e.g., threats of physical violence outside of work hours).

Retaliation is strictly prohibited by this Policy and by law against anyone for making a good faith complaint of harassment or discrimination, for opposing in good faith any practices forbidden by applicable anti-discrimination laws or for filing a good faith complaint with, or otherwise participating in any manner in an internal workplace investigation or an external investigation, proceeding or hearing conducted by any federal or state agency charged with enforcing employment discrimination laws.

Even if the alleged harassment or discrimination does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if he/she had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment or discrimination.

Complaints of retaliation should be brought directly to a Compliance Officer. Such complaints will be promptly investigated. If retaliation is found, the person retaliating will be subject to corrective action up to and including termination from employment, or in the case of a non-employee, an appropriate remedy up to and including termination of the business relationship.

**SECTION 7: APPEALS**

Any complainant or accused party who wishes to appeal the conclusion which the Municipality reached in investigating a complaint filed under this Policy, may do so within ten (10) calendar days of receipt of the appealing party's notification of the investigation outcome. Untimely submissions shall not receive consideration. Such appeal must be made in writing to the Municipality's governing body. The appealing party shall be entitled to present evidence in writing as to why the conclusion was flawed, improper, or otherwise not supported by the evidence. The Municipality's consideration and review of any such appeal shall be conducted confidentially in executive session. Following a review of that evidence, as well as the information obtained in the investigation process and conclusions derived there from, the Municipality's governing body, or its designee, shall render a decision. That decision shall be final. The appealing party shall be notified of the decision in writing.

Nothing set forth in the Appeal Process above shall be construed to in any way confer upon either the complainant(s) or the person(s) accused of violating this Policy any right to appeal the

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Municipality's determination as to appropriate disciplinary and/or corrective action to be taken on meritorious complaints. In this regard, the Municipality at all times retains sole discretion to determine the appropriate disciplinary and/or corrective action to be taken with regard to a meritorious complaint.

**SECTION 8: RECORD KEEPING**

The Municipality shall maintain a written record of all complaints of discrimination and/or harassment for a period of at least three years. The Municipality shall also document the steps taken with regard to investigations, as well as conclusions reached and remedial action taken, if any. The Municipality shall also maintain these documents for, at a minimum, three years.

The Municipality's records regarding alleged discrimination and harassment shall be maintained separate and apart from personnel records in a secure and confidential location.

**SECTION 9: LEGAL PROTECTIONS AND EXTERNAL REMEDIES**

Discrimination and harassment based on protected characteristics, including sexual harassment, are not only prohibited by the Municipality but are also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at the Municipality, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

**State Human Rights Law (HRL)**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment and harassment based on other protected characteristics set forth in this Policy, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. Complaints of sexual harassment that accrue on or after August 12, 2020 may be filed with DHR at any time **within three years** of the alleged sexual harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged harassment, including sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

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Complaining internally to the Municipality does not extend your time to file with DHR or in court. The one year or three years is counted from the date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual or other illegal harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual or other illegal harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees (in sex discrimination and sexual harassment cases only) and civil fines.

### **Civil Rights Act of 1964**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the discrimination or harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination" with the EEOC.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### **Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists.

### **Contact the Local Police Department**

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If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

**SECTION 10: QUESTIONS**

Any questions by employees of the Municipality about this Policy or potential harassment or discrimination should be brought to the attention of one of the Municipality's Compliance Officers.

**SECTION 11: COMPLIANCE OFFICERS**

Town Supervisor  
Batavia Town Hall  
Batavia, New York 14020

Secretary to the Supervisor  
Town Hall  
Batavia, New York 14020

**SECTION 12: POLICY DISSEMINATION**

The Town of Batavia shall ensure that this Policy is adequately disseminated and made available to all employees of the Municipality. In addition, copies of this Policy and Complaint Form shall be maintained in the office of each Department Head and Compliance Officer as well as the Municipality's Code Book that is available at the office of the Town Clerk.

**SECTION IV: EFFECTIVE DATE AND SEVERABILITY**

This local law shall take effect upon the filing with the Secretary of State in accordance with the Municipal Home Rule Law and Town Law. If any part or section of this local law shall be held to be invalid, the remaining provisions thereof shall not fail but shall remain in full force and effect. All local laws, ordinances, rules or regulations, or parts or portions thereof that conflict or are contrary to any portion of this local law are hereby repealed.

**(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)**

**1. (Final adoption by local legislative body only.)**

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I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2020, of the ~~(County)~~ (City) (Town) (Village) of Batavia, New York was duly passed by the Town Board on \_\_\_\_\_, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the ~~(County)~~ (City) (Town) (Village) \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_, and was (approved) (not disapproved) (repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 2017, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the ~~(County)~~(City) (Town) (Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_, and was (approved) (not disapproved) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_. Such local law was submitted to the people by reason of a (mandatory) (permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special) (annual) election held on \_\_\_\_\_ 20\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_ of the ~~(County)~~(City) (Town) (Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_, and was (approved) (~~not disapproved~~) (~~repassed after disapproval~~) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20\_\_, in accordance with the applicable provisions of law.

**\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

**5. (City local law concerning Charter revision proposed by petition.)**

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I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special) (general) election held on \_\_\_\_\_ 20\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20\_\_\_\_ of the County of \_\_\_\_\_, State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

(SEAL)

\_\_\_\_\_  
Teresa M. Morasco  
Town Clerk, Town of Batavia

Date: \_\_\_\_\_, 2020

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**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF GENESEE

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Andrew W. Meier  
Town Attorney  
~~County~~  
~~City~~ of Batavia  
Town  
~~Village~~

Date: \_\_\_\_\_, 2020

**SUSPEND THE RULES**-Motion Deputy Supervisor Underhill, second Councilman Zambito to suspend the rules to introduce an additional resolution.

**Ayes:** Underhill, Zambito, White, Michalak, Post

**MOTION CARRIED by unanimous vote (5-0)**

**RESOLUTION NO. 122:**

Deputy Supervisor Underhill offered the following:

**RESOLUTION TO AUTHORIZE COMMUNITY SERVICE PROJECT**

**BATAVIA TOWN PARK**

**BOY SCOUTS TROOP 6006**

**WHEREAS**, Nicholas Grover of Boy Scout Troop 6006, submitted an application to complete a Community Service project at the Batavia Town Park on Galloway Road; and

**WHEREAS**, Mr. Grover is proposing to clear a hiking trail in an area identified in the Batavia Town Park Master Plan and repair a broken bench for his Eagle Scout Project; and

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**WHEREAS**, all the supplies and materials will be provided by Mr. Grover and/or Boy Scout Troop 6006; and

**WHEREAS**, the Town Engineer recommends approval of this proposed project (recommendation and proposal attached).

**NOW, THEREFORE, BE IT**

**RESOLVED**, the Batavia Town Board hereby approves Nicholas Grover's Boy Scout Troop 6006 proposal to clear a hiking trail and repair a broken bench for the Community Service Project at the Batavia Town Park on Galloway Road.

**Second by:** Councilman Zambito

**Ayes:** Underhill, Zambito, White, Michalak, Post

**APPROVED by unanimous vote (5-0)**

**Abstract No. 7-2020:** Motion Councilwoman Michalak, second Councilman Zambito to authorize the Supervisor to pay the following vouchers:

General	\$47,398.52
Highway	271,194.08
Sewer No. 1	8,937.45
Sewer No. 2	34,453.07
Water	559,261.03
Agri-Bus PS	82,274.62
Ellicott Trail	186.56
W Side Sewer Improve	4,404.00
Bigelow Creek	790.00
Fixed Based Metering	12,000.00
<b>Total</b>	<b>\$1,020,899.33</b>

Check numbers 23060 thru 23133 ACH: \$38,315.82

**Ayes:** Michalak, Zambito, White, Underhill, Post

**MOTION CARRIED by unanimous vote (5-0)**

**DEPARTMENT REPORTS:**

**Bruce Gerould, Building Inspector** reported that the building department has been very busy.

**Kathy Jasinski, Planning Board Chair** reported that the Planning Board had a meeting last Tuesday and took care of pending business. Currently, there are no applications or additional business for the

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Planning Board,

She is encouraging the Planning Board Members to complete training online.

**The Supervisor reported on the following departments:**

**Water/Wastewater-** They have been working 12 hours days and in some cases 7 days a week to attend to the record demand of water on the county and town water system. There have been a few times that there wasn't going to be enough water and pressure drop on Galloway Road. A booster pump has since been installed.

Continuing with the upgrade to the pump station project. Also, replacing and upgrading things under the COVID 19.

**Highway** -Has been actively engaged in finishing the Ellicott Trail Project. It's been an extraordinary effort on the gentlemen in the highway department as well as Tom Lichtenthal, Highway Superintendent/Assistant Engineer.

**Engineering-** Engineering staff is busy. Continuing to review plans and work with new projects that are proposed.

**Supervisor's Report:**

**County Revenue Sharing-** The Genesee County Ways and Means Committee adopted a proposal on the distribution of revenue sharing to all the communities. The proposal will go to the full legislature.

**VLT Revenue-** Town received the VLT revenue from NYS at the reduced amount.

**Daily Operations-** The Town has had no reduction of services. Continuing to conduct business at the drive-up window and remotely. The Courts are opened on a limited basis.

**Status Report** on expenditures and revenues is available for the Board's review.

**State of Emergency Declaration-** Will be extending the State of Emergency Declaration that expires July 16, 2020 at 5:59 P.M. to be in compliance with the FEMA and State and Federal requirement to maintain cash flow.

**Ellicott Trail** -Received a Certificate of Merit from Assemblyman Hawley in recognition of the grand opening of Ellicott Trail. The Supervisor complimented all that were involved in this project. It's a great example of what communities can do working together.

**COMMUNICATIONS:**

**The Town Clerk reported on the following:**

**June Town Clerk** monthly report collected a total of \$5,762.50, remitted \$5,282.36 to the Supervisor for the Local Share.

**NYS Ag & Market-** Received Dog Control Officer Inspection Report and Municipal Shelter inspection report from NYS AG & Market on the GC Animal Shelter.

**Liquor License-** Received Notice of Application from AVI Foodsystem Inc. applying for a liquor license.

**Electronic Records Management-** The Electronic Records Management Shared Services grant work continues. The Town of Byron records portion of the project has been completed and Town of

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Alexander records portion is near to completion. We have been working jointly on the Enterprise Content Management System (ECMS) procedures manual.

The Supervisor expressed that as he understands from the Building Inspector that the system is utilized with ease and savings of time. It's a great investment, shared with a couple of the communities with opportunities for other communities to become a part of.

**ADJOURNMENT:**

Motion Deputy Supervisor Underhill, second Councilman Zambito to adjourn the Regular Town Board Meeting at 7:33 P.M.

**Ayes:** Underhill, Zambito, White, Michalak, Post

**MOTION CARRIED by unanimous vote (5-0)**

Respectfully submitted,

Teresa M. Morasco  
Town Clerk