

VILLAGE OF MULBERRY GROVE, ILLINOIS

ORDINANCE NO. 666

AN ORDINANCE ADOPTING A
WHISTLEBLOWER PROTECTION POLICY
FOR THE VILLAGE OF MULBERRY GROVE, ILLINOIS

ADOPTED BY THE
BOARD OF TRUSTEES
OF THE VILLAGE OF
MULBERRY GROVE, ILLINOIS
THIS 7 DAY OF MARCH, 2022

Published in pamphlet form by the authority of the Board of Trustees of the Village of
Mulberry Grove, Bond County, Illinois, this 7 day of March, 2022.

Prepared by:

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STATE OF ILLINOIS
COUNTY OF BOND
VILLAGE OF MULBERRY GROVE

ORDINANCE NO. 666

AN ORDINANCE ADOPTING A
WHISTLEBLOWER PROTECTION POLICY
FOR THE VILLAGE OF MULBERRY GROVE, 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 a 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 PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MULBERRY GROVE:

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.

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or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of the conflict, expressly repealed on the effective date of this Ordinance.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 and adopted by the Board of Trustees of the Village of Mulberry Grove, Bond County, State of Illinois, on this 7 day of March, 2022, upon yea and nay vote as follows:

	AYE	NAY	ABSENT
Jim Blankenship	_____	✓	_____
Mike Burlingame	✓	_____	_____
Charles Hall	_____	_____	✓
Dennis Henrichsmeyer	✓	_____	_____
Shawna Henrichsmeyer	✓	_____	_____
David Konsense	✓	_____	_____

APPROVED:

Cherie Henson
Cherie Henson, Village President

ATTEST:

Dianne Siebert
Dianne Siebert, Village Clerk

STATE OF ILLINOIS)
)
COUNTY OF BOND)

CERTIFICATION

I, Dianne Siebert, do hereby certify that I am the duly qualified and acting Village Clerk of the Village of Mulberry Grove, Bond County, Illinois, and that as such officer, I am the keeper of the records and files of the Village of Mulberry Grove, Illinois.

I do further certify that the foregoing document is a true, correct and complete copy of Ordinance 664 as passed by the Board of Trustees of the Village of Mulberry Grove, Illinois, at the Village Board Meeting held on March 7th, 2022, said Ordinance being entitled:

ORDINANCE NO.

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

In witness whereof, I have hereunto affixed my official signature and the seal of the Village of Mulberry Grove, Bond County, Illinois, this 7th day of March, 2022.

Dianne Siebert
Dianne Siebert, Village Clerk
Village of Mulberry Grove, Illinois

Exhibit A

Whistleblower Protection Policy

I. Purpose

The Village of Mulberry Grove, Illinois 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 Municipality 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 Municipality who:
 - 1. Reports an improper governmental action as defined under 50 ILCS 105/4.1 (hereinafter Section 4.1);
 - 2. Cooperated 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 Municipality whose duties may include; receiving, registering and investigating complaints and information concerning misconduct, inefficiency and waste within the Municipality; 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 Municipality.
 - 1. The Auditing Official shall be President of the Board of Trustees, until replaced by the Municipality.
- (c) **Employee** means anyone employed by the Municipality, 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 Municipality; an appointed member of a board, commission or committee; or, an elected official of the Municipality 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 Municipality's personnel actions, including, but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassessments, 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 Official 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 the 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.

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 (18 U.S.C 1836) Compliance:

Section 7(b): "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 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.

VI. Employee Acknowledgement

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 Municipality. The form that follows on page four of this policy will satisfy the requirement upon receipt.

WHISTLEBLOWER REPORTING AND ANTI-RETALIATION POLICY ESTABLISHED BY AUDITING OFFICIAL

It is the policy of the Village of Mulberry Grove to act in accordance with Illinois Public Act 101-652 generally, and specifically Section 4.1 of the Public Officers Prohibited Activities Act.

1. It is the policy of the Village of Mulberry Grove to prohibit any official from retaliating against any employee who:

- (a) Reports an improper governmental action,
- (b) Cooperates in the investigation related to a report of an improper governmental action, or
- (c) Testifies in a proceeding or prosecution of an improper governmental action.

2. An improper governmental action is defined as follows:

(a) "Improper governmental action" includes any action by an employee, a member of a board, commission, or committee, or an elected official of the Village of Mulberry Grove that is undertaken in violation of federal, State, or unit of local government law or rule; is an abuse of authority; violates the public's trust or expectation of his or her conduct; is of substantial and specific danger to the public's health or safety; or is a gross waste of public funds.

(b) "Improper governmental action" does not include Village of Mulberry Grove 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 the action amounts to retaliation. Retaliation, in this context means retaliatory action that results from an employee's protected activity of reporting improper governmental action, cooperating in the investigation, proceeding or prosecuting of a reported improper governmental action.

3. Retaliation or retaliatory action is defined as follows:

(a) Retaliation is an adverse change in an employee's employment status or the terms and conditions of employment that results from an employee's protected activity. 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 protected activity.

Copies of this Policy and Procedure will be provided to every Village of Mulberry Grove employee upon hire. Additionally, this same document will be furnished or made available to all employees on an annual basis.

DESIGNATION OF AUDITING OFFICIAL

The Village of Mulberry Grove designates the President of the Board of Trustees, or their designee to serve as the Auditing Official of the Village of Mulberry Grove, with the duties and responsibilities set forth in 50 ILCS105/4.1.

PROCEDURES FOR REPORTING & INVESTIGATING REPORTS OF IMPROPER GOVERNMENTAL ACTION

A. Reporting an “Improper Governmental Action” or Retaliation.

1. If a Village employee believes that they have witnessed an improper governmental action, as defined in the Policy above, the employee must submit a written report of the improper governmental action to the Auditing Official.
2. If a Village employee believes that they have been retaliated against for reporting improper governmental action, or cooperating in the investigation, or procedure involving an improper governmental action, the Village employee must report such alleged retaliation to the Auditing Official within sixty (60) days of the retaliatory action taking place.
3. The Auditing Official may transfer the complaint to another auditing official, including the State’s Attorney, if they determine that is appropriate.
4. If the Auditing Official is also the subject of the complaint, the Complainant may file the complaint with Human Resources.

B. Investigation of Complaint.

1. Identity of Complainant

- The Auditing Official will keep the identity of the Complainant confidential to the extent allowed by the law.
- The Complainant may waive confidentiality in writing on a form presented to the Auditing Official.

2. The Auditing Official shall investigate the complaint promptly and thoroughly and conclude whether or not the evidence gathered through such investigation warrants merit of a finding that either an improper governmental action, or retaliation for filing such a complaint or complying with such investigation occurred or did not occur.

3. The investigation by the Auditing Official may include:

- Interviews of the Complainant and witnesses;
- Interviews of governmental officials who may have knowledge about the complainant or may be the subject of the complaint;

- Inspection of documentation (in written, printed, or electronic format) relevant to the complaint;
- Take any other appropriate measures to ensure that the complainant has been thoroughly investigated.
- Make a determination whether the complaint has merit or whether the complaint does not have merit.

C. Determination and Remedial Action if Necessary.

1. If the Auditing Official determines that the complaint has no merit, they can dismiss the complaint.

2. If the Auditing Official determines that the complaint has merit, they may take remedial action on behalf of the Complainant, including reinstatement, reimbursement for lost wages or expenses, promotion, or other remedial action that the Auditing Official deems appropriate. The Auditing Official may also make their investigation findings available to the Complainant's attorney if the Auditing Official finds that restitution is not sufficient.

3. Any person who engages in prohibited retaliation under Section 4.1 of the Public Officers Prohibited Activities Act may also be subject to fines, appropriate employment action, civil, or criminal prosecution, or any combination of these actions.

4. Auditing Official shall prepare a report to document findings.

Whistleblower Policy
WHISTLEBLOWER REPORTING FORM

Your Name _____

Telephone _____ Email _____

Name of person you are reporting _____

Date of incident _____ Date you became aware of incident _____

It is the policy of the Village of Mulberry Grove, Illinois to prohibit any official from retaliating against employee who:

1. Reports an improper governmental action,
2. Cooperates in the investigation related to a report of an improper governmental action, or
3. Testifies in a proceeding or prosecution of an improper governmental action.

An improper governmental action is defined as follows:

1. “Improper governmental action” includes any action by an employee, a member of a board, commission, or committee, or an elected official of the Village of Mulberry Grove, Illinois that is undertaken in violation of federal, State, or unit of local government law or rule; is an abuse of authority; violates the public’s trust or expectation of his or her conduct; is of substantial and specific danger to the public’s health or safety; or is a gross waster of public funds.
2. “Improper governmental action” does not include Village of Mulberry Grove, Illinois 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 the action amounts to retaliation. Retaliation, in this context means retaliatory action that results from an employee’s protected activity of reporting improper governmental action, cooperating in the investigation, proceeding or prosecuting of a reported improper governmental action.

Description of incident and retaliation _____

Submit this report to Whistleblower Policy Auditing Official, c/o Village of Mulberry Grove, Illinois, 205 N. Wood St., Mulberry Grove, Illinois 62262.

(50 ILCS 105/4.1)

Sec. 4.1. Retaliation against a whistleblower.

(a) It is prohibited for a unit of local government, any agent or representative of a unit of local government, or another employee to retaliate against an employee or contractor who:

- (1) reports an improper governmental action under this Section;
- (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) To invoke the protections of this Section, an employee shall make a written report of improper governmental action to the appropriate auditing official. An employee who believes he or she has been retaliated against in violation of this Section must submit a written report to the auditing official within 60 days of gaining knowledge of the retaliatory action. If the auditing official is the individual doing the improper governmental action, then a report under this subsection may be submitted to any State's Attorney.

(c) Each auditing official shall establish written processes and procedures for managing complaints filed under this Section, and each auditing official shall investigate and dispose of reports of improper governmental action in accordance with these processes and procedures. If an auditing official concludes that an improper governmental action has taken place or concludes that the relevant unit of local government, department, agency, or supervisory officials have hindered the auditing official's investigation into the report, the auditing official shall notify in writing the chief executive of the unit of local government and any other individual or entity the auditing official deems necessary in the circumstances.

(d) An auditing official may transfer a report of improper governmental action to another auditing official for investigation if an auditing official deems it appropriate, including, but not limited to, the appropriate State's Attorney.

(e) To the extent allowed by law, the identity of an employee reporting information about an improper governmental action shall be kept confidential unless the employee waives confidentiality in writing. Auditing officials may take reasonable measures to protect employees who reasonably believe they may be subject to bodily harm for reporting improper government action.

(f) The following remedies are available to employees subjected to adverse actions for reporting improper government action:

- (1) Auditing officials may reinstate, reimburse for lost wages or expenses incurred, promote, or provide some other form of restitution.

(2) In instances where an auditing official determines that restitution will not suffice, the auditing official may make his or her investigation findings available for the purposes of aiding in that employee or the employee's attorney's effort to make the employee whole.

(g) A person who engages in prohibited retaliatory action under subsection (a) is subject to the following penalties: a fine of no less than \$500 and no more than \$5,000, suspension without pay, demotion, discharge, civil or criminal prosecution, or any combination of these penalties, as appropriate.

(h) Every employee shall receive a written summary or a complete copy of this Section 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.

(i) As used in this Section:

"Auditing official" means any elected, appointed, or hired individual, by whatever name, in a unit of local government whose duties are similar to, but not limited to, receiving, registering, and investigating complaints and information concerning misconduct, inefficiency, and waste within the unit of local government; 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 municipality. If a unit of local government does not have an "auditing official", the "auditing official" shall be a State's Attorney of the county in which the unit of local government is located within.

"Employee" means anyone employed by a unit of local government, 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 or not paid. "Employee" also includes persons who have been terminated because of any report or complaint submitted under this Section.

"Improper governmental action" means any action by a unit of local government employee, an appointed member of a board, commission, or committee, or an elected official of the unit of local government that is undertaken in violation of a federal, State, or unit of local government law or rule; is an abuse of authority; violates the public's trust or expectation of his or her 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". "Improper governmental action" does not include a unit of local government personnel actions, including, but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassessments, 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.

"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 this Section. "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 this Section.

(Source: P.A. 101-652, eff. 7-1-21.)

Following passage of Public Act 101-0652, the Safety, Accountability, Fairness and Equity Today Act, which was amended to provide whistleblower protection prohibiting retaliation by local government or representatives, the Board of Trustees passed a Village Ordinance adopting a Whistleblower Policy for the Village of Mulberry Grove, Illinois.

Whistleblower Protection Policy requires that all employees receive a copy of the policy and acknowledge receipt thereof. Village of Mulberry Grove, Illinois policy, per state statute, requires an auditing official be appointed and that the auditing official establish written procedures.

Attached are the following documents:

- Employee Acknowledgement of Whistleblower Protection Policy
- Village Whistleblower Protection Policy
- Auditing Official Whistleblower Reporting and Anti-Retaliation Policy
- Whistleblower Reporting Form
- 50 ILCS 105/4.1

Please review the documents and return the acknowledgement form to the President of the Board of Trustees no later than _____.