



EHLANZENI
DISTRICT MUNICIPALITY

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WHISTLE BLOWING POLICY

2016/ 2017

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1 OBJECTIVE OF THE POLICY

The purpose of this policy is to articulate the procedures by means of which members of staff can raise concerns where they have reasonable grounds for believing that there is fraud, corruption, corporate crime or impropriety within Ehlanzeni District Municipality.

The policy is aimed at creating a culture that will facilitate disclosure of information by employees relating to criminal and irregular conduct within Ehlanzeni District Municipality in a responsible manner by providing comprehensive guidelines for reporting. The policy also affirms the protection of employees against any reprisals as a result of reporting impropriety in compliance with Ehlanzeni District Municipality's procedures.

2 PROBLEM STATEMENT

2.1 LEGISLATIVE FRAMEWORK

The Protected Disclosures Act, No 26 of 2000 makes provision for procedures in terms of which employees may disclose information regarding unlawful or irregular conduct by their employers or other employees. The Act also accords protection to employees for disclosures made without malice and in good faith, in de-fined circumstances.

In terms of the Protected Disclosures Act, employees can blow the whistle on fraud and corruption in the work environment without fear of suffering an occupational detriment as defined in the Act. Subjecting an employee to an occupational detriment or victimization as a result of a protected disclosure is deemed to constitute an unfair labour practice and attracts legal remedies.

The Municipal Finance Management Act (MFMA), prescribes that the municipality must have a risk management strategy that must include a Fraud Prevention Plan. A mechanism for whistle blowing is central to any Fraud Prevention Plan and risk management strategy. Accordingly, the policy will complement and must be read together with the municipality's Fraud Prevention Plan.

The Prevention and Combating of Corrupt Activities Act, No 12 of 2004 ("PCCA") has strengthened measures against corruption and has, *inter alia* created the general offence of corruption. The Act prescribes a duty on the part of the executive management or "any person who holds a position of authority" and who knows or reasonably ought to have known or suspect that any person has committed acts constituting corruption, theft, fraud, extortion or uttering a forged document to report such knowledge or suspicion to the Police. Failure to report such suspicion has serious legal implications.

2.2 CORPORATE GOVERNANCE

The King II report recommends that, as part of the organizational integrity framework, an enterprise should establish accessible safe reporting channels (whistle blowing) and monitor compliance with its ethical guidelines. The organization is required to respond to offences and prevent reoccurrence.

Conceptually, whistle blowing is concerned with raising a legitimate concern about a malpractice within an organization. It is a key tool for promoting individual responsibility

and corporate accountability. Whistle blowers act in good faith and in the public interest to raise concerns around suspected impropriety within their place of employment. If implemented correctly, a whistle blowing mechanism can be an early warning system to management to avert possible risks to an organization. An effective whistle blowing policy will thus enable the municipality to find out when something is going wrong in time to take corrective action.

A positive whistle blowing culture is a critical element in the success of the implementation of any risk management strategy.

By promoting better risk management, it can also help prevent the need for more regulation and intervention by regulators and legislators. In addition by facilitating such an early warning system for reporting wrongdoing, Ehlanzeni District Municipality can increase market and stakeholder confidence in its practices and embed a culture of honesty and openness. Encouraging members of staff to report wrongdoing internally will mitigate the reputational risk that would ensue if members of staff resorted to making disclosures externally.

2.3 CODE OF CONDUCT

Ehlanzeni District Municipality has a Code of Conduct to regulate ethical behaviour and provide guidelines on the minimum standards of conduct expected from employees. In terms of the Code, all employees are under an obligation to report any suspected bribery, corruption, fraud or any contravention of the Code through a secure and independent channel of communication. On its part, Ehlanzeni District Municipality undertakes to read such reports in confidence and not subject employees to victimisation in compliance with the Protected Disclosures Act.

The Policy herein will manifestly create a system for enforcing and monitoring compliance with the standards prescribed by the Code of Conduct.

2.4 CONCEPTUAL FRAMEWORK

Corruption undermines democratic tenets, constitutional institutions and erodes ethical values.

Corruption is a transnational phenomenon and affects all societies and economies and is destructive both in the public and private spheres. International and regional bodies have recognized the need and have taken concrete steps to pre-scribe all forms of corruption. The United Nations Convention against Corruption was adopted by the General Assembly on 31 October 2003. The SADC Protocol against Corruption was adopted by members of states in 2001. The South African Government has promulgated a number of statutes with respect to corruption, fraud and related economic crime in order to align with international norms and standards.

Fraud and corruption is rife where the risk of detection is low and/or the penalties upon discovery are slight. Whistle blowing increases the risk of detection by creating a culture of reporting and should be integrated into any Fraud Prevention Strategy. Ehlanzeni District Municipality consequently needs to have internal procedures to ensure that unethical conduct and contraventions of the legislative requirements are reported and appropriately dealt with.

The municipality does not have a whistle blowing policy articulating the reporting procedures and the protection given to employees who report suspected fraudulent and corrupt activities. The *status quo* exposes the municipality to unquantifiable risks as the municipality will not have information to effectively combat fraud and corruption if suspected incidents are not adequately reported.

The greatest deterrent to malpractice in the workplace is the perceived probability that the misconduct will be reported and investigated vigorously, that those responsible for it will, in appropriate cases, be punished and that the matter will be promptly remedied.

The Whistle blowing policy is intended to be an unequivocal statement by municipality that whenever fraud and corruption is identified and reported, the municipality will thoroughly investigate and take appropriate action as permitted by law.

The existence of the Whistle blowing policy will contribute towards embedding an organisational culture of zero tolerance against fraud and corruption.

3. SCOPE OF THE POLICY

The policy deals with raising concerns pertaining to fraud, corruption, bribery, misconduct and malpractice within the municipality. The policy will not apply to personal grievances, which will be dealt with under the existing Collective Agreement on Grievance Procedure.

The policy covers all *bona fide* concerns raised relating to the following:

- Financial misconduct;
- Health and safety risks;
- Environmental damage;
- Fraud, corruption and theft
- Contravention of the Municipality's Code of Conduct;
- Corporate crime;
- Abuse of the municipality's resources;
- Any attempts to suppress or conceal any of the above; and
- Any Act of Omission which has a potential of prejudicing the municipality.

The nature of the matter reported will dictate the process to be followed in investigating the issue. Certain matters can be dealt with in terms of municipality's existing disciplinary procedures whilst other matters may require to be handed over to the Police or external authorities for further investigation. If in the course of investigating any concerns reported purportedly in accordance with this policy and should it appear that the report relates to a personal grievance or disciplinary issue, the matter will be dealt with in accordance with the Collective Agreement on disciplinary and grievance procedures.

4 POLICY

4.1 VISION/ POLICY STATEMENT

“Ehlanzeni District Municipality is committed to achieving the highest ethical standards and practices in all its business operations. The municipality encourages and supports freedom of speech at the work place. In order to ensure that the highest standards of ethics are observed, the municipality encourages members of staff to use internal mechanisms for reporting any malpractice at all levels. Ehlanzeni District Municipality is fully committed to ensuring that those reporting impropriety are protected from any form of victimization and will investigate all reports of impropriety fairly, equally and in accordance with the law”.

4.2 OVERARCHING OBJECTIVES

To show the municipality’s commitment to creating a culture of highest standards of ethics, probity and accountability;

To inculcate a culture of zero tolerance against fraud, corruption or criminal activity by all employees and persons associated with Ehlanzeni District Municipality as provided in the municipality’s Code of Conduct;

To enhance compliance with corporate governance standards and legislative requirements;

To create an environment where members of staff feel free to raise concerns about impropriety.

4.3 SPECIFIC OBJECTIVES

- To enforce and monitor compliance with the Code of Conduct;
- To encourage members of staff to feel confident to raise and report all serious concerns about unethical conduct, fraud and corruption;
- To provide avenues for raising those concerns and receive feedback on any action taken;
- To reassure employees that they will be protected from possible reprisals or victimization employees, in good faith, report concerns that they reasonably believe to be true
- To underpin the municipality’s commitment to ensuring that concerns raised by members of staff at all levels of the organisation, are considered and investigated fairly, equally and in a responsible manner.

5. POLICY PRINCIPLES AND STANDARDS

5.1. WHO CAN RAISE A CONCERN

Any member of staff who has a reasonable belief that there is fraud, bribery, corruption, misconduct or any of the protected matters specified in section 3 above may raise a concern by phoning the Hotline Toll-free number **0800 701 701** in accordance with the procedure detailed in this policy.

Concerns must be raised without malice, in good faith and not for personal gain and the employee 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, a group of staff, executive manager, councillor, supplier, client, contractor, and consultant. The report/disclosure may include a system or procedure which may cause the municipality to contravene its legal duties and responsibilities.

5.2. HOW SHOULD A REPORT BE MADE

It is recognized that employees may not feel comfortable to discuss concerns directly with their line managers or other senior levels of management. Accordingly all concerns related to suspected fraud, corruption, bribery, theft or any of the matters stipulated in section 3 of this policy should be reported by using the Hot-line Toll-free number **0800 701 701**.

5.3 INVESTIGATION OF DISCLOSURE

The municipality is committed to investigating disclosures fully, fairly, quickly and confidentially.

Upon receipt of the disclosure from the Fraud Hotline, Internal Audit shall make a provisional assessment to determine whether the concern falls more appropriately within the purview of this policy and whether there is a *prima facie* case against an employee warranting an investigation.

If an investigation is considered necessary, the municipality's (Chief Audit Executive) will recommend for the appointment an investigator (or investigative team). The investigator or investigative team will be employee(s) with specialist knowledge of the subject matter of the disclosure or experienced in the operating procedure/process in question or expertise in forensic investigation. For example, with respect to charge of financial malpractice, a Chief Audit Executive or the Manager: Finance and Supply Chain Management may be asked to carry out the investigation.

In some cases and depending on the nature of complexity of the disclosure or investigation, the municipality may outsource the investigation to the reputable specialist firm.

The recommendations/findings of the investigator (investigative team) will be forwarded to the Municipal Manager for consideration. Should the recommendations/findings reveal a *prima facie* case, the matter will be referred to Corporate Services and disciplinary proceedings will be invoked in terms of the municipality's disciplinary procedures.

In as far as is practicable, the municipality should keep the whistle blower in-formed of the progress of the investigation, especially where the whistle blower has identified himself/herself. However, the need for confidentiality may prevent the municipality from giving the whistle blower specific details of the investigation or actions taken.

In some cases an investigation may need to be carried out under the terms of strict confidentiality, i.e. by not informing the subject of the complaint until (or if) it becomes necessary to do so. This may be appropriate in cases of suspected fraud, or unlawful conduct. In some other cases it may not be possible to detail the precise action taken, especially where this would infringe on a duty of confidence owed to someone else. If an

investigation of this type is necessary the sanction and consent of the Municipal Manager must in all circumstances be sought.

It is not normally appropriate to set a specific time frame for completion of investigations in advance, as the diverse nature of disclosures contemplated under the policy makes this impracticable. This notwithstanding, the municipality will endeavour to deal with all disclosures timeously manner and with due regard to the rights of all individuals involved.

The municipality acknowledges that there may be matters that cannot be dealt with internally and in respect of which external authorities will need to be notified and become involved either during or after the municipality's investigation. The municipality will endeavour to inform the whistle blower if a referral to an external authority is about to or has taken place. In some cases the municipality may need to make such a referral without the whistle blower's knowledge or consent if the Municipal Manager considers it appropriate.

If the initial analysis by Internal Audit reveals that there is no basis for the concern, the Risk Management and Fraud prevention Committee must be informed of an issue having been raised together with the reasons for not proceeding. The Internal Audit Unit shall keep records of all concerns received in accordance with this policy. An annual analysis shall be conducted by the Risk Management Unit to determine the potential areas of weaknesses in the municipality's controls and make recommendations.

All concerns received from the Ethics and Fraud Hotline (whether investigated or not) must be reported to the Audit Committee.

ASSURANCES AND SAFEGUARDS

Ehlanzeni District Municipality's Management is committed to ensuring a culture of transparency and accordingly will ensure that any member of staff who makes a disclosure/report in accordance with this policy will not be penalized or suffer an occupational detriment for doing so.

Occupational detriment as defined by the Protected Disclosures Act includes dismissal, suspension, demotion, a transfer against ones will, harassment or intimidation, being refused a reference or being provided with an adverse reference, as a result of disclosure of impropriety.

No employee will be at risk of losing employment or suffering any form of retribution as a result of raising a concern in accordance with this policy.

In order to be protected the following criteria must be met;

- The report must be made in good faith;
- The employee must reasonably believe that the information, and any allegations contained in it, are substantially true;
- The employee should not act for personal gain or advance a personal vendetta.

6.1. FALSE ALLEGATIONS

The above assurance does not extend to employees who maliciously raise matters they know to be untrue. However, if an employee makes an allegation in good faith but it is

subsequently not confirmed by the investigation, no action will be taken against the reporting employee.

A member of staff who does not act in good faith or who makes an allegation without having reasonable grounds for believing it to be substantially true, or who makes it maliciously or vexatious, may be subject to the municipality's disciplinary processes. In this regard, making a false allegation shall constitute serious misconduct.

6.2. HARASSMENT AND VICTIMISATION

No member of staff who raises genuinely held concerns in good faith under this policy will be dismissed or subjected to any detriment as a result of such action. In this regard detriment includes unwarranted disciplinary action and victimization.

If an employee believes that he/she is being subjected to a detriment as a result of having raised concerns under this policy, he/she should in writing inform the Municipal Manager immediately.

Harassing or victimizing (including use of informal pressures) an employee who has reported a concern in terms of the policy will constitute a serious disciplinary offence, and will be dealt with in accordance with the municipality's disciplinary procedure.

If an investigation under this policy concludes that a disclosure has been made maliciously, vexatious, in bad faith or with a view to personal gain, the whistle blower will be subject to disciplinary action. Those choosing to make disclosures without following this procedure or anonymously may not receive the protection outlined above.

6.3. CONFIDENTIALITY

All concerns/reports will be treated in confidence and every effort will be made by the municipality to keep the identity of the person making a disclosure (and the person being investigated) confidential, at least until any formal investigation is under way. In order not to jeopardize the investigation into the malpractice, the reporting employee will be expected to keep the fact that they raised the concern, the nature of the concern and those involved confidential.

There may, however, be circumstances in which, because of the nature of the investigation or disclosure, it will be necessary to disclose the employee's identity as required by law. This may occur in connection with associated disciplinary or legal proceedings or investigations. If such circumstances exist, the Municipal Manager must make every effort to inform the reporting employee that his/her identity is likely to be disclosed.

If it is necessary for the employee to participate in an investigation, the fact that the employee made the original disclosure will, so far as reasonably practicable, be kept confidential and all reasonable steps will be taken to protect the employee from any victimization or detriment as a result of having made the disclosure. It is likely however, that the employee's role as a whistle blower could still become apparent to third parties during the course of an investigation.

6.4. ROLE OF TRADE UNIONS

The municipality recognizes that employees may wish to seek advice and be represented by their Trade Union representative when using the provisions of this policy, and acknowledges and endorses the role Trade Union representatives can play in this regard.

7. PROCEDURE AND IMPLEMENTATION MECHANISM

7.1. RESPONSIBLE PERSONNEL

AUDIT COMMITTEE

The Management has overall responsibility for the municipality's Whistle Blowing Policy as part of its overarching risk management oversight. Responsibility for Monitoring and reviewing the operation of the policy and any recommendations for change within the municipality resulting from investigations into complaints under this policy lies with the Audit Committee.

LINE MANAGERS

Line Managers have a specific responsibility to facilitate the operation of the policy and to ensure that members of staff feel free to raise concerns without fear of reprisals in accordance with the principles set out above.

ALL EMPLOYEES

All employees are responsible for the successful implementation of the Policy by ensuring that they take steps to disclose any wrongdoing or malpractice of which they become aware. It must be noted and employees are not required to prove beyond reasonable doubt the truth of the matters to be reported or produce irrefutable proof. The operative principle is that employees must *act in good faith and reasonably believe that the matters that they are reporting are substantially true.*

7.2. CORRECTIVE ACTION AND COMPLIANCE

As part of the investigations into disclosures made under this policy, periodic recommendations for change will be submitted by the Internal Audit Unit through the Risk Management and Fraud Prevention Committee (RFPC) to minimize the risk or recurrence of any malpractice or impropriety which will have been uncovered.

The Audit Committee will have oversight responsibility for reviewing and implementing the aforesaid recommendations.

The terms of reference of the Audit Committee, Risk Management and Fraud Committee (RFPC) will be duly amended to include oversight of the Whistle Blowing Policy.

The municipality's disciplinary procedures will be amended to take into account the whistle blowing procedures herein.

7.3. TIMING OF THE POLICY

This Policy shall come into effect on the date determined by Council following its approval.

7.4. MONITORING AND POLICY REVIEW

Risk Management Unit shall be responsible for reviewing the policy at least annually to take into account legislative and business changes.

7.5. BUDGET IMPLICATIONS

There are no direct budgetary or resource implications, although an allowance for effective

7.6 GRIEVANCE NON COMPLIANCE

Should any staff member have a grievance regarding the interpretation or implementation of this policy, such staff member shall abide by the grievance procedure of council as amended from time to time.

Any non-compliance by any staff member of this policy, where there are no extenuating or extraordinary circumstances, shall lead to staff members being subjected to discipline in terms of the Council's disciplinary procedure.

7.7 REVIEW AND AMENDMENT OF POLICY

This policy shall be reviewed in full consultation with staff members, but can only be amended by Council.

7.8 SHORT TITLE AND APPLICATION

This policy shall be called the Whistle Blowing Policy for Ehlanzeni District Municipality and shall come into operation on the date of adoption by Council.

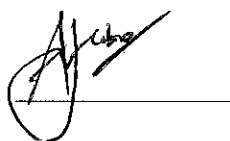
8. APPROVAL OF PLAN

The 2016/2017 Whistle Blowing Policy is submitted for approval; however it is subject to review in consultation with the Risk Management and Fraud Prevention Committee and the Municipal Manager:

This Policy shall be reviewed annually to reflect the current stance on risk management.

Recommended by the Risk Management and Fraud Prevention Committee:

Signature:

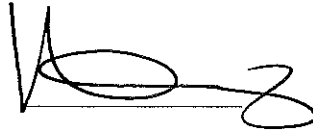
A handwritten signature in black ink, appearing to be 'A. L. ...', written over a horizontal line.

Date:

13/06/2016

Approved by the Acting Municipal Manager:

Signature:

A handwritten signature in black ink, consisting of a vertical line on the left, a large loop in the middle, and a horizontal line extending to the right.

Date:

13/6/16