

ORDINANCE NO. 2022-1

**AN ORDINANCE ADOPTING A WHISTLEBLOWER PROTECTION POLICY
FOR THE VILLAGE OF PECATONICA, ILLINOIS**

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/1-2-1, provides that the corporate authorities of each municipality may pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper; and

WHEREAS, Public Act 101-0652, effective July 1, 2021, amends the Public Officers Prohibited Activities Act by adding a new section at 50 ILCS 105/4.1; and

WHEREAS, 50 ILCS 105/4.1 prohibits a unit of local government, or any agent or representative of a unit of local government, from retaliating against an employee or contractor who reports an improper governmental action as defined under 50 ILCS 105/4.1; cooperates with an investigation by an auditing official related to a report of improper governmental action; or, testifies in a proceeding or prosecution arising out of an improper governmental action.

NOW, THEREFORE, be it ordained, by the President and Board of Trustees of the Village of Pecatonica, Illinois, as follows:

Section 1. The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

Section 2. The Whistleblower Protection Policy, included as Exhibit A to this Ordinance, is hereby adopted, and shall be codified as Section 32.090, “Whistleblower Protection Policy”, under Title 32, “Administration”, Chapter 32, “Village Policies”.

Section 3. Repeal of Conflicting Provisions. All ordinances, resolutions, and policies or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.

Section 4. Severability. If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 5. The Clerk is directed by the corporate authorities to publish this Ordinance in pamphlet form. This Ordinance shall be in full force and effect after its passage and publication in accordance with 65 ILCS 5/1-2-4.

PASSED by the Board of Trustees this ___ 18th day of ___ January _____, 2022.

APPROVED by the Village President this 18th day of January 2022.

AYES: 6 _____
NAYS: 0 _____
ABSTENTIONS: _____
ABSENT: _____

APPROVED THIS __18th day of J a n u a r y ____, 2022_ .

WILLIAM SMULL, Village President

ATTEST:

Gwenn Shirley, Village Clerk

EXHIBIT A

VILLAGE OF PECATONICA

WHISTLEBLOWER PROTECTION POLICY

Exhibit A

Whistleblower Protection Policy

I. Purpose

The **Village of Pecatonica (Village)** provides whistleblower protections in two important areas: confidentiality and against retaliation. The confidentiality of a whistleblower will be maintained to the extent allowable by law, however, an identity may have to be disclosed to conduct a thorough investigation, to comply with the law and to provide accused individuals their legal rights of defense. A whistleblower may also waive confidentiality in writing. The **Village** will not retaliate against a whistleblower. This includes, but is not limited to, protection from retaliation in the form of an adverse employment action such as termination, compensation decreases, or poor work assignments and threats of physical harm. Any whistleblowers who believe they are being retaliated against must submit a written report to the Auditing Official within 60 days of gaining knowledge of the retaliatory action. The right of a whistleblower for protection against retaliation does not include immunity for any personal wrongdoing that is alleged and investigated.

II. Definitions

- a) **Whistleblower** means an employee, as defined in Section II of this policy, of the **Village** who:
1. Reports an improper governmental action as defined under 50 ILCS 105/4.1 (hereinafter Section 4.1);
 2. Cooperates with an investigation by an Auditing Official related to a report of improper governmental action; or,
 3. Testifies in a proceeding or prosecution arising out of an improper governmental action.
- b) **Auditing Official** means any elected, appointed or employed individual, by whatever name, in the **Township** whose duties may include: receiving, registering and investigating complaints and information concerning misconduct, inefficiency and waste within the **Township**; investigating the performance of officers, employees, functions and programs; and, promoting economy, efficiency, effectiveness and integrity in the administration of the programs and operations of the **Village**.
1. The Auditing Official shall be the Village Attorney, until replaced by the **Village**.
 2. If the **Village** not designate an Auditing Official, the Auditing Official defaults to the State's Attorney of Winnebago County.
- c) **Employee** means anyone employed by the **Village**, whether in a permanent or temporary position, including full-time, part-time and intermittent workers. Employee also includes members of appointed boards or commissions, whether paid or unpaid. Employee also includes persons who have been terminated because of any report or complaint submitted under Section 4.1.

- d) **Improper governmental action** means any action by an employee of the **Village**; an appointed member of a board, commission or committee; or, an elected official of the **Village** that is undertaken in violation of a federal or state law or local ordinance; is an abuse of authority; violates the public's trust or expectation of their conduct; is of substantial and specific danger to the public's health or safety; or, is a gross waste of public funds. The action need not be within the scope of the employee's, elected official's, board member's, commission member's or committee member's official duties to be subject to a claim of "improper governmental action."
1. Improper governmental action does not include the **Village** personnel actions, including, but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployment, performance evaluations, reductions in pay, dismissals, suspensions, demotions, reprimands or violations of collective bargaining agreements, except to the extent that the action amounts to retaliation.
- e) **Retaliate, retaliation or retaliatory action** means any adverse change in an employee's employment status or the terms and conditions of employment that results from an employee's protected activity under Section 4.1. Retaliatory action includes, but is not limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion; transfer or reassignment; suspension or dismissal; or, other disciplinary action made because of an employee's protected activity under Section 4.1.

III. Duties of an Auditing Official

Each Auditing Official shall establish written processes and procedures consistent with the terms of this policy and best practices for investigations for managing complaints filed under Section 4.1. Each Auditing Official shall investigate and dispose of reports of improper governmental action in accordance with these processes and procedures, and all other provisions of Section 4.1.

The Auditing Official must provide each employee a written summary or a complete copy of Section 4.1 upon commencement of employment and at least once each year of employment. At the same time, the employee shall also receive a copy of the written processes and procedures for reporting improper governmental actions from the applicable Auditing Official.

Auditing Officials may reinstate, reimburse for lost wages or expenses incurred, promote or provide some other form of restitution.

In instances where an Auditing Official determines that restitution will not suffice, the Auditing Official may make their investigation findings available for the purposes of aiding in that employee's, or the employee's attorney's, effort to make the employee whole.

Auditing Officials are responsible for reading the full context of Section 4.1 and complying with all requirements.

If no Auditing Official is designated, the State's Attorney of Winnebago County will be the default Auditing Official.

IV. Duties of an Employee

All reports of illegal and dishonest activities will be promptly submitted to the Auditing Official who is responsible for investigating and coordinating corrective action.

If an employee has knowledge of, or a concern of, improper governmental action, the employee shall make a written report of the activity to the Auditing Official. The employee must exercise sound judgment to avoid baseless allegations. An employee who intentionally files a false report of wrongdoing will be subject to discipline up to and including termination.

The whistleblower is not responsible for investigating the activity or for determining fault or corrective measures; a designated Auditing Official is charged with these responsibilities.

V. Defend Trade Secrets Act Compliance:

"Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing:

(1) Immunity—An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that—(A) is made—(i) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and, (ii) solely for the purpose of reporting or investigating a suspected violation of law; or, (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(2) Use of Trade Secret Information in Anti-Retaliation Lawsuit—An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual—(A) files any document containing the trade secret under seal; and, (B) does not disclose the trade secret, except pursuant to court order." (18 U.S.C. § 1833).

VI. Employee Acknowledgment

Employees are required to sign a written acknowledgement that they have received, read and understand this Policy, and to submit that acknowledgement to the Auditing Official or other designated official of the Village. The form that follows on page four of this policy will satisfy this requirement upon receipt.

Employee Acknowledgement of Whistleblower Protection Policy

I confirm that I have received, read and understand the "Whistleblower Protection Policy" for employees of the Village of Pecatonica.

I understand that as an employee, it is my responsibility to abide by this Policy. If I have questions about the Policy, I understand it is my responsibility to seek clarification from the proper supervisory department, the Auditing Official or the State's Attorney of Winnebago County.

Print Name: _____

Employee Signature: _____

Date: _____