

CHAPTER 22

MANDATED POLICIES

ARTICLE I – IDENTITY THEFT PREVENTION PROGRAM

**22-1-1**      **PURPOSE.** The purpose of this Identity Theft Prevention Program (Program) is to protect customers of the Village’s utility services from identity theft. The Program is intended to establish reasonable policies and procedures to facilitate the detection, prevention and mitigation of identity theft in connection with the opening of new Covered Accounts and activity on existing Covered Accounts.

**22-1-2**      **SCOPE.** This Program applies to the creation, modification and access to Identifying Information of a customer of one or more of the utilities operated by the Village (electric, natural gas, water and waste water) by any and all personnel of the Village, including management personnel. This Program does not replace or repeal any previously existing policies or programs addressing some or all of the activities that are the subject of this Program, but rather it is intended to supplement any such existing policies and programs.

**22-1-3**      **DEFINITIONS.** When used in this Program, the following terms have the meanings set forth opposite their name, unless the context clearly requires that the term be given a different meaning:

(A)      **Covered Account.** The term “covered account” means an account that the Village offers or maintains, primarily for personal, family or household purposes, that involves or is designed to permit multiple payments of transactions. (16 CFR 681.2(b)(3)(i)). A utility account is a “covered account”. The term “covered account” also includes other accounts offered or maintained by the Village for which there is a reasonably foreseeable risk to customers the Village or its customers from identity theft. (16 CFR 681.2(b)(3)(ii)).

(B)      **Identity Theft.** The term “identity theft” means a fraud committed or attempted using the identifying information of another person without authority. (16 CFR 681.2(b)(8) and 16 CFR 603.2(a)).

(C)      **Identifying Information.** The term “identifying information” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, social security number, date of birth, official State or government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number. Additional examples of “identifying information” are set forth in 16 CFR 603.2(a).

(D)      **Red Flag.** The term “Red Flag” means a pattern, practice or specific activity that indicates the possible existence of identity theft.

Certain terms used but not otherwise defined herein shall have the meanings given to them in the FTC’s Identity Theft Rules (16 CFR Part 681) or the Fair Credit Reporting Act of 1970 (15 U.S.C. 1681 et seq.), as amended by the Fair and Accurate Credit Transactions Act of 2003 into law on December 4, 2003. (Public Law 108-159).

**22-1-4      ADMINISTRATION OF THE PROGRAM.** The initial adoption and approval of the Identity Theft Prevention Program shall be by Ordinance of the Village Board. Thereafter, changes to the Program of a day-to-day operational character and decisions relating to the interpretation and implementation of the Program may be made by the \_\_\_\_\_ (Program Administrator). Major changes or shifts of policy positions under the Program shall only be made by the Village Board.

Development, implementation, administration and oversight of the Program will be the responsibility of the Program Administrator. The Program Administrator may, but shall not be required to, appoint a committee to administer the Program. The Program Administrator shall be the head of any such committee. The Program Administrator will report at least annually to the Village Board regarding compliance with this Program.

Issues to be addressed in the annual Identity Theft Prevention Report include:

- (A) The effectiveness of the policies and procedures in addressing the risk of Identity Theft in connection with the opening of new Covered Accounts and activity with respect to existing Covered Accounts.
- (B) Service provider arrangements.
- (C) Significant incidents involving Identity Theft and management's response.
- (D) Recommendations for material changes to the Program, if needed for improvement.

**22-1-5      IDENTITY THEFT PREVENTION ELEMENTS.**

(A) **Identification of Relevant Red Flags.** The Village has considered the guidelines and the illustrative examples of possible Red Flags from the FTC's Identity Theft Rules and has reviewed the Village's past history with instances of identity theft, if any. The Village hereby determines that the following are the relevant Red Flags for purposes of this Program given the relative size of the Village and the limited nature and scope of the services that the Village provides to its citizens:

- (1) Alerts, notifications, or other warnings received from consumer reporting agencies or service providers.
  - (a) A fraud or active duty alert is included with a consumer report or an identity verification response from a credit reporting agency.
  - (b) A consumer reporting agency provides a notice of credit freeze in response to a request for a consumer report.
  - (c) A consumer reporting agency provides a notice of address discrepancy, as defined in 681.1(b) of the FTC's Identity Theft Rules.
  - (d) A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:
    - (i) A recent and significant increase in the volume of inquiries;
    - (ii) An unusual number of recently established credit relationships;
    - (iii) A material change in the use of credit, especially with respect to recently established credit relationships; or

- (iv) An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.
- (2) The presentation of suspicious documents.
  - (a) Documents provided for identification appear to have been altered or forged.
  - (b) The photograph or physical description on the identification is not consistent with the appearance of the applicant or customer presenting the identification.
  - (c) Other information on the identification is not consistent with information provided by the person opening a new covered account or customer presenting the identification.
  - (d) Other information on the identification is not consistent with readily accessible information that is on file with the Village, such as a signature card or a recent check.
  - (e) An application appears to have been altered or forged, or gives the appearance of having been destroyed and reassembled.
- (3) The presentation of suspicious personal identifying information, such as a suspicious address change.
  - (a) Personal identifying information provided is inconsistent when compared against external information sources used by the Village. For example:
    - (i) The address does not match any address in the consumer report or CRA ID Check response; or
    - (ii) The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.
  - (b) Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer. For example, there is a lack of correlation between the SSN range and date of birth.
  - (c) Personal identifying information provided is associated with known fraudulent activity as indicated by internal or third-party sources used by the Village. For example:
    - (i) The address on an application is the same as the address provided on a fraudulent application; or
    - (ii) The phone number on an application is the same as the number provided on a fraudulent application.
  - (d) Personal identifying information provided is of a type commonly associated with fraudulent activity as indicated by internal or third-party sources used by the Village. For example:
    - (i) The billing address on an application is fictitious, a mail drop, or a prison; or
    - (ii) The phone number is invalid, or is associated with a pager or answering service.

- (e) The SSN provided is the same as that submitted by other persons opening an account or other customers.
  - (f) The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of other persons opening accounts or other customers.
  - (g) The person opening the covered account or the customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.
  - (h) Personal identifying information provided is not consistent with personal identifying information that is on file with the Village.
  - (i) If the Village uses challenge questions, the person opening the covered account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.
- (4) The unusual use of, or other suspicious activity related to, a Covered Account.
- (a) Shortly following the notice of a change of address for a covered account, the Village receives a request for the addition of authorized users on the account.
  - (b) A new utility account is used in a manner commonly associated with known patterns of fraud patterns. For example: the customer fails to make the first payment or makes an initial payment but no subsequent payments.
  - (c) A covered account with a stable history shows irregularities.
  - (d) A covered account that has been inactive for a reasonably lengthy period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).
  - (e) Mail sent to the customer is returned repeatedly as undeliverable although usage of utility products or services continues in connection with the customer's covered account.
  - (f) The Village is notified that the customer is not receiving paper account statements.
  - (g) The Village is notified of unauthorized usage of utility products or services in connection with a customer's covered account.
- (5) Notice of Possible Identity Theft. The Village is notified by a customer, a victim of identity theft, a law enforcement authority, or any other person that it has opened a fraudulent account for a person engaged in identity theft.

(B) **Detection of Red Flags.** The employees of the Village that interact directly with customers on a day-to-day basis shall have the initial responsibility for monitoring the information and documentation provided by the customer and any third-party service provider in connection with the opening of new accounts and the modification of or access to

existing accounts and the detection of any Red Flags that might arise. Management shall see to it that all employees who might be called upon to assist a customer with the opening of a new account or with modifying or otherwise accessing an existing account are properly trained such that they have a working familiarity with the relevant Red Flags identified in this Program so as to be able to recognize any Red Flags that might surface in connection with the transaction. An Employee who is not sufficiently trained to recognize the Red Flags identified in this Program shall not open a new account for any customer, modify any existing account or otherwise provide any customer with access to information in an existing account without the direct supervision and specific approval of a management employee. Management employees shall be properly trained such that they can recognize the relevant Red Flags identified in this Program and exercise sound judgment in connection with the response to any unresolved Red Flags that may present themselves in connection with the opening of a new account or with modifying or accessing of an existing account. Management employees shall be responsible for making the final decision on any such unresolved Red Flags.

The Program Administrator shall establish from time to time a written policy setting forth the manner in which a prospective new customer may apply for service, the information and documentation to be provided by the prospective customer in connection with an application for a new utility service account, the steps to be taken by the employee assisting the customer with the application in verifying the customer's identity and the manner in which the information and documentation provided by the customer and any third-party service provider shall be maintained. Such policy shall be generally consistent with the spirit of the Customer Identification Program rules (31 CFR 103.121) implementing Section 326(a) of the USA PATRIOT Act but need not be as detailed. The Program Administrator shall establish from time to time a written policy setting forth the manner in which customers with existing accounts shall establish their identity before being allowed to make modifications to or otherwise gain access existing accounts.

(C) **Response to Detected Red Flags.** If the responsible employees of the Village as set forth in the previous section are unable, after making a good faith effort, to form a reasonable belief that they know the true identity of a customer attempting to open a new account or modify or otherwise access an existing account based on the information and documentation provided by the customer and any third-party service provider, the Village shall not open the new account or modify or otherwise provide access to the existing account as the case may be. Discrimination in respect to the opening of new accounts or the modification or access to existing accounts will not be tolerated by employees of the Village and shall be grounds for immediate dismissal.

The Program Administrator shall establish from time to time a written policy setting forth the steps to be taken in the event of an unresolved Red Flag situation. Consideration should be given to aggravating factors that may heighten the risk of Identity Theft, such as a data security incident that results in unauthorized access to a customer's account, or a notice that a customer has provided account information to a fraudulent individual or website. Appropriate responses to prevent or mitigate Identity Theft when a Red Flag is detected include:

- (1) Monitoring a Covered Account for evidence of Identity Theft.
- (2) Contacting the customer.
- (3) Changing any passwords, security codes, or other security devices that permit access to a Covered Account.
- (4) Reopening a Covered Account with a new account number.
- (5) Not opening a new Covered Account.
- (6) Closing an existing Covered Account.

- (7) Not attempting to collect on a Covered Account or not selling a Covered Account to a debt collector.
- (8) Notifying law enforcement.
- (9) Determining that no response is warranted under the particular circumstances.

**22-1-6      PROGRAM MANAGEMENT AND ACCOUNTABILITY.**

(A)      **Initial Risk Assessment – Covered Accounts.** Utility accounts for personal, family and household purposes are specifically included within the definition of “covered account” in the FTC’s Identity Theft Rules. Therefore, the Village determines that with respect to its residential utility accounts it offers and/or maintains covered accounts. The Village also performed an initial risk assessment to determine whether the utility offers or maintains any other accounts for which there are reasonably foreseeable risks to customers or the utility from identity theft. In making this determination the Village considered (1) the methods it uses to open its accounts, (2) the methods it uses to access its accounts, and (3) its previous experience with identity theft, and it conclude that it does not offer or maintain any such other covered accounts.

(B)      **Program Updates – Risk Assessment.** The Program, including relevant Red Flags, is to be updated as often as necessary but at least annually to reflect changes in risks to customers from Identity Theft. Factors to consider in the Program update include:

- (1) An assessment of the risk factors identified above.
- (2) Any identified Red Flag weaknesses in associated account systems or procedures.
- (3) Changes in methods of Identity Theft.
- (4) Changes in methods to detect, prevent, and mitigate Identity Theft.
- (5) Changes in business arrangements, including mergers, acquisitions, alliances, joint ventures, and service provider arrangements.

(C)      **Training and Oversight.** All staff and third-party service providers performing any activity in connection with one or more Covered Accounts are to be provided appropriate training and receive effective oversight to ensure that the activity is conducted in accordance with policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

**22-1-7      OTHER LEGAL REQUIREMENTS.** Awareness of the following related legal requirements should be maintained:

- (A)      31 U.S.C. 5318(g) – Reporting of Suspicious Activities.
- (B)      15 U.S.C. 1681c-1(h) – Identity Theft Prevention; Fraud Alerts and Active Duty Alerts – Limitations on Use of Information for Credit Extensions.
- (C)      15 U.S.C. 1681 s-2 – Responsibilities for Furnishers of Information to Consumer Reporting Agencies.
- (D)      15 U.S.C. 1681 m – Requirements on Use of Consumer Reports.

**(Ord. No. 08-15; 10-15-08)**

**ARTICLE II – USE OF SOCIAL SECURITY NUMBERS**

**22-2-1 GENERAL.** This Identity Protection Policy is adopted pursuant to the Illinois Identity Protection Act, **5 ILCS 179/1 et seq.**, to protect Social Security Numbers from unauthorized disclosure. All Village officers, employees, and agents shall comply with the Identity Protection Act and this Policy at all times.

**22-2-2 DEFINITIONS.** The following words shall have the following meanings when used in this Policy.

**"Act"** means the Illinois Identity Protection Act, **5 ILCS 179/1 et seq.**

**"Board"** means the Board of Trustees of the Village.

**"Village"** means the Village of New Berlin.

**"Person"** means any individual in the employ of the Village.

**"Policy"** means this Identity Protection Policy.

**"Publicly post" or "publicly display"** means to intentionally communicate or otherwise intentionally make available to the general public.

**"Redact"** means to alter or truncate data so that no more than **five (5)** sequential digits of a SSN are accessible as part of personal information.

**"SSN(s)"** means any Social Security Number provided to an individual by the Social Security Administration.

**"Statement of Purpose"** means the statement of the purpose or purposes for which the Village is collecting and using an individual's SSN that the Act requires the Village to provide when collecting a SSN or upon request by an individual.

**22-2-3 PROHIBITED ACTIVITIES.**

(A)

Neither the Village nor any Person may:

- (1) Publicly post or publicly display in any manner an individual's SSN.
- (2) Print an individual's SSN on any card required for the individual to access products or services provided by the person or entity.
- (3) Require an individual to transmit a SSN over the Internet unless the connection is secure or the SSN is encrypted.
- (4) Print an individual's SSN on any materials that are mailed to the individual, through the U.S. Postal Service, any private mail service, electronic mail, or any similar method of delivery, unless State or federal law requires the SSN to be on the document to be mailed. Notwithstanding the foregoing, SSNs may be included in applications and forms sent by mail, including, but not limited to:
  - (i) any material mailed in connection with the administration of the Unemployment Insurance Act; (ii) any material mailed in connection with any tax administered by the Department of Revenue; and (iii) documents sent as part of an application or enrollment process or to establish, amend, or terminate an account, contract, or policy or to confirm the accuracy of the SSN. A SSN that is permissibly mailed pursuant to this paragraph will not be printed, in whole or in part, on a postcard or other mailer

that does not require an envelope or be visible on an envelope without the envelope having been opened.

(B) Except as otherwise provided in paragraph (C) below or unless otherwise provided in the Act, neither the Village nor any Person may:

- (1) Collect, use, or disclose a SSN from an individual, unless: (i) required to do so under State or Federal law, rules, or regulations, or the collection, use, or disclosure of the SSN is otherwise necessary for the performance of the Village's duties and responsibilities; (ii) the need and purpose for the SSN is documented before collection of the SSN; and (iii) the SSN collected is relevant to the documented need and purpose.
- (2) Require an individual to use his or her SSN to access an Internet website.
- (3) Use the SSN for any purpose other than the purpose for which it was collected.

(C) The prohibitions in paragraph (B) above do not apply in the following circumstances:

- (1) The disclosure of SSNs to agents, employees, contractors, or subcontractors of a governmental entity to another governmental entity or its agents, employees, contractors, or subcontractors if disclosure is necessary in order for the entity to perform its duties and responsibilities; and, if disclosing to a contractor or subcontractor, prior to such disclosure, the governmental entity first receives from the contractor or subcontractor a copy of the contractor's or subcontractor's policy that sets forth how the requirements imposed under this Act on a governmental entity to protect an individual's SSN will be achieved.
- (2) The disclosure of SSNs pursuant to a court order, warrant, or subpoena.
- (3) The collection, use, or disclosure of SSNs in order to ensure the safety of: State and local government employees; persons committed to correctional facilities, local jails, and other law enforcement facilities or retention centers; wards of the State; and all persons working in or visiting a State or local government agency facility.
- (4) The collection, use, or disclosure of SSNs for internal verification or administrative purposes.
- (5) The disclosure of SSNs by a State agency to the Village for the collection of delinquent child support or of any State debt or to the Village to assist with an investigation or the prevention of fraud.
- (6) The collection or use of SSNs to investigate or prevent fraud, to conduct background checks, to collect a debt, to obtain a credit report from a consumer reporting agency under the federal Fair Credit Reporting Act, to undertake any permissible purpose that is enumerated under the federal Gramm Leach Bliley Act, or to locate a missing person, a lost relative, or a person who is due a benefit such as a pension benefit or an unclaimed property benefit.



**22-2-4 COORDINATION WITH THE FREEDOM OF INFORMATION ACT AND OTHER LAWS.** The Village shall comply with the provisions of the Illinois Freedom of Information Act, **5 ILCS 140/1 et seq.**, and any other State law with respect to allowing the public inspection and copying of information or documents containing all or any portion of an individual's SSN. However, the Village shall redact SSNs from the information or documents before allowing the public inspection or copying of the information or documents.

When collecting SSNs, the Village shall request each SSN in a manner that makes the SSN easy to redact if required to be released as part of a public records request.

**22-2-5 LIMITED EMPLOYEE ACCESS TO SOCIAL SECURITY NUMBERS.** Only employees who are required to use or handle information or documents that contain SSNs will have access. All employees who have access to SSNs shall first be trained to protect the confidentiality of SSNs. The training will include instructions on the proper handling of information that contains SSNs from the time of collection through destruction of the information.

**22-2-6 EMBEDDED SOCIAL SECURITY NUMBERS.** Neither the Village nor any Person shall encode or embed a SSN in or on a card or document, including but not limited to, using a bar code, chip, magnetic strip, RFID technology, or other technology, in place of removing the SSN as required by the Act and this Policy.

**22-2-7 APPLICABILITY.** If any provision of this Policy conflicts with any provision of the Act, the provisions of the Act shall prevail.

This Policy does not apply to:

- (A) the collection, use, or disclosure of a SSN as required by State or federal law, rule, or regulation; or
- (B) documents that are recorded with a county recorder or required to be open to the public under a State or federal law, rule, or regulation, applicable case law, Supreme Court Rule, or the Constitution of the State of Illinois; provided, however, that the Village shall redact the SSN from such document if such law, rule, or regulation permits.

**22-2-8 AVAILABILITY OF POLICY.** All Village employees shall be advised of the existence of this Policy. Village employees who are required to use or handle information or documents that contain SSNs have been provided a copy of this Policy, which each shall maintain at all times. A copy of the Policy is available to all other employees and any member of the public by requesting a copy from the Village Clerk.

**22-2-9 AMENDMENTS.** This Policy may be amended by the Village at any time. If the Policy is amended, the Village shall file a written copy of the Policy, as amended, with the Board and shall also advise all Village employees of the existence of the amended Policy. A copy of the amended Policy will be made available to Village employees and the public as set forth in the preceding section above.

**22-2-10**      **STATEMENT OF PURPOSE.** The Village shall provide an individual with the following Statement of whenever an individual is asked to provide the Village with his or her SSN or if an individual requests it.

**STATEMENT OF PURPOSE**

The Village of New Berlin complies with the Identity Protection Act, **5 ILCS 179/1 et seq.** which requires each local and State government agency to draft, approve, and implement an Identity Protection Policy that includes a statement of the purpose or purposes for which the Village is collecting and using an individual's social security number.

We will only use your social security number for the purpose for which it was collected.

We will not:

- Sell, lease, loan, trade, or rent your social security number to a third party for any purpose;
- Publicly post or publicly display your social security number;
- Print your social security number on any card required for you to access our services;
- Require you to transmit your social security number over the internet, unless the connection is secure and your social security number is encrypted; or
- Print your social security number on any materials that are mailed to you, unless State or Federal law requires that number to be on documents mailed to you, or unless we are confirming the accuracy of your social security number.

We collect and use social security numbers for one or more of the following reasons:

- Complaint mediation or investigation;
- Crime victim compensation;
- Vendor services, such as executing contracts and/or billing;
- Law enforcement investigation;
- Internal verification;
- To investigation and prevention of fraud, conducting background checks, debt collection, and obtaining credit report from consumer reporting agencies;
- Administrative services;
- Other reasons that would be explained to you at the time we ask for your social security number.

The President and Board of Trustees have adopted Identity Protection Act requirements as **Article II** of Chapter 22 of the Revised Code of Ordinances. You may request a copy of the Statement of Purpose any time you have been asked by the Village to provide your social security number or if you request a copy of the statement.

If you have questions or complaints about the Village's Identity Protection Policy, contact:

New Berlin Village Clerk  
301 E. Illinois  
New Berlin, IL 62670

**(Ord. No. 14-05; 04-16-14)**

**ARTICLE III - FREEDOM OF INFORMATION POLICY**

**22-3-1 DEFINITIONS.** For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**"Commercial Purpose":** The use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a "commercial purpose" when the principal purpose of the request is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

**"Copying":** The reproduction of any public record by means of any photographic, electronic, mechanical, or other process, device or means now known or hereafter developed and available to the Village.

**"Exempt Materials":** Materials which are exempt from disclosure pursuant to Sections 7 and 7.5 of the Freedom of Information Act. See Appendix A to this Chapter.

**"Freedom of Information Act" or "FOIA":** The Illinois Freedom of Information Act, **5 ILCS 140/1.1 et seq.**

**"Person":** Any individual, corporation, partnership, firm, organization, or association, acting individually or as a group.

**"Private Information":** Unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

**"Public Access Counselor":** The Public Access Counselor is an Illinois Attorney General Office appointee responsible for various duties described in Section 9.5 of the Illinois Freedom of Information Act and Section 7 of the Attorney General Act (**15 ILCS 205/7**). Contact information for the Public Access Counselor is as follows:

Public Access Bureau  
500 S. 2<sup>nd</sup> Street  
Springfield, Illinois 62706  
217-558-0486  
[publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

**"Public Record":** All records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of the Village.

"Public record" also includes the following:

- (A) All records relating to the obligation, receipt, and use of public funds.
- (B) Certified payroll records submitted to the Village under Section 5(a)(2) of the Prevailing Wage Act [**820 ILCS 130/5**] are public records; except that contractors' employees' addresses, telephone numbers, and social security numbers must be redacted by the Village prior to disclosure.

(C) Arrest reports (except for arrests of persons under the age of **twenty-one (21)** subject to the Juvenile Court Act of 1987). (See **Section 22-3-16** for further provisions with respect to arrest reports).

(D) Criminal history records (except for arrests of persons under the age of **twenty-one (21)** subject to the Juvenile Court Act of 1987), including but not limited to:

- (1) court records that are public;
- (2) records that are otherwise available under State or local law; and
- (3) records in which the requesting party is the individual identified, except as provided under Section 7(1)(d)(vi) [**5 ILCS 140/7**] of the Freedom of Information Act.

**"Village"**: The Village of New Berlin, Illinois.

**22-3-2 POLICY.** It is declared to be the public policy of the Village that all persons are entitled to full and complete information regarding the affairs of the Village. The official acts and policies of the public officials and public employees of the Village shall be consistent with the terms of this Article.

**22-3-3 INDIVIDUAL PRIVACY PROTECTED.** This Article is not intended to be used to violate individual privacy or to disrupt the duly undertaken work of the Village.

**22-3-4 PUBLIC RECORDS AVAILABLE.** The Village shall make available to any person for inspection or copying all public records, as provided in the Freedom of Information Act.

**22-3-5 FREEDOM OF INFORMATION ACT OFFICER.** The Village shall designate one or more officials or employees to act as its Freedom of Information Act officer ("FOIA Officer"). The Chief of Police is hereby designated as deputy FOIA Officer for FOIA requests involving the police department and the Village Attorney is designated as deputy FOIA Officer in the place and stead of the FOIA Officer if the FOIA Officer is unavailable. Except in instances when records are furnished immediately, the FOIA Officer, or designee, shall receive requests submitted to the Village under this Article and issue responses accordingly. All Village officers and employees who receive a FOIA request from any source whatsoever shall notify the FOIA Officer within **one (1) working day**. If the FOIA Officer is not available, the Village Attorney shall be notified.

Upon receiving a request for a public record, the FOIA Officer shall:

- (A) note the date the Village receives the written request;
- (B) compute the day on which the period for response will expire and make a notation of that date on the written request;
- (C) maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been complied with or denied; and
- (D) create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

The Village FOIA Officer and deputies shall, by **July 1, 2010**, successfully complete an electronic training curriculum to be developed by the Public Access Counselor and thereafter

successfully complete an annual training program. Thereafter, whenever a new FOIA Officer is designated by the Village, that person shall successfully complete the electronic training curriculum within **thirty (30) days** after assuming the position. Successful completion of the required training curriculum within the periods provided shall be a prerequisite to continue serving as a FOIA Officer.

**22-3-6      REQUESTS TO BE IN WRITING.** All requests for inspection or copying of public records shall be in writing and shall be addressed to the FOIA Officer. The requestor shall include the following information in any request for public records:

- (A)            The requestor's full name, mailing address and telephone number at which the requestor can be reached during normal business hours;
- (B)            A description of the records sought, as specific as possible;
- (C)            An indication of whether the records are requested for a commercial purpose and whether the requestor seeks a fee waiver; and
- (D)            A statement as to whether the request is for inspection, copying, or both.

The FOIA Officer shall make available a form for use by requestors; however, no request shall be denied for failure to use the form.

All requests for inspection and copying received by the Village shall immediately be forwarded to its FOIA Officer or designee.

**22-3-7      FEES.**

(A)            The Village hereby establishes and shall charge fees reasonably calculated to reimburse its actual cost for reproducing and certifying public records and for the use, by any person, of the equipment of the Village to copy records. Such fees exclude the costs of any search for and review of the record, and shall not exceed the actual cost of reproduction and certification, unless otherwise provided by state statute. The charge for copying shall be **Ten Cents (\$0.10)** per page for photocopies, **Five Cents (\$0.05)** per page for computer printouts, and **Two Dollars Fifty Cents (\$2.50)** per audio tape, CD, or DVD. No fees shall be charged for the first **fifty (50) pages** of black and white, letter or legal sized copies requested by a requestor. If the Village provides copies in color or in a size other than letter or legal, it shall charge the actual cost for reproducing the records. In calculating the actual cost for reproducing records or for the use of the equipment of the Village to reproduce the records, the Village shall not include the costs of any search for and review of the records or other personnel costs associated with reproducing the records. The cost for certifying a record shall be **One Dollar (\$1.00)**.

(B)            Documents shall be furnished without charge or at a reduced charge where the Village determines that waiver or reduction of the fee is in the public interest because furnishing information can be considered as primarily benefitting the general public. Waiver or reduction of the fee is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit. For purposes of this paragraph, "commercial benefit" shall not apply to requests made by news media when the principal purpose of the request is to access and disseminate information regarding the health, safety, and welfare or the legal rights of the general public. In setting the amount of the waiver or reduction, the Village may take into consideration the amount of materials requested and the cost of copying them.

**22-3-8**      **TIME LIMIT FOR COMPLIANCE WITH REQUEST.**

(A)      **Compliance with Request (Non-Commercial Purpose).** The Village shall either comply with or deny a request for public records within **five (5) business days** after its receipt. If the Village fails to respond to a request within the requisite periods in this Section but thereafter provides the requester with copies of the requested public records may not impose a fee for such copies. If the Village fails to respond to a request received may not treat the request as unduly burdensome under **Section 22-3-10**. Denials shall be in writing and in accordance with **Section 22-3-12**.

(B)      **Compliance with Request (Commercial Purpose).** The Village shall respond to a request for records to be used for a commercial purpose within **twenty-one (21) working days** after receipt. The response shall:

- (1) provide to the requestor an estimate of the time required by the Village to provide the records requested and an estimate of the fees to be charged, which the Village may require the person to pay in full before copying the requested documents,
- (2) deny the request pursuant to **one (1)** or more of the exemptions set out in this Article,
- (3) notify the requestor that the request is unduly burdensome and extend an opportunity to the requestor to attempt to reduce the request to manageable proportions, or
- (4) provide the records requested.

Unless the records are exempt from disclosure (see Appendix A to this Chapter), the Village shall comply with a request within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes. No person shall knowingly obtain a public record for a commercial purpose without disclosing that it is for a commercial purpose, if requested to do so by the Village.

**22-3-9**      **EXTENSION OF TIME LIMIT (NON-COMMERCIAL PURPOSE); NOTICE.**

(A)      The time limit prescribed in **Section 22-3-8(A)** may be extended in each case for not more than **five (5) additional business days** from the original due date for any of the following reasons:

- (1) The requested records are stored in whole or in part at other locations other than the office having charge of the requested records.
- (2) The request requires the collection of a substantial number of specified records.
- (3) The request is couched in categorical terms and requires an extensive search for the records responsive to it.
- (4) The requested records have not been located in the course of routine search and additional efforts are being made to locate them.
- (5) The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under the terms of the Illinois Freedom of Information Act or should be revealed only with appropriate deletions.

- (6) The request for records cannot be complied with by the Village within the time limits prescribed by the foregoing paragraph without unduly burdening or interfering with the operations of the Village.
- (7) There is a need for consultation, which shall be conducted with all practicable speed, with another public body or among **two (2)** or more components of a public body having a substantial interest in the determination or in the subject matter of the request.

(B) The person making a request and the Village may agree in writing to extend the time for compliance for a period to be determined by the parties. If the requestor and the Village agree to extend the period for compliance, a failure by the Village to comply with any previous deadlines shall not be treated as a denial of the request for the records.

(C) When additional time is required for any of the above reasons, the FOIA Officer shall notify the person making the request, by letter, within the **five (5) business days** after receipt of the request, of the reasons for the delay and the date by which the records will be made available or denial will be forthcoming. In no instance may the delay in processing last longer than **five (5) business days**. A failure to render a decision within the time permitted for extension shall be considered a denial of the request.

(D) If the Village fails to respond to a request within the time permitted for extension but thereafter provides the requestor with copies of the requested public records, the Village may not impose a fee for those copies. If the Village requests an extension and subsequently fails to respond to the request, it may not treat the request as unduly burdensome under **Section 22-3-10**.

**22-3-10      UNDULY BURDENDOME REQUESTS.**

(A) Requests calling for all records falling within a category shall be complied with unless compliance with the request would be unduly burdensome for the Village, there is no method of narrowing the request, and the burden on the Village strongly outweighs the public interest in the information. Before invoking this exemption, the Village shall extend to the person making the request an opportunity to confer with it in an attempt to reduce the request to manageable proportions. If the Village responds to a categorical request by stating that compliance would unduly burden its operation and the conditions described above are met, it shall do so in a writing signed by the FOIA Officer specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operation of the Village. Such a response shall be treated as a denial of the request for information.

(B) Repeated requests for the same public records by the same person shall be deemed unduly burdensome. Repeated requests from the same person for the same records that are unchanged or identical to records previously provided or properly denied under this Article shall be deemed unduly burdensome.

**22-3-11      CERTAIN INFORMATION EXEMPT FROM INSPECTION AND COPYING.** Information exempted by Sections 7 and 7.5 of the Freedom of Information Act shall be exempt from inspection and copying (see Appendix A to this Article). If a record contains both exempt and nonexempt information, the Village may elect to redact the information that is exempt and make the remainder of the record available for inspection and copying.

Moreover, information described in items (iii) through (vi) of subsection (C) of the definition for "Public Record" may be withheld if it is determined that disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility.

**22-3-12      NOTICE OF DENIAL OF REQUEST; REQUEST FOR REVIEW.**

(A)            The FOIA Officer, when denying a request for public record, shall notify the requestor, by letter, of the decision to deny the information, the reason for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial.

(B)            Each notice of denial by the FOIA Officer shall inform the person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor.

(C)            Each notice of denial shall also inform such person of his or her right to judicial review in accordance with Section 11 of the Freedom of Information Act.

(D)            When a request is denied on the grounds that the records are exempt under the provisions of this Article, the notice of denial shall specify the exemption claimed to authorize the denial and briefly explain how the exemption applies to the specified records withheld.

(E)            Copies of all notices of denials shall be retained by the Village in a single central office file that is open to the public and indexed according to the type of exemption asserted and, to the extent feasible, according to the types of records requested.

(F)            Any person making a request for public records shall be deemed to have exhausted his or her administrative remedies with respect to that request if the Village fails to act within the time periods provided in **Sections 22-3-8** and **22-3-9**.

**22-3-13      PUBLIC ACCESS COUNSELOR; OPINIONS.**

(A)            A person whose request to inspect or copy a public record is denied by the Village may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than **sixty (60) days** after the date of the final denial. The request for review must be in writing, signed by the requestor, and include (i) a copy of the request for access to records and (ii) any responses from the public body.

(B)            If the Village receives a request for records, and asserts that the records are exempt under General Exemptions (1)(C) or (1)(F) (see Appendix A of this Article), it shall, within the time periods provided for responding to a request, provide written notice to the requester and the Public Access Counselor of its intent to deny the request in whole or in part. The notice shall include:

- (1)          a copy of the request for access to records;
- (2)          the proposed response from the public body; and
- (3)          a detailed summary of the public body's basis for asserting the exemption.

(C)            In accordance with FOIA, upon receipt of a notice of intent to deny from the Village, the Public Access Counselor determines whether further inquiry is warranted. Within **five (5) working days** after receipt of the notice of intent to deny, the Public Access Counselor notifies the Village and the requester whether further inquiry is warranted. If the



Public Access Counselor determines that further inquiry is warranted, the procedures set out in this Section regarding the review of denials, including the production of documents, shall also be applicable to the inquiry and resolution of a notice of intent to deny from the Village. Times for response or compliance by the Village under **Sections 22-3-8** and **22-3-9** shall be tolled until the Public Access Counselor concludes his or her inquiry.

(D) In accordance with FOIA, upon receipt of a request for review, the Public Access Counselor determines whether further action is warranted. If the Public Access Counselor determines that the alleged violation is unfounded, he or she so advises the requester and the Village and no further action shall be undertaken. In all other cases, the Public Access Counselor forwards a copy of the request for review to the Village within **seven (7) working days** after receipt and specifies the records or other documents that the Village shall furnish to facilitate the review. Within **seven (7) working days** after receipt of the request for review, the FOIA Officer shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor. If the FOIA Officer fails to furnish specified records pursuant to this Section, or if otherwise necessary, the Attorney General may issue a subpoena to any person or public body having knowledge of or records pertaining to a request for review of a denial of access to records under the Freedom of Information Act. By statute, to the extent that records or documents produced by the Village contain information that is claimed to be exempt from disclosure under Appendix A of this Article, the Public Access Counselor does not further disclose that information.

(E) In accordance with FOIA, within **seven (7) working days** after it receives a copy of a request for review and request for production of records from the Public Access Counselor, the FOIA Officer may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. The Public Access Counselor forwards a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy. The requestor may, but is not required to, respond in writing to the answer within **seven (7) working days** and shall provide a copy of the response to the Village. In addition to the request for review, and the answer and the response thereto, if any, a requester or the Village may furnish affidavits or records concerning any matter germane to the review.

(F) In accordance with FOIA, unless the Public Access Counselor extends the time by no more than **twenty-one (21) business days** by sending written notice to the requester and the Village that includes a statement of the reasons for the extension in the notice, or decides to address the matter without the issuance of a binding opinion, the Attorney General examines the issues and the records, makes findings of fact and conclusions of law, and issues to the requester and the Village an opinion in response to the request for review within **sixty (60) days** after its receipt. The opinion is binding upon both the requester and the Village, subject to administrative review under Section 11.5 of the Freedom of Information Act **[5 ILCS 140/11.5]**.

Upon receipt of a binding opinion concluding that a violation of FOIA has occurred, the FOIA Officer shall either take necessary action immediately to comply with the directive of the opinion or shall initiate administrative review under Section 11.5 of FOIA. If the opinion concludes that no violation of FOIA has occurred, the requester may initiate administrative review under Section 11.5 of FOIA. If the Village discloses records in accordance with an opinion of the Attorney General, it is immune from all liabilities by reason thereof and shall not be liable for penalties under FOIA.

(G) In accordance with FOIA, the Attorney General may also issue advisory opinions to the Village regarding compliance with FOIA. A review may be initiated upon receipt of a written request from the Village President or the Village Attorney, which shall contain

sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the Village in order to assist in the review. If the Village relies in good faith on an advisory opinion of the Attorney General in responding to a request, it is not liable for penalties under FOIA, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.

**22-3-14 GRANTING OF REQUEST; PROCEDURE FOR INSPECTION.** When a freedom of information request is granted, the documents will be made available for inspection at the Village Hall during regular business hours. Copies shall be made upon request as set forth in **Section 22-3-7.**

**22-3-15 WRITTEN REQUEST NOT REQUIRED FOR CERTAIN DOCUMENTS.** The following documents shall be made available for inspection and copying without a written request; however, the requestor shall contact the FOIA Officer or designee in advance to set a mutually convenient time. These documents, if copied, shall be subject to the copying fee set forth in **Section 22-3-7:**

- (A) Ordinances and written resolutions.
- (B) The journal of the Village Board of Trustees, not including executive session minutes.
- (C) Any personnel code, building code, other technical code, or any other regulation of the Village adopted by the Village, whether by ordinance, resolution or otherwise.

**22-3-16 SPECIAL PROVISIONS PERTAINING TO CERTAIN LAW ENFORCEMENT RECORDS.** The following chronologically maintained arrest and criminal history information maintained by the Village Police Department shall be furnished as soon as practical, but in no event later than **seventy-two (72) hours** after the arrest, notwithstanding the time limits otherwise provided for in **Section 22-3-8** of this Article:

- (A) information that identifies the individual, including the name, age, address, and photograph, when and if available;
- (B) information detailing any charges relating to the arrest;
- (C) the time and location of the arrest;
- (D) the name of the investigating or arresting law enforcement agency;
- (E) if the individual is incarcerated, the amount of any bail or bond; and
- (F) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the Village Police Department's custody.

**22-3-17 DISSEMINATION OF INFORMATION ABOUT PUBLIC BODIES.** The Village shall prominently display at the Village Hall, make available for inspection and copying without charge, and shall send through the mail if requested, each of the following:

- (A) A brief description of itself, which will include, but not be limited to a short summary of its purpose, a block diagram giving its functional subdivisions, the total amount of its operating budget, the number and location of all of its separate offices, the approximate number of full and part-time employees, and the identification and membership of any board, commission, committee, or Board of Trustees which operates in an advisory capacity

relative to the operation of the Village, or which exercises control over its policies or procedures, or to which the Village is required to report and be answerable for its operations;

(B) A brief description of the methods whereby the public may request information and public records, a directory designating for the FOIA Officer or officers, the address where requests for public records should be directed, and any fees allowable under **Section 22-3-7**; and

(C) The Village shall also post this information on its website, if one is maintained.

**22-3-18** **LIST OF CATEGORIES OF RECORDS.** As to public records prepared or received after the effective date of this Article, the FOIA Officer shall maintain and make available for inspection and copying a reasonably current list of all types or categories of records under its control. The list shall be reasonably detailed in order to aid persons in obtaining access to public records pursuant to this Article. The FOIA Officer shall furnish upon request a description of the manner in which public records stored by means of electronic data processing may be obtained in a form comprehensible to persons lacking knowledge of computer language or printout format.

**(Ord. No. 10-01; 01-20-10)**

**ARTICLE IV – POLICY PROHIBITING SEXUAL HARASSMENT**

**22-4-1 PROHIBITION ON SEXUAL HARASSMENT.** It is unlawful to harass a person because of that person’s sex. The courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991. All persons have a right to work in an environment free from sexual harassment. Sexual harassment is unacceptable misconduct which affects individuals of all genders and sexual orientations. It is a policy of this Village to prohibit harassment of any person by any municipal official, municipal agent, municipal employee or municipal agency or office on the basis of sex or gender. All municipal officials, municipal agents, municipal employees and municipal agencies or offices are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.

**22-4-2 DEFINITION OF SEXUAL HARASSMENT.** This policy adopts the definition of sexual harassment as stated in the Illinois Human Rights Act, which currently defines sexual harassment as:

(A) Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when:

- (1) Submission to such conduct is made a term or condition of an individual’s employment, either explicitly or implicitly; or
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (3) Such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.

(B) Conduct which may constitute sexual harassment includes, but is not limited to:

- (1) **Verbal Harassment.** Sexual innuendoes, suggestive comments, insults, humor, jokes about: sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements of a sexual nature about other employees, even outside of their presence.
- (2) **Non-verbal Harassment.** Suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, “catcalls”, “smacking” or “kissing” noises.
- (3) **Visual.** Posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
- (4) **Physical Harassment.** Touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
- (5) **Textual/Electronic Harassment.** “Sexting” (electronically sending messages with sexual content, including pictures or video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/ video messages, intranet/on-line postings, blogs, instant messages and posts on social network websites like Facebook and Twitter).

(C) The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. The courts will assess sexual harassment by a standard of what would offend a "reasonable person."

**22-4-3 PROCEDURE FOR REPORTING AN ALLEGATION OF SEXUAL HARASSMENT.**

(A) An employee who either observes sexual harassment or believes herself/himself to be the object of sexual harassment should deal with the incident(s) as directly and firmly as possible by clearly communicating his/her position to the offending employee, and his/her immediate supervisor. It is not necessary for sexual harassment to be directed at the person making the report.

(B) Any employee may report conduct which is believed to be sexual harassment, including the following:

- (1) **Electronic/Direct Communication.** If there is sexual harassment behavior in the workplace, the harassed employee should directly and clearly express his/her objection that the conduct is unwelcome and request that the offending behavior stop. The initial message may be verbal. If subsequent messages are needed, they should be put in writing in a note or a memo.
- (2) **Contact with Supervisory Personnel.** At the same time direct communication is undertaken, or in the event the employee feels threatened or intimidated by the situation, the problem must be promptly reported to the immediate supervisor of the person making the report, a department head, a director of human resources, an ethics officer, the village manager or administrator, or the chief executive officer of the Municipality. The employee experiencing what he/she believes to be sexual harassment must not assume that the employer is aware of the conduct. If there are no witnesses and the victim fails to notify a supervisor or other responsible officer, the Municipality will not be presumed to have knowledge of the harassment.
- (3) **Resolution Outside Municipality.** The purpose of this policy is to establish prompt, thorough and effective procedures for responding to every report and incident so that problems can be identified and remedied by the Municipality. However, all municipal employees have the right to contact the Illinois Department of Human Rights (IDHR) or the Equal Employment Opportunity Commission (EEOC) for information regarding filing a formal complaint with those entities. An IDHR complaint must be filed within **three hundred (300) days** of the alleged incident(s) unless it is a continuing offense. A complaint with the EEOC must also be filed within **three hundred (300) days**.
- (4) **Allegations of Sexual Harassment Made Against an Elected Official of the Governmental Unit by Another Elected Official of a Governmental Unit.** In addition to the methods of reporting included above, an elected official may request an independent review of a complaint of sexual harassment by

another elected official. The request shall be made to the human resources director, the village manager or administrator or the chief elected official of the Village. The official receiving the request shall take immediate action in keeping with the procurement process of the Village to retain a qualified individual or entity for the independent review of the allegations of sexual harassment in violation of this policy. The outcome of the independent review shall be reported to the corporate authorities.

(C) Documentation of any incident may be submitted with any report (what was said or done, the date, the time and the location), including, but not limited to, written records such as letters, notes, memos and telephone messages.

(D) All allegations, including anonymous reports, will be accepted and investigated regardless of how the matter comes to the attention of the Municipality. However, because of the serious implications of sexual harassment charges and the difficulties associated with their investigation and the questions of credibility involved, the claimant's willing cooperation is a vital component of an effective inquiry and an appropriate outcome.

**22-4-4 PROHIBITION ON RETALIATION FOR REPORTING SEXUAL HARASSMENT ALLEGATIONS.**

(A) No municipal official, municipal agency, municipal employee or municipal office shall take any retaliatory action against any municipal employee or official due to a municipal employee's or official's:

- (1) Disclosure or threatened disclosure of any violation of this policy,
- (2) Providing information related to an investigation or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy, or
- (3) Assistance with or participation in a proceeding to enforce the provisions of this policy.

(B) For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any municipal employee that is taken in retaliation for a municipal employee's or official's involvement in protected activity pursuant to this policy.

(C) No individual making a report will be retaliated against, even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation.

(D) Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (**5 ILCS 430/15-10**) provides whistleblower protection from retaliatory action, and this policy prohibits retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:

- (1) Discloses or threatens to disclose to a supervisor or to a public body an activity, policy or practice of any officer, member, agency or other employee that the employee reasonably believes is in violation of a law, rule, or regulation; or
- (2) Provides information to or testifies before any public body conducting an investigation, hearing or inquiry into any violation of a law, rule or regulation by any officer, member, agency or other employee; or

(3) Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act or this policy.

(E) Pursuant to the Whistleblower Act (**740 ILCS 174/15(a)**), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, before a legislative commission or committee or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule or regulation. In addition, an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule or regulation. (**740 ILCS 174/15(b)**).

(F) According to the Illinois Human Rights Act (**775 ILCS 5/6-101**), it is a civil rights violation for a person, or for two or more people to conspire to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be sexual harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing under the Illinois Human Rights Act.

(G) An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge – either due within **three hundred (300) days** of the alleged retaliation.

**22-4-5 CONSEQUENCES OF A VIOLATION OF THE PROHIBITION ON SEXUAL HARASSMENT.** In addition to any and all other discipline that may be applicable pursuant to municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements, any person who violates this policy or the Prohibition on Sexual Harassment contained in **5 ILCS 430/5-65**, may be subject to a fine of up to **Five Thousand Dollars (\$5,000.00)** per offense, applicable disciplinary actions or discharge by the Municipality and any applicable fines and penalties established pursuant to local ordinance, State law or Federal law. Each violation may constitute a separate offense. Any discipline imposed by the Municipality shall be separate and distinct from any penalty imposed by an ethics commission and any fines or penalties imposed by a court of law or a State or Federal agency.

**22-4-6 CONSEQUENCES FOR KNOWINGLY MAKING A FALSE REPORT.** A false report is a report of sexual harassment made by an accuser to accomplish an outcome other than stopping sexual harassment or stopping retaliation for reporting sexual harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report is a severe offense that can itself result in disciplinary action. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to disciplinary action or discharge pursuant to applicable municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements.

In addition, any person who intentionally makes a false report alleging a violation of any provision of the State Officials and Employees Ethics Act to an ethics commission, an inspector general, the Illinois State Police, a State's Attorney, the Attorney General or any other law enforcement official is guilty of a Class A misdemeanor. An ethics commission may levy an administrative fine of up to **Five Thousand Dollars (\$5,000.00)** against any person who intentionally makes a false, frivolous or bad faith allegation.

**(Ord. No. 20-10; 05-20-20)**

**ARTICLE V – ETHICS CODE**

**22-5-1 STATE OFFICIALS AND EMPLOYEES ETHICS ACT.**

(A) The regulations of Sections 5-15 (**5 ILCS 430/5-15**) and Article 10 (**5 ILCS 430/10-10 through 10-40**) of the State Officials and Employees Ethics Act, **5 ILCS 430/1-1 et seq.**, (hereinafter referred to as the "Act" in this Section) are hereby adopted by reference and made applicable to the officers and employees of the Village to the extent required by **5 ILCS 430/70-5**.

(B) The solicitation or acceptance of gifts prohibited to be solicited or accepted under the Act, by any officer or any employee of the Village, is hereby prohibited.

(C) The offering or making of gifts prohibited to be offered or made to an officer or employee of the Village, is hereby prohibited.

(D) The participation in political activities prohibited under the Act, by any officer or employee of the Village, is hereby prohibited.

(E) For the purposes of this Section, the terms "officer" and "employee" shall be defined as set forth in **5 ILCS 430/70-5(c)**.

(F) The penalties for violations of this Section shall be the same as those penalties set forth in **5 ILCS 430/50-5** for similar violations of the Act.

(G) This Section does not repeal or otherwise amend or modify any existing ordinances or policies which regulate the conduct of Village officers and employees. To the extent that any such existing ordinances or policies are less restrictive than this Section, however, the provisions of this Section shall prevail in accordance with the provisions of **5 ILCS 430/70-5(a)**.

(H) Any amendment to the Act that becomes effective after the effective date of this Section shall be incorporated into this Section by reference and shall be applicable to the solicitation, acceptance, offering and making of gifts and to prohibited political activities. However, any amendment that makes its provisions optional for adoption by municipalities shall not be incorporated into this Section by reference without formal action by the corporate authorities of the Village.

(I) If the Illinois Supreme Court declares the Act unconstitutional in its entirety, then this Section shall be repealed as of the date that the Illinois Supreme Court's decision becomes final and not subject to any further appeals or rehearings. This Section shall be deemed repealed without further action by the Corporate Authorities of the Village if the Act is found unconstitutional by the Illinois Supreme Court.

(J) If the Illinois Supreme Court declares part of the Act unconstitutional but upholds the constitutionality of the remainder of the Act, or does not address the remainder of the Act, then the remainder of the Act as adopted by this Section shall remain in full force and effect; however, that part of this Section relating to the part of the Act found unconstitutional shall be deemed repealed without further action by the Corporate Authorities of the Village.



**ARTICLE VI – TRAVEL AND EXPENSE REIMBURSEMENT POLICY**

**DIVISION I - GENERALLY**

**22-6-1**      **PURPOSE.** The Village will reimburse employee and officer travel, meal, and lodging expenses incurred in connection with pre-approved travel, meal, and lodging expenses incurred on behalf of the Village.

**22-6-2**      **DEFINITIONS.**

(A)      **"Entertainment"** includes, but is not limited to, shows, amusements, theaters, circuses, sporting events, or any other place of public or private entertainment or amusement, unless ancillary to the purpose of the program or event.

(B)      **"Travel"** means any expenditure directly incident to official travel by employees and officers of the Village or by wards or charges of the Village involving reimbursement to travelers or direct payment to private agencies providing transportation or related services.

**22-6-3**      **AUTHORIZED TYPES OF OFFICIAL BUSINESS.** Travel, meal and lodging expenses shall be reimbursed for employees and officers of Village only for purposes of official business conducted on behalf of the Village, which includes but is not limited to off-site or out-of-town meetings related to official business and seminars, conferences and other educational events related to the employee's or officer's official duties. Employee travel will be approved in advance by the employee's supervisor. Travel of the Village President and Trustees will be approved in advance by the Village Board. Travel of other Village officers will be approved in advance by the Village President.

**22-6-4**      **REIMBURSABLE EXPENSES AND LIMITS.**

(A)      **CMS Rates for Meals, Lodging and Mileage.** Reimbursable expenses for meals and lodging and for mileage will be limited to those amounts established by the State of Illinois Department of Central Management Services from time to time and published on the internet (currently, [www.illinois.gov/cms/Employees/travel/Pages/TravelReimbursement.aspx](http://www.illinois.gov/cms/Employees/travel/Pages/TravelReimbursement.aspx)).

The expense limits in force as of the date of this Article are attached hereto; however, when the Department of CMS publishes changes in the limits, the Village's limits shall be deemed to be changed in like amount.

(B)      **Airfare.** Since official business of the Village does not normally involve air transportation, all air transportation expenses for any employee or officer of the Village must be approved by the Village Board in advance. Travelers are expected to obtain the lowest available airfare that reasonably meets business travel needs. Only coach or economy tickets will be paid or reimbursed. The traveler will pay for the difference between higher priced tickets and coach or economy tickets with his or her personal funds.

(C)      **Automobiles.** If a Village-owned vehicle is available, it will be used. There will be no reimbursement of the cost of rental cars. For personal vehicles, mileage reimbursement will be based on mileage from the Village Hall to the off-site location of the official business, not from the employee's or officer's residence. When attending a training event or other off-site official business directly from an employee's or officer's residence, no

reimbursement will be made if the distance is less than the mileage of a normal commute to the workplace. If the distance is higher than the employee's or officer's normal commute, reimbursement will be paid based on the differential of the commute less the mileage of a normal commute to the workplace.

(D) **Other Transportation.** The traveler should utilize hotel shuttle service or other shuttle services, if available. If none are offered, the use of the most economic transportation is encouraged.

(E) **Vacation in Conjunction with Business Travel.** In cases where vacation time is added to a business trip, any cost variance in airfare, car rental, lodging and/or any other expenses must be clearly identified on the Travel, Meal, and Lodging Expense Report form and paid by the traveler.

(F) **Accompanied Travel.** When a traveler is accompanied by others not on official business, any lodging, transportation, meals or other expenses above those incurred for the authorized traveler will not be reimbursed by the Village.

(G) **Parking.** Parking fees at a hotel or motel will be reimbursed only with a receipt. Valet parking will not be reimbursed.

**22-6-5 APPROVAL OF EXPENSES.** Travel, meal, and lodging expenses incurred by any employee in excess of **Two Hundred Fifty Dollars (\$250.00)** must be approved in an open meeting by a majority roll-call vote of the Village Board.

Travel, meal, and lodging expenses incurred by the Village President or any Village Trustee any amount must be approved by roll call vote at an open meeting of the Village Board. Travel, meal, and lodging expenses advanced as a per diem to any employee or any member of the Village Board must be approved by roll call vote at an open meeting of the Village Board prior to payment. Documentation of expenses must be provided in accordance with **Sections 22-6-3, 22-6-4 and 22-6-6** of this Article, and any excess from the per diem must be repaid.

**22-6-6 DOCUMENTATION OF EXPENSES.** Before an expense for travel, meals, or lodging may be approved under **Section 22-6-5** of this Article, the following minimum documentation must first be submitted, in writing, to the Village Board on a Travel, Meal, and Lodging Expense form:

(A) an estimate of the cost of travel, meals, or lodging if expenses have not been incurred or a receipt of the cost of the travel, meals, or lodging if the expenses have already been incurred.

(B) the name of the individual who received or is requesting the travel, meal, or lodging expense.

(C) the job title or office of the individual who received or is requesting the travel, meal, or lodging expense; and

(D) the date or dates and nature of the official business for which the travel, meal, or lodging expense was or will be expended.

All documents and information submitted under this Section are public records subject to disclosure under the Freedom of Information Act.

The Village hereby adopts as its official standardized form for the submission of travel, meal, and lodging expenses the Travel, Meal, and Lodging Expense Report form attached hereto. **(See Addendum "A")**

**22-6-7**      **ENTERTAINMENT EXPENSES.** No employee or officer shall be reimbursed for any entertainment expense, unless ancillary to the purpose of the program, event or other official business.

**22-6-8 - 22-6-10**   **RESERVED.**

**(Ord. No. 16-03; 12-21-16)**

**DIVISION II – EMPLOYMENT REIMBURSEMENT POLICY**

**22-6-11**      **POLICY.** It is a policy of New Berlin to reimburse employees for all necessary expenditures or losses incurred by the employee within the employee’s scope of employment and directly related to services performed for New Berlin. New Berlin is not responsible for losses due to an employee’s own negligence, losses due to normal wear or losses due to theft unless the theft was a result of New Berlin’s negligence.

This policy was drafted using the Illinois Wage Payment and Collection Act (**820 ILCS 115/9.5**), effective **January 1, 2020**.

**22-6-12**      **DEFINITIONS.**

(A)            **“Employee”** means an employee, officer or official of New Berlin.

(B)            **“Necessary expenditures”** means all reasonable expenditures or losses required of the employee in the discharge of employment duties and that inure to the primary benefit of New Berlin, subject to the provisions of this Article.

**22-6-13**      **GUIDELINES FOR NECESSARY EXPENDITURES.**

Authorized expenditures include mileage from previously approved travel, tools, equipment, uniform alterations, meals, registration fees, training expenses, tolls, postage, and parking fees.

Unauthorized expenditures include home internet service, personal cell phone expenses, mileage incurred on personal vehicles, alcoholic beverages and entertainment expenses.

Any expenditure that is not requested and approved prior to purchase is deemed an Unauthorized Expenditure and may not be reimbursed.

Reimbursement of travel, meal or lodging expenses incurred by an employee is guided by Division I of this Article pursuant to the Local Government Travel Expense Control Act (**50 ILCS 150/**).

**22-6-14**      **PRE-APPROVAL FOR AUTHORIZED EXPENDITURES.** An employee shall submit a written request to purchase any Authorized Expenditures at least **three (3) business days** in advance of incurring the expense on the “Expense Reimbursement Form,” as such form may be approved from time to time by the corporate authorities of the Village. Following approval of the expense, the employee will be reimbursed as provided in **Section 22-6-15** below. If the expense is not approved following a written request, the employee will not be entitled to reimbursement.

In the event that an expense is not pre-approved, reimbursement will be subject to the discretion of the Board of Trustees of the Village of New Berlin.

**22-6-15 REIMBURSEMENT PROCEDURE FOR AUTHORIZED EXPENDITURES.** An employee shall submit an "Expense Reimbursement Form," as such for may be approved from time to time by the corporate authorities of the Village, along with appropriate supporting documentation not later than **thirty (30) calendar days** after incurring the expense. Where supporting documentation is nonexistent, missing or lost, the employee shall submit a signed statement regarding any such receipts.

An employee may not be entitled to reimbursement if the employee has failed to comply with this Expense Reimbursement Policy.

**(Ord. No. 20-02; 11-20-20)**

**(See 820 ILCS 115/9.5)**