



WHISTLE BLOWING POLICY

2022-2023

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1. DEFINITIONS AND ABRIVIATIONS

'Municipality Manager'	means a person appointed in terms of section 54A of the Municipal Systems Act, 2000, (Act 32 of 2000), or his/her duly authorised nominee in terms of the Municipality's System of Delegations.
'Constitution'	means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);
'Discrimination'	<p>means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly—</p> <ul style="list-style-type: none"> a) imposes burdens, obligations or disadvantage on; or b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds.
'Disclosure'	<p>means any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of the following:</p> <ul style="list-style-type: none"> a) That a criminal offence has been committed, is being committed or is likely to be committed; b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject; c) that a miscarriage of justice has occurred, is occurring or is likely to occur; d) that the health or safety of an individual has been, is being or is likely to be endangered; e) that the environment has been, is being or is likely to be damaged; f) unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); or g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed.
'Good faith'	means that the employee must believe that the allegations are true.
'Harassment'	<p>means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to—</p> <ul style="list-style-type: none"> a) sex, gender or sexual orientation; or b) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group.
'Occupational Detriment'	means a staff member being subjected to any disciplinary action, being dismissed, suspended, demoted, harassed, intimidated, transferred against one's will, refused transfer or promotion, having a term or condition of one's employment or retirement altered to one's disadvantage, being refused a reference, or being provided with an adverse reference from the Municipality, being denied appointment to

	any employment, profession or office, being threatened with any of the above or being otherwise adversely affected in one's employment with the Municipality, including employment opportunities and work security.
'Protected Disclosures Act'	means the Protected Disclosures Act, 2000 (Act 26 of 2000) and came into effect on 16 February 2001.
'Protected disclosure'	means a disclosure made in accordance with certain section of the Protected Disclosures Act and made to — a) a legal adviser in accordance with section 5; b) an <i>employer</i> in accordance with section 6; c) a member of Cabinet or of the Executive Council of a province in accordance with section 7; d) a person or body in accordance with section 8; or e) any other person or body in accordance with section 9, but does not include a <i>disclosure</i> — i. in respect of which the <i>employee</i> concerned commits an offence by making that <i>disclosure</i> ; or ii. made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5.
'this Act'	includes any regulation made in terms of section 10.
'Victimisation'	means "to punish or discriminate against an employee selectively or unfairly". The Labour Relations Act, 1995 (Act 66 of 1995) does not define victimisation in the workplace exactly but deals with it rather more broadly by legislating unfair practices such as unfair discrimination, forced resignations and unfair dismissals.

2. INTRODUCTION

This policy is intended to make it clear that Matjhabeng Local Municipality (MLM) is committed to the fight against fraud and corruption whether the perpetrators are internal or external. The whistle-blowing policy is part of the municipality's commitment to working towards a culture of openness, accountability and transparency. Confidentiality will be maintained, to the extent provided by the law, and nobody will be penalised for disclosing in good faith information that might be in the municipality's interest.

2.1. What is whistle blowing

If an employee report wrongdoing that they believe is in the public interest, it is known as whistleblowing. Whistleblowing examples can include criminal activity, such as theft or unethical or unjust behaviour in the workplace, including racist, sexist or homophobic behaviour.

A whistleblower is a person, often an employee, who reveals information about activity within a private or public organization that is deemed illegal, immoral, illicit, unsafe or fraudulent. Whistleblowers can use a variety of internal or external channels to communicate information or allegations.

2.2. Why is whistle blowing important

Whistle-blowing is an early warning system to avert possible risks to the municipality and alert Management about any wrongdoing in time so that they can take necessary corrective action. A positive whistle-blowing culture is a crucial element in the success of any risk management system.

3. PROBLEM STATEMENT

3.1. One of the key obstacles in the fight against corruption is the fact that, without legal protection, individuals are often too intimidated to speak out or blow the whistle on criminal and irregular activities they observe in the workplace. Problems identified as the most significant potential barriers in preventing employees from taking action about workplace misconduct are:

- 3.1.1. conduct being seen as justified and correct when it should not be, resulting in an ethical dilemma for the public official;
- 3.1.2. the attitude that there is no point in reporting corruption as nothing will be done about it;
- 3.1.3. concern about personal and professional retaliation; and
- 3.1.4. not knowing how and where to report corruption.

3.2. The Municipality is committed to the highest standards of openness, integrity and accountability. We aim to promote a culture in which employees feel able to raise genuine and valid concerns without fear of victimisation, discrimination or disadvantage. Members of the public and service providers are also encouraged to raise concerns about our

activities so that we can investigate and take appropriate action. The Municipality therefore recognises the fact that:

- 3.2.1. Criminal and other irregular conduct within the Municipality is detrimental to good, effective, accountable and transparent governance;
- 3.2.2. There is a need for procedures in terms of which employees should, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct;
- 3.2.3. Every employee has a responsibility to disclose criminal and/or any other irregular conduct in the workplace; and
- 3.2.4. Employees who disclose such information must be protected from any reprisals as a result of such disclosure.

4. DESIRED OUTCOMES

- 4.1. The Protected Disclosures Act came into effect on 16 February 2001. In order to remain in compliance with the Act, and its duty as a public body in terms of the Constitution to promote good governance, the Municipality will through the development and adoption of this policy:
 - 4.1.1. Strive to create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure; and
 - 4.1.2. Promote the eradication of criminal and other irregular conduct within the Municipality.
- 4.2. The policy is intended to encourage and enable staff to raise concerns rather than overlooking a problem or blowing the whistle through inappropriate channels.
- 4.3. Furthermore the policy aims to:
 - 4.3.1. Provide avenues for staff to raise concerns;
 - 4.3.2. Inform staff on how to take the matter further if they are dissatisfied with the response; and
 - 4.3.3. Reassure staff that they will be protected from reprisals or victimisation for whistle blowing in good faith.

5. THE PROTECTED DISCLOSURES ACT 2000

- 5.1. The Protected Disclosures Act sets out a clear and simple framework to promote responsible whistle-blowing by:
 - 5.1.1. Reassuring workers that silence is not the only safe option;
 - 5.1.2. Providing strong protection for workers who raise concerns internally;

5.1.3. Reinforcing and protecting the right to report concerns to public protection agencies such as the Special Investigation Unit, The South African Police Service, The National Intelligence Agency, Public Protector and Auditor General; and

5.1.4. Protecting more general disclosures provided that there is a valid reason for going wider and that the particular disclosure is a reasonable one.

5.2. The following are objectives of the Act:

5.2.1. To protect an employee, whether in the private or the public sector, from being subjected to an occupational detriment on account of having made a protected disclosure;

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

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

6. PURPOSE OF THE POLICY

The purpose of this policy is to provide a means by which staff is able to raise concerns through appropriate channels or line management or specific appointed person in the Municipality, where they have reasonable grounds for believing that there is fraud and corruption within the Municipality.

The Protected Disclosure Act 26 of 2000 provides protection to employees for disclosures made without malice and in good faith, in defined circumstances. In terms of the Protected Disclosure Act, employees can blow the whistle on fraud and corruption in the working environment without fear of suffering an occupational detriment as defined in the Act.

MLM's Management encourages staff to raise matters of concern responsibly through the procedures laid down in this policy document. The Prevention and Combating of Corrupt activities Act No. 12 of 2004 provides for measure to prevent combat corruption and corrupt activities, investigative measures and penalties and related matters.

7. SCOPE OF THE POLICY

This policy is designed to deal with concerns raised in relation to issues relating to fraud, corruption, misconduct and malpractice within MLM. The policy will not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct.

The policy covers all genuine concerns raised including but not limited:

- Financial Misconduct;
- Corruption;
- Fraud;
- Theft;
- Health and safety risks;

- Environmental damage;
- Any person abusing their position in connection with unauthorised activity for personal gain; and
- Misuse of the municipal property and resources.

If in the course of investigation of any concern raised in relation to the above matters it appears to the investigator that concerns raised relate more appropriately to grieve or discipline, those procedures will be evoked.

8. CONFIDENTIAL REPORTING PROCEDURES

- 8.1. Any member of staff who has a reason to belief that there is corruption or misconduct relating to any of the matters specified above may raise a concern under the procedure detailed in this policy. Concerns must be raised without malice, in good faith and not for personal gain and the individuals must reasonably believe that the information disclose, and any allegations contained in it, are substantially true.
- 8.2. The issue raised may relate to a manager, another member of staff, a group of staff, the individual own section or different section or different section of the municipality. The perpetrator can be an outsider, an employee, a manager, a customer or an ex-employee. You may even be aware of a system or procedure in use, which may cause MLM to transgress legal obligations.
- 8.3. Any suspicion of fraud or other wrongdoing will be treated seriously with strictest confidence and will be reviewed and analysed.
- 8.4. MLM recognises that it needs a channel through which suppliers, rate payers and other community members can report irregular activities, free from victimisation. The primary means of detecting fraud will always remain a sound system of internal control and regular internal audits.
- 8.5. These measures will be supplemented with a fraud-reporting channel where information regarding fraud, theft and corruption is collected, and decisive corrective and protective steps are taken to limit the municipality's exposure to further of future loss. Vital to this function is the assurance of anonymity, commitment to investigate all irregularities, protection of the whistle-blower and consistent application of the fraud policy, regardless of the seniority of the alleged offender.
- 8.6. Any suspected or actual fraud must be reported to the Supervisor or Manager if you are an employee. If the employee is not comfortable reporting such matters to his/her Supervisor/Manager, he/she should report the matter to his/her Supervisor/Manager's superior, with the final recourse to the Municipal Manager. People may also report incidents by using the Anti-Fraud and Anti-Corruption hotline (if in place) if they wish to remain anonymous.

- 8.7. It is the responsibility of the Managers to report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to the Executive Director Strategic Support services or to the Municipal Manager. If the manager is not comfortable reporting such matters as indicated above, he/she should report the matter to the Executive Mayor. This reporting must take place as follows:
- 8.7.1. Telephonically immediately after discovery of such an incident;
 - 8.7.2. This telephonic report must be followed by a detailed written report to be submitted within 24 hours of the discovery of such an incident.
- 8.8. If sufficient information is available to substantiate that a criminal offence has been committed, the Municipal Manager or his/her nominee must report the matter to the South African Police Services as soon as possible.
- 8.9. Where an employee is alleged to have committed an act of fraud, corruption, theft, or maladministration the Municipal Manager must institute disciplinary proceedings, in terms of the disciplinary code agreement of the municipality.
- 8.10. Managers are also required to ensure that losses or damages suffered by the Municipality as a result of an act committed or omitted by an employee must be recovered from such an employee if he/she is liable in law. The Municipal Manager must determine the amount of the loss or damage and, in writing request the employee to pay the amount within 30 days or in reasonable instalments. If the employee fails to comply with the request, the matter must be handed to the Chief Financial Officer for the recovery of the loss or damage.

9. ANONYMOUS ALLEGATIONS

This policy encourages whistle-blowers to put their names to their allegations whenever possible. Where an individual chooses to report their concerns anonymously, such anonymity will be respected.

It should be noted that, if the report suggests criminal activity, and the case is to be pursued by police, the identity of the person reporting the details may be important at a later date if the criminal proceedings are to be pursued effectively.

10. UNTRUE ALLEGATIONS

Public, employees, and third parties may raise their concerns orally, telephonically or in writing. A person raising a concern or blowing the whistle, should give the details about the place and venue where the activity has taken place, is taking place or is going to take place, the time and the date where possible.

Anti-Fraud and Anti-Corruption hotline will be administered by the Fraud Prevention Committee in conjunction with the municipality's Investigation Unit will be put in place for the purpose of reporting fraudulent and corrupt activities.

Those who wish to make written reports are invited to use the following methods:

- 10.1. Encrypted municipal email;
- 10.2. Letters addressed to the Municipal Manager for investigation;
- 10.3. Visiting the offices of the municipality; and
- 10.4. Alternatively they may report cases at the National Anti- Corruption Hotline (0800 701 701).

Although whistle blowers are not expected to prove beyond reasonable doubt the truth of an allegation, they will need to demonstrate to the person contacted that there are reasonable grounds for their concern.

11. WHAT NOT TO DO

A whistle-blower must not do any of the following:

- 11.1. Contact the suspected perpetrator in an effort to determine facts or demand restitution;
- 11.2. If the whilst-blower is an employee of the municipality, discuss the case facts, suspicions, or allegations with anyone outside the municipality (including the Press or Media);
- 11.3. Discuss the case with anyone within the municipality other than the people administering the Anti-Fraud and Anti-Corruption hotline; and
- 11.4. Attempt to personally conduct investigations or interviews or question anyone.

12. HOW THE MUNICIPALITY WILL RESPOND TO CONCERNS

The municipality will respond to concerns raised by whistle-blowers by:

- 12.1. Investigating all reported cases;
- 12.2. Institute disciplinary hearings where appropriate;
- 12.3. Lay criminal charges where necessary;
- 12.4. Blacklist perpetrators where appropriate (name and shame); and
- 12.5. Respond within the period of 3 months.

In order to protect individuals and those accused of possible malpractice, initial enquiries will be conducted to determine whether an investigation is appropriate or not and, where appropriate, what form should the investigation take.

The overriding principle which the municipality will uphold is of the public interest. Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required, this will be taken before any investigation is conducted.

The municipality accepts that whilst-blowers need to be assured that the reported matters have been properly addressed. Thus, subject to legal considerations, the municipality will inform whistle-blowers of the outcome of investigations conducted as a result of their disclosure.

If the whilst-blower is not satisfied with the municipality's response, remember you can go to the other levels and bodies detailed in this policy. While we cannot guarantee that the municipality will respond to all matters in the way you might wish, the municipality commit to handle every matter fairly and properly.

13. CREATING AWARENESS

It is the responsibility of all Managers to ensure that all employees are made aware of and receive appropriate training and education with regard to this policy.

This policy should also be publicized following the process that is being followed by the municipality to ensure that community members and other third parties are aware of it.

14. ADMINISTRATION

The custodian of this policy is the Municipal Manager, who is supported in its implementation by the Council and all Executive Management, all Managers and staff of Matjhabeng Local Municipality.

The Municipal Manager is responsible for the administration, revision and interpretation of this policy. The policy will be reviewed as and when necessary, preferably annually together with Anti-Fraud and Anti-Corruption Strategy of the municipality.

Prepared by the Manager: Risk Management:

Signature : _____

Date : _____

Reviewed by the Senior Manager: Strategic Support Services:

Signature : _____

Date : _____

Recommended by the Municipal Manager:

Signature : _____

Date : _____

Recommended by the Audit and Performance Committee:

Signature : _____

Date : _____

Approved by the Municipal Council:

COUNCIL RESOLUTION NUMBER: _____