

MKHAMBATHINI MUNICIPALITY

ANTI-CORRUPTION POLICY

1. DEFINITIONS

1. When used in this policy:

1.1 “The Municipal Manager” shall mean the municipal manager of the Municipality;

1.2 “the Municipality” shall mean Mkhambathini Municipality

2. SCOPE OF THE POLICY

This policy applies to all corruption, fraud, theft and maladministration and dishonest activities of a similar nature (hereinafter jointly referred to as “corrupt conduct”) involving the following persons or entities:

2.1 all members of the Council of the Municipality;

2.2 all employees of the Municipality; and

2.3 consultants, suppliers, contractors and other providers of goods or services to the Municipality

3. THE POLICY

It is the policy of the Municipality that:

3.1 corrupt conduct will not be tolerated;

3.2 such conduct will be investigated and followed up by the application of all remedies available within the full extent of the law;

3.3 all managers are responsible for the detection, prevention and investigation of all corrupt conduct;

3.4 appropriate prevention and detection controls will be rigorously applied, and to that end, the provisions of the Municipal Finance Management Act and regulations issued thereunder will be strictly observed;

3.5 the Municipality will take appropriate legal action to recover losses or damages arising from fraud, corruption, theft or maladministration

4. ACTIONS CONSTITUTING CORRUPT CONDUCT

4. Actions constituting corrupt conduct collectively refer to, but are not limited to:

- 4.1 any dishonest, fraudulent or corrupt act;
- 4.2 theft of funds, supplies, or other assets;
- 4.3 maladministration or financial misconduct in handling or reporting of money, financial transactions or other assets;
- 4.4 making a profit from insider knowledge;
- 4.5 disclosing confidential or proprietary information to outside parties;
- 4.6 irregularly accepting, requesting, offering or giving anything of material value to or from contractors, suppliers or other persons providing services/goods to the Municipality;
- 4.7 irregular destruction, removal or abuse of records, furniture and equipment;
- 4.8 unauthorised private use of municipal assets, including vehicles;
- 4.9 falsifying travel and subsistence claims;
- 4.10 conspiring unfairly with others to obtain a tender;
- 4.11 disclosing proprietary information relating to a tender to outside parties;
- 4.12 accepting inappropriate gifts from suppliers;
- 4.13 operating a private business in working hours;
- 4.14 stealing equipment or supplies from work;
- 4.15 accepting bribes or favours as an inducement to implement or give effect to requests;
- 4.16 accepting bribes or favours for turning a blind eye to a service provider who does not provide an appropriate service;
- 4.17 submitting or processing false invoices from contractors or other service providers;
- 4.18 misappropriating fees or other monies received from customers, and avoiding detection by not issuing receipts to those customers;
- 4.19 misappropriation of Municipal funds;

- 4.20 falsifying accounting records or documents
- 4.21 falsifying consumer debtors accounts or amending such accounts without authority;
- 4.22 theft
- 4.23 any similar or related irregularity; and
- 4.24 deliberately omitting or refusing to report or act upon reports of any such irregular or dishonest conduct

5. RESPONSIBILITIES IN RELATION TO CORRUPT CONDUCT

- 5.1 It is the responsibility of all employees and councillors of the Municipality to report all incidents of corrupt conduct.
- 5.2 Any corrupt conduct must be reported immediately through the mechanisms set out in whistle blowing mechanism described in Policy.
- 5.3 All reports received will be acted upon, will be treated with the requisite confidentiality and will not be disclosed or discussed with parties other than those charged with investigation into such reports.
- 5.4 All Managers are responsible for the detection, prevention and investigation of fraud and corruption or any dishonest activities of a similar nature, within their areas of responsibility.

6. WHISTLE BLOWING

The Protected Disclosures Act came into effect on 16 February 2001. This Act is commonly referred to as the Whistle blowing Act. In order to remain in compliance with the Act, the Municipality has created a whistle blowing program with the following objectives:

- 6.1 To encourage the reporting of matters that may cause financial or non-financial loss to the Municipality, or damage to the Municipality's reputation;
- 6.2 To enable the Municipality to deal effectively with reports from whistleblowers by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure;
- 6.3 To provide for the appropriate infrastructure including an alternative mechanism for reporting.

7. SCOPE OF WHISTLE BLOWING MECHANISM

7.1 The whistle blowing mechanism is not a replacement for the existing Grievance Procedure and therefore grievances should not be reported in terms of this policy. Any grievances should be lodged in accordance with the provisions of the Grievance Procedure.

7.2 In terms of the Protected Disclosures Act, the following concerns may be raised:

- 7.2.1 That a criminal offence has been committed, is being committed or is likely to be committed;
- 7.2.2 That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- 7.2.3 That a miscarriage of justice has occurred, is occurring or is likely to occur;
- 7.2.4 That the health or safety of an individual has been, is being or is likely to be endangered;
- 7.2.5 That the environment has been, is being or is likely to be damaged;
- 7.2.6 That unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000 has occurred, is occurring or is likely to occur; or

7.2.7 That any matter referred to above had been, is being or is likely to be deliberately concealed.

8 PURPOSE OF WHISTLE BLOWING MECHANISM

8.1 The Whistle Blowing mechanism has been developed to give effect to the objects of the Protected Disclosures Act, namely:

8.1.1 To protect an employee from being subjected to occupational detriment on account of having made a protected disclosure;

8.1.2 To provide for remedies in connection with any occupational detriment suffered on account of having made a protected disclosure;
and

8.1.3 To provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her colleagues, other stakeholders and employer.

8.2 This mechanism is intended to encourage persons to report conduct referred to in section 4 by providing procedures for such reporting as well as ensuring that employees who make such reports in good faith are not victimised, harassed and do not suffer any occupational detriment.

9. PERSONS WHO MAY RAISE A CONCERN

Any member of staff, councillor or member of the public who has a reasonable belief that any corrupt conduct has been committed may raise a concern under the procedure detailed below. Concerns must be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true. The issues raised may relate to a manager, another member of staff, or a group of staff.

10. CONFIDENTIAL REPORTING PROCEDURE

Where a member of staff, a councillor or a member of the public wishes to raise a concern anonymously, such anonymity will be respected.

11. REPORTS BY MEMBERS OF STAFF

If a member of staff has an issue to report, the issue should be raised:-

- 11.1 with the staff member's Manager; or
- 11.2 in the case of corrupt conduct involving the staff member's Manager, with the Director of that Manager; or
- 11.3 in the case of corrupt conduct involving the Director of the Manager concerned, with the Municipal Manager; or
- 11.4 in the case of fraud or corruption or any other dishonest activities involving the Municipal Manager:or
- 11.5 in the case of fraud or corruption or any other dishonest activities involving a Councillor, with the Municipal Manager.

12. REPORTS BY COUNCILLORS OR MEMBERS OF PUBLIC

If a councillor or a member of the public has an issue to report, the issue should be raised:-

- 12.1 with the Municipal Manager; or
- 12.2 in the case of corrupt involving the Municipal Manager,

13. NATURE OF REPORT AND SUBSEQUENT ACTION

13.1 When raising an issue, the person making the report should provide as much information about the concern as possible, including names, dates and places, where possible, as well as the reason why the person concerned is particularly concerned about the issue he/she wishes to report.

13.2 The person to whom the report is made will follow the various steps set out in this Policy.

14. HOT LINE

14.1 In the event of the Municipality establishing a Fraud Hotline, a person wishing to make a report may instead of following the procedures set out in sections 12 or 13 contact the hotline in the manner provided for in this section.

14.2 The person concerned may remain anonymous when making such a report.

14.3 An operator will answer the call and record the details of the concern.

14.4 The Fraud Hotline will thereafter submit a report to the designated officials within the Municipality responsible for receiving and actioning such reports.

15. PROCEDURE IF INTERNAL MECHANISMS FAIL

If a staff member, a councillor or a member of the public has exhausted the abovementioned internal mechanisms or has substantial reason to believe that there would be a cover-up or that evidence will be destroyed or that the matter might not be handled properly, the person concerned may raise the matter in good faith with MEC for local government.

16. FALSE OR MALICIOUS ALLEGATIONS; ANONYMOUS ALLEGATIONS

16.1 Persons wishing to make reports must guard against making allegations which are false and made with malicious intent. Persons making such reports will not enjoy the protection offered by the Protected Disclosures Act. Furthermore, there are resource and cost implications in respect of initiating investigations, which need to be considered in the event of a false or malicious accusation.

16.2 The Municipality encourages staff to put their names to allegations. Concerns expressed anonymously are difficult to investigate; nevertheless they will be followed up at the discretion of the municipality. This discretion will be applied by taking into account the following:

- 16.2.1 seriousness of the issue raised;
- 16.2.2 credibility of the concern; and
- 16.2.3 likelihood of confirming the allegation

17. RESPONSIBILITY FOR CONDUCTING INVESTIGATIONS

17.1 The responsibility for conducting investigations relating to corrupt conduct lies with the Municipal Manager, who may delegate such responsibility, whether generally or in specific cases, to such manager or managers of the municipality as he may consider appropriate; provided that if the Municipal Manager is the subject of any complaint, then the responsibility for conducting the investigation shall lie with council.

17.2 The assistance of the following may be sought for purposes of carrying out any such investigation:

- 17.2.1 External and internal Audit Services;
- 17.2.2 External investigating agencies, for example the South African Police Services, where matters fall within their mandate;

17.2.3 External consultants, for example Forensic Accounting consultants;

17.2.4 Office of the National Director of Public Prosecutions;

17.2.5 Special Investigating Units established under any law;

17.2.6 The Public Protector ;

17.2.7 Any other authority as determined by Council.

17.3 The municipality will make all evidence collected during the course of an investigation available to law enforcement agencies and will pursue the prosecution of all parties involved in criminal activities.

18. PROCEDURE WHEN ALLEGATION OF CORRUPT CONDUCT MADE

18.1 The person receiving the allegation will ensure that the Municipal Manager is advised at the earliest opportunity or, if the Municipal Manager is the subject of the allegation, will ensure that council is advised at the earliest opportunity.

18.2 The Municipal Manager or the Chairperson of the Anti-Fraud and Corruption Committee, as the case may be, will conduct an initial evaluation to decide whether an investigation is appropriate and, if so, what form the investigation should take. Concerns raised may not necessarily require an investigation to resolve them.

18.3 Anonymous reports may warrant a preliminary investigation before any decision to implement an independent investigation is taken.

18.4 Where an internal investigation is considered appropriate, the Municipal Manager or council , as the case may be, will appoint an appropriately

qualified and experienced person who is independent of the section/unit where investigations are required. This may be a senior manager within the Municipality itself, an external consultant or a law enforcement agency. All investigations performed and evidence obtained will be in accordance with acceptable practices and legal requirements. Independence and objectivity of investigations will be paramount.

- 18.5 The person appointed to conduct or co-ordinate the investigation of an allegation of fraud may consult the Chairman of the Anti-Fraud and Corruption Committee on technical aspects of the investigation.
- 18.6 Upon receipt of an allegation of a suspected fraud, the immediate concern of the manager or investigating officer must be the preservation of evidence and the containment of loss.
- 18.7 The extent of the contact between the manager or investigating officer investigating the issues and the persons raising the concern (if not anonymous) will depend on the nature of the concern raised and the investigations which may require to be performed. If required, further information may be sought from the person who made the report.
- 18.8 All information relating to irregularities that is received and investigated by Managers will be treated confidentially. Investigations will be handled in a confidential manner and will not be disclosed or discussed with any other person(s) other than those who have a legitimate right to such information. This is important in order to avoid harming the reputations of suspected persons who are subsequently found innocent of wrongful conduct.
- 18.9 No person is authorized to supply any information with regard to the issues covered within this policy to the media without the express permission of the Municipal Manager.

19. NATURE OF PROCEDURES

19.1 Investigations of fraud and corruption must be conducted in a manner which avoids:-

19.1.1 defamation;

19.1.2 action against an employer for wrongful dismissal;

19.1.3 inadmissible or poor control over the collection of evidence; and

19.1.4 destruction of physical evidence.

19.2 If external consultants are utilised as contemplated in 17.2, they may be assisted by experienced personnel within the Municipality who are sufficiently independent of the area or the matter under investigation. The Municipal Manager, within his/her delegated authority, will have the discretion to determine the appropriate external consultants and/or the Municipal personnel to conduct investigations: provided that if an allegation of fraud or corruption concerns the Municipal Manager, the authority of the Municipal Manager to determine the appropriate external consultants and/or the Municipal personnel shall vest in the Chairperson of the Anti-Fraud and Corruption Committee.

19.2 Investigations may involve one or more of the following activities:

19.2.1 Interviewing of relevant witnesses, internal and external, including obtaining statements where appropriate;

19.2.2 Reviewing and collating documentary evidence;

19.2.3 Forensic examination of computer systems;

19.2.4 Examination of telephone records;

19.2.5 Enquiries from banks and other financial institutions (subject to the granting of appropriate approval/Court orders);

19.2.6 Enquiries with other third parties;

19.2.7 Data search and seizure;

- 19.2.8 Expert witness and specialist testimony;
- 19.2.9 Tracing funds/assets/goods;
- 19.2.10 Liaison with the police or other law enforcement or regulatory agencies;
- 19.2.11 Interviewing persons suspected of involvement in fraud and corruption; and
- 19.2.12 Any other reasonable action legally required or necessary to investigate the matter.

20. REPORT ON INVESTIGATION

- 20.1 The appointed investigator must submit a written report to the Municipal Manager detailing the circumstances and recommending appropriate remedial action following the investigation: provided that in the case of an investigation concerning the Municipal Manager, the report and recommendations must be submitted to the council.
- 20.2 Any investigation initiated must be concluded by the issue of a report by the person appointed to conduct such investigations. Such reports will only be disseminated to those persons required to have access thereto in order to implement whatever action is deemed appropriate as a result of the investigation.

21. DISCIPLINARY PROCEEDINGS

- 21.1 If the report referred to above recommends the taking of disciplinary action, then the Municipal Manager must institute disciplinary proceedings, within a reasonable period, in terms of the disciplinary code and procedure of the Municipality; provided that if it is recommended that action be taken

against the Municipal Manager, then council must institute disciplinary proceedings.

21.2 As soon as a disciplinary hearing on a charge concerning any matter contemplated in 21.1 is completed, the outcome must be reported to the Municipal Manager or to council, as the case may be. Such report shall deal with the following:

21.2.1 The name and position of the staff member against whom proceedings are instituted;

21.2.2 The disciplinary charges, indicating the misconduct the staff member is alleged to have committed;

21.2.3 The findings of the disciplinary hearing;

21.2.4 Any sanction imposed on the staff member; and

21.2.5 Any further action to be taken against the staff member, including criminal charges or civil proceedings.

21.3 The Municipal Manager, or council as the case may be, is also required to ensure that losses or damages suffered by the municipality as a result of an act committed or omitted by an staff member must be recovered from such a staff member if he is liable in law. The Municipal Manager or council must determine the amount of the loss or damage and, in writing request that staff member to pay the amount within 30 days or in reasonable installments. If the staff member fails to comply with the request, the appropriate legal process will then be initiated by the Municipal Manager or council to recover such loss or damage.

22 PROSECUTION

Should investigations uncover evidence of fraud or corruption in respect of an allegation or series of allegations, the Municipality will review the facts at hand to determine whether the matter is one that ought to be reported to the relevant law

enforcement agency for investigation and possible prosecution. Such reports must be submitted to the South African Police Service in accordance with the requirements of the Municipal Finance Management Act and the Municipal Systems Act. The Municipality will give its full co-operation to any such law enforcement agency including the provision of reports compiled in respect of investigations conducted.

23. INTERNAL CONTROL REVIEW

- 23.1 In each instance where corrupt conduct is detected, Line Management will reassess the adequacy of the current internal control environment (particularly those controls directly impacting on the fraud incident) to consider the need for improvements.
- 23.2 The responsibility for ensuring that the internal control environment is reassessed and for ensuring that the recommendations arising out of this assessment are implemented will lie with Line Management of the Department concerned.

24. HARASSMENT OR VICTIMISATION

The Municipality will not tolerate harassment or victimisation of any person who reports any incident of corrupt conduct and will take action to protect staff when they report incidents in good faith.

25. TRAINING, EDUCATION AND AWARENESS

25.1 In order for the Policy to be sustainable, it must be supported by a structured education, communication and awareness programme.

25.2.2 It is the responsibility of all heads of department and managers to ensure that all staff are made aware of, and receive appropriate training and education with regard to this Policy.

26. ADMINISTRATION

26.1 The custodian of this policy is the Municipal Manager who is supported in its implementation by the all Heads of Department.

26.2 The Municipal Manager is responsible for the administration, revision, interpretation, and application of this policy. It will be reviewed annually, and revised as required.

27. COMMENCEMENT

This policy will come into effect on 01 July 2012