

**ORDINANCE No. 22 - 34**

**AN ORDINANCE ADOPTING AND ESTABLISHING SECTION 31.03,  
WHISTLEBLOWER AND ANTI-RETALIATION ACT AND POLICY, OF THE VILLAGE  
OF EAST DUNDEE MUNICIPAL CODE OFFICERS AND EMPLOYEES CHAPTER**

**WHEREAS** the Village of East Dundee is an Illinois municipal corporation operating and organized under the Illinois Municipal Code;

**WHEREAS** the Illinois General Assembly enacted Public Act 101-652 (codified at 50 ILCS 105/4.1) that requires units of local government to adopt a whistleblower and anti-retaliation policy to provide procedures for reporting improper governmental actions, as defined by that Act; and

**WHEREAS** the Corporate Authorities of the Village desire to adopt the Whistleblower Reporting and Anti-Retaliation Act set forth in Exhibit A attached to this Ordinance and to amend the Village's Personnel Manual accordingly.

**NOW THEREFORE, BE IT ORDAINED BY** the President and Board of Trustees of the Village of East Dundee, Counties of Kane and Cook, as follows:

**SECTION 1.** The recitals set forth above are hereby incorporated into and made a part of this Ordinance as though set forth in this Section 1.

**SECTION 2.** The Corporate Authorities of the Village of East Dundee, Kane and Cook Counties, Illinois hereby adopt the Whistleblower Reporting and Anti-Retaliation Policy and Procedures attached as Exhibit A and appoints the Village Administrator as the Auditing Official for the Village. The Village's Personnel Manual shall be amended to add this policy.

**SECTION 3.** This Ordinance shall take effect upon its passage and approval and publication in pamphlet form as provided by law.


**ADOPTED** this 18th day of July, 2022 pursuant to a roll call vote as follows:

AYES: Mahony, Kunze, Brittin, Saviano, Treiber and Sauder

NAYES: 0

ABSENT: 0

**APPROVED** by me this 18th day of July, 2022

  
\_\_\_\_\_  
Jeffery Lynam, Village President

**ATTEST:**

  
\_\_\_\_\_  
Katherine Diehl, Village Clerk

Published in pamphlet form this 18<sup>th</sup> day of July, 2022, under the authority of the Village President and Board of Trustees.

Recorder in the Village records on July 20, 2022.

**POLICY**

**Exhibit A**

**WHISTLEBLOWER REPORTING AND ANTI-RETALIATION POLICY AND PROCEDURES  
CHAPTER 31, SECTION 03**

It is the policy of the Village of East Dundee to act in accordance with Illinois Public Act 101-652 generally, and specifically Section 4.1 of the Public Officers Prohibited Activities Act, 50 ILCS 105/4.1.

It is the policy of the Village of East Dundee 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. An improper governmental action is defined as follows.

"Improper governmental action" includes any action by a Village of East Dundee employee, an appointed member of a board, commission, or committee, or an elected official of the Village of East Dundee that is undertaken in violation of federal, State, or Village of East Dundee ordinance, 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.

"Improper governmental action" does not include Village of East Dundee 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 actions 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 prosecution of a reported improper governmental action.

Copies of this Policy and Procedure, along with a copy of Section 4.1 of the Public Officers Prohibited Activities Act will be given to every employee upon hiring. Additionally, these same documents will be furnished or made available to all employees on an annual basis.

## Designation of Auditing Official

Village of East Dundee designates the Village Administrator to serve as the Auditing Official of the Village of East Dundee, with the duties and responsibilities set forth in 50 ILCS 105/4.1. Procedures for Reporting and Investigating Reports of Improper Governmental Action

### A. Reporting an "Improper Governmental Action" or Retaliation.

1. If an employee believes that he/she has 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 an employee believes that he/she has been retaliated against for reporting improper governmental action, or cooperating in the investigation, or procedure involving an improper governmental action, the employee must report such alleged retaliation to the Auditing Official in writing within sixty (60) days of the retaliatory action taking place.

3. The Auditing Official may transfer the complaint to another auditing official, including the Kane County State's Attorney, if he/she determines that it is appropriate.

4. If the Auditing Official is also the subject of the complaint, the Complainant may file the complaint with any State's Attorney.

### B. Investigation of Complaint.

#### 1. Identity of the Complainant

a. The Auditing Official will keep the identity of the Complainant confidential to the extent allowed by law.

b. The Complainant may waive confidentiality in writing.

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

#### 3. The investigation by the Auditing Official may include:

a. Interviews of the Complainant and witnesses;

b. Interviews of governmental officials who may have knowledge about the complaint or may be the subject of the complaint;

- c. Inspection of documentation (in written, printed, or electronic format) relevant to the complaint;
- d. Taking any other appropriate measures to ensure that the complaint has been thoroughly investigated.
- e. Making 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, he/she can dismiss the complaint.

2. If the Auditing Official determines that the complaint has merit, he/she 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 his/her 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 as prescribed in that section.

**STATUTE**

(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, 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.

"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.)