

SA38/2005

ANTI-CORRUPTION POLICY (PS&T) (9/1/3/8)

PURPOSE

*** To seek the Council's approval for the adoption of the Anti-Corruption/Fraud Policy. (See Separate Cover)

INTRODUCTION AND BACKGROUND

Through its employees, municipality conducts business on a daily basis with its suppliers and communities as well as the State and other authorities. To reflect and foster Municipality's responsibilities and enhance its reputation, employees have to be committed to maintain the highest level of integrity and ethical conduct in their actions and relationships with all stakeholders in Council business.

Business relationships characterized by integrity and ethical behaviour require compliance with all applicable national laws, and particularly with the provisions of the national Constitution and those principles which relate to Municipality and its employees, and interaction between the employees themselves. Our Municipality's reputation, built by so many people since its inception, depends on every business transaction concluded by each employee.

Municipality mission and vision, Municipal Systems Act, and the applicable aspects of our Constitution contain the broad basic values we aspire to. Ethical principles and Code of Conduct do not create new values or obligations and have always been the foundation upon which sound business is conducted. They are intended to serve as guidelines to assist Municipality and its employees in attaining and maintaining ethical standards.

Guidelines on ethical business conduct mean little without a conscious commitment to personally live up to the values, act as a role model for fellow employees and be Municipality ambassador and representative in all relationships with stakeholders. Standards and guidelines, no matter how comprehensive they may be, cannot anticipate every situation. The Municipality must ensure that all our business relationships reflect our personal integrity, respect for human dignity and the rights of others, honesty, and commitment to what is right, fair, reasonable, legal and just.

The Anti-Corruption Policy will serve as a vehicle which will help employees to recognize ethical issues and guide them in responding appropriately to situations that may arise in their respective jobs.

ETHICS IS ABOUT WHAT YOU DO

PROBLEM STATEMENT

None

POLICY POSITION

Municipal Systems Act, Code of Conduct, Schedule 2.

RECOMMENDATION

The department recommends as follows; that:

- Council adopts the policy.
- The external mechanism for handling anonymous and known calls be approved.
- Road shows are conducted to educate employees and councilors on this policy, Code of Conduct and the new Corruption Act. (Prevention and Combating of Corrupt Activities Act, Act 12 of 2004)
- Council commits itself to the protection of those blowing the whistle.

THE SOCIAL CLUSTER RESOLVED : (29 JUNE 2005)

1. That the Social Cluster **SUPPORT** the idea to fight corruption but due to limited resources the policy **CANNOT BE IMPLEMENTED**.
2. That current legislation **BE USED TO GUIDE** the Municipality to respond/take action against corruption.

GOVERNANCE AND ADMINISTRATION CLUSTER RESOLVED : (31 AUGUST 2005)

1. That Council **ADOPTS** the Policy.
2. That the external mechanism for handling anonymous and known calls **BE APPROVED**.
3. That Road shows are conducted to educate employees and Councillors on this Policy, Code of Conduct and the new Corruption Act, (Prevention and Combating of Corrupt Activities Act, Act 12 of 2004)
4. That Council **COMMITTS** itself to the Protection of those blowing the whistle.

IT WAS RESOLVED BY THE MAYORAL COMMITTEE (19 OCTOBER 2005)

1. That Council **ADOPTS** the Policy.
2. That the external mechanism for handling anonymous and known calls **BE APPROVED**.
3. That Road shows **BE CONDUCTED** to educate employees and Councillors on this Policy, Code of Conduct and the new Corruption Act, (Prevention and Combating of Corrupt Activities Act, Act 12 of 2004).
4. That Council **COMMITTS** itself to the Protection of those blowing the whistle.

SUBMITTED FOR CONSIDERATION

SA38/2005

ANTI-CORRUPTION POLICY (PS&T) (9/1/3/8) (P10 : SEPARATE COVER)

PURPOSE

To seek the Council's approval for the adoption of the Anti-Corruption/Fraud Policy.

COUNCIL RESOLVED (1 NOVEMBER 2005)

- [AMPS&T]
1. That Council **ADOPTS** the Anti-Corruption/Fraud Policy as a working document.
 2. That the external mechanism for handling anonymous and known calls **BE APPROVED**.
 3. That Road shows **BE CONDUCTED TO MAKE** employees and Councillors on this Policy, Code of Conduct and the new Corruption Act, (Prevention and Combating of Corrupt Activities Act, Act 12 of 2004).
 4. That Council **COMMITTS** itself to the Protection of those blowing the whistle.

SEPARATE COVER

SA38/2005

ANTI-CORRUPTION POLICY (PS&T) (9/1/3/8)

DRAFT ANT-CORRUPTION POLICY

1. MISSION STATEMENT

- 1.1. Matjhabeng Local Council is wholly committed to the spirit of **ZERO TOLERANCE** to FRAUD and CORRUPTION and all its manifestations.
The COUNCIL shall robustly investigate all incidents of corruption and callously prosecute those found guilty of committing the offence.
- 1.2. The COUNCIL shall not hesitate to terminate its agreement with the service providers or contractors found or suspected to be involved in fraudulent and corrupt activities and/or, employee or potential employees found to have been involved in any fraudulent and/or corrupt activities. This would be maximally achieved through amongst others, considerate substantive screening and vetting processes.
- 1.3. All criminal elements shall be barred from gaining any form of access to the systems of the COUNCIL through the employment of vigorous pre employment screening and investigations. **(The Recruitment and Selection policy)**.
The Municipal Manager shall take stern actions, including dismissal, against perpetrators and accomplice of fraud and corruption.
- 1.4. Employees convicted and sentenced for fraud and corruption or organised crime related offences in the criminal courts, shall automatically be suspended or dismissed by the Municipal Manager, depending on the circumstances of their case. In the event where an employee has appeal against his/her conviction, sentence or order of the trial court a suspension would be enforced until the outcome of the appeal.

- 1.5. Conflict of interest, being professional, personal, pecuniary and/or prejudicial shall be avoided at all costs by both employees and councillors alike.

2. SUPERSEDED REGULATIONS

- 2.1. This Policy replaces all corruption policies, if any, previously published and drafted by Matjhabeng Local Municipality.

3. AMENDMENTS

- 3.1. Amendments, which may be published from time to time, shall take effect as from the date of issue of such amendments. Any disagreement with or deviations from this Policy shall be referred to the Municipal Manager's office by the employees, in writing.

4. POLICY OBJECTIVE

- 4.1. The objective of the Anti-Corruption Policy is to provide both employees and councillors of Matjhabeng with an opportunity of reporting fraud and corruption to appropriate mechanisms in addition to the normal existing command channels.
- 4.2. This policy shall strive to create and ensure an environment for the Matjhabeng Local Municipality which is free of fraud and corruption and which reflects the disposition, values and norms of our society. This policy should therefore be viewed as an addition to the existing legislations, directives, procedures and other internal policies within Matjhabeng.
- 4.3. Due to the contentious nature of the subject matter, namely fraud and corruption, which this policy seeks to address, the concepts in this document are defined in such a manner that they provide a uniform understanding to members within the Council. Such concepts have broadly been derived from existing legal definitions and simplified in order to be easily understood by the general membership. However their legal

interpretation remains subject to those contained in the applicable legislations.

5. DEFINITIONS

When interpreting this policy, the following definitions shall apply:

5.1. BRIBERY – is the offering or receiving of any consideration to perform or not to perform official duties in an illegal or irregular manner. Examples of bribery are the making or acceptance of an offer/s or promise/s to obtain services, material goods, money promotion, influence, etc., in an illegal manner or through the abuse of power or position.

5.2. CORRUPTION – giving of direct/indirect compensation, to whom it is not due, for something he/she should not do or for not doing something he/she should do. It is an unlawful act by an individual, to the detriment of another individual, the COUNCIL, through the abuse of power or position.

General elements of corruption are:

Unlawfulness.

Abuse of power

Actual or potential benefit of one party and to the actual or potential detriment of another.

5.3. Corruption can also be defined as an unlawful act by an individual, to the detriment of another individual, the INSTITUTION or the state, through the abuse of power or position. From this activity four elements which together describe a corrupt act are identified as:

Receiving a favour (money, goods, sex, services, etc).

Doing somebody a favour; the person is able to do this favour because of his position within the organisation.

Damage to the organisation (prejudice or potential prejudice). This damage could be done in a variety of ways, including financial, image, ethical and physical.

- 5.4. The government has widened the net on corruption with the introduction of Prevention and Combatir.g of Corrupt **Activities** Act, Act 12 of 2004. The Act imposes an obligation to officials and employees to report **corrupt activities**.
- 5.5. This is confirmed in this statement "Any person who holds a position of authority who knows or ought to reasonably to know or suspected to that an act of corruption has been committed is obliged to report to the police". Obligation to report also applies to fraud, theft, extortion, forgery, or uttering involving an amount of **R 100 000-00 or more**.
- 5.6 FRAUD** is commonly understood to mean dishonesty in the form of an intentional deception or wilful misrepresentation of a material fact which has or may result in prejudice. Fraud is also conslsts in unlawfully making, with intent to deceive, a misrepresentation which causes *actual* prejudice, or which is *potentially* prejudicial to another.
- 5.7 Fraud also involves the misrepresentation of information both by overt acts, such as forgery, as well as the concealment of and/or deliberate failure to record transactions. Usually, where fraud occurs in offices of the COUNCIL, it involves the concealment and/or falsification of financial information.
- 5.8. For purposes of this policy all the below mentioned economic offences will all be regarded as fraud.
- Theft.
 - Misuse of assets.
 - Extortion.
 - Embezzlement.
 - Big rigging.
 - Forgery.

Manipulation.

Falsification and the intentional illegal alteration of records or documents.

The intentional suppression of information or intentional failure to record transactions in official records or documents.

Recording of false transactions.

Misapplication of accounting practices or improper implementation of accounting practices.

5.9. INTENTION – the intention to defraud/deceive consists of a wilful act to make a misrepresentation and/or intention to prejudice, or a wilful failure to act, in order to achieve a specific goal and/or objective.

5.10. MISREPRESENTATION – refers to the making of a written or oral statement, about an individual, organisation or department, which is not true.

5.11. PREJUDICE – can be actual or potential. Actual prejudice is present where real loss has been incurred and potential prejudice is present where a risk exists that a result which may be prejudicial to a victim can be incurred.

5.12. REPORTING MEMBER – any member or contract member of the INSTITUTION reporting an incident/potential incident of fraud and corruption, or any other information relating to such incidents/possible incident to the mechanism.

5.13. THEFT – consists of the unlawful appropriation of anything capable of being stolen, with intent to deprive the owner thereof of his/her ownership. This includes all assets and "security matters" as defined in section 1 of the Protection of Information Act, 1983 (Act 84 of 1982), and any other interest of the INSTITUTION.

NB For the purpose of this Policy, theft shall be viewed in the broader context of fraud and corruption.

6. FUNDAMENTAL PRINCIPLES

- 6.1. It shall be the obligation and responsibility of all employees to report reasonably suspected incidents of fraud, theft and corruption and any other perceived malpractice, as defined in this policy for purposes of internal disciplinary processes. However, the COUNCIL will not hesitate to take disciplinary steps or have the matter criminally prosecuted if applicable laws or regulations indicate that an employee's involvement constitutes a criminal act/omission or an act of misconduct in itself.
- 6.2. The non-fulfilment of this obligation may also impact on the career prospects of the employee. Management, particularly the legal services branch, shall ensure that employees are workshop and road shows are conducted on the newly promulgated corruption legislation so as to establish a common understanding of the concepts.
- 6.3. The identity and interests of the reporting employee shall be protected at all times. (**Disclosure of Information Act**). Management shall have the responsibility to take action to avoid victimisation. The principles of confidentiality and "need-to-know" shall always apply in the handling of reported information.
- 6.4. All reported information shall be brought to the attention of the MUNICIPAL MANAGER and subsequently to Public Safety and Transport for further investigation and/or referral to the SAPS and other law enforcement agencies. All reported information shall be addressed objectively with the relevant internal authorities.

- 6.5. The COUNCIL shall ensure that the integrity of the "accused" employee is protected. The COUNCIL and all its employees shall, at all times, guard against the intentional misuse of reporting alleged fraud and corruption. Disciplinary action shall be taken against those abusing the system.
- 6.6. It shall be the responsibility of all employees to take steps to prevent, determine and/or detect instances of fraud and corruption through the continual creation and evaluation of internal control mechanisms and awareness programme. (E.g. ensuring that their passwords are protected, etc.)
- 6.7. The responsibilities of HOD's and Managers with regard to the development and implementation of anti-fraud and corruption mechanisms shall be included in their respective job descriptions and/or performance agreements if necessary.
- 6.8. KEY ELEMENTS IN COMBATING CORRUPTION/FRAUD SHALL BE ADEQUATELY ADDRESSED IN THE FRAUD PREVENTION STRATEGY AND PLAN**
- 6.9. The anti fraud strategy and plan for Matjhabeng Municipality shall endeavour to adequately address the four pillars crucial in the fight against corruption and fraud, namely;
- 6.10. Prevention of fraud in Matjhabeng (risk assessment)
Detection of fraudulent acts or omission within Matjhabeng.
Investigations of alleged fraudulent acts within Matjhabeng
Response plan

7. REPORTING SYSTEM

- 7.1. Municipal Manager shall, by appointing a person or service provider, establish a mechanism (hereinafter referred to as fraud hotline, managed by a reputable service provider) to which the reporting of alleged fraud and corruption by employees of the COUNCIL, and members of the public involving employees and councillors, can be recorded. The existence of the mechanism, should, however, not prevent employees from using the normal line of reporting within the COUNCIL.

8. MANDATE

The mandate conferred to this external mechanism shall be as follows:

- 8.1. The person or service provider appointed as a mechanism by the Municipal Manager shall be accountable to the Municipal Manager or his/her delegated nominee only.
- 8.2. The mechanism shall receive information on, or complaints about, fraud or corruption involving COUNCIL employees, councillors or contracted workers as well as service providers/contractors.
- 8.3. The mechanism shall conduct assessments of such information/complaints and to deliver advisory reports personally to the Municipal Manager.
- 8.4. The mechanism shall give effect to any decisions of the Municipal Manager in this regard through the facilitation of further investigations, etc. The mechanism shall further be mandated to clandestinely investigate certain cases and submit a complete docket to the municipal manager for possible prosecution.

- 8.5. The mechanism shall provide the Municipal Manager with a monthly management report detailing the extent of corruption and fraud and areas susceptible to these activities within the Municipality through the anonymous reports received.

9. FUNCTIONAL RESPONSIBILITIES (MACHANISM)

- 9.1. To assist with the creation of a non-fraudulent and corruption-free environment.

The provision of a 24-hour reporting service.

The assessment of information and complaints.

The compilation of monthly management reports to the Municipal Manager.

The administration (including the security and protection) of the abovementioned process.

The mechanism shall be responsible for the safeguarding of the identities of reporting members.

The investigations of cases reported through the approval of the municipal manager.

10. REPORTED INFORMATION

- 10.1 The mechanism's operators shall also establish the following from the reporting employee during the process of receiving an allegation:

- 10.2 Whether the reporting employee wishes to remain anonymous.

Whether the reporting employee will be prepared to be a witness in the event where criminal and/or internal disciplinary processes are initiated.

Whether the reporting employee has objections to the conversation being recorded for administrative purposes, after which the recording will be destroyed.

- 10.3 Whether the reporting member is voluntarily reporting the alleged fraud and/or corruption. Provisions of the Disclosure of Information Act shall be adhered to at all times.

11. FUNCTIONAL RESPONSIBILITIES (DEPARTMENTS)

- 11.1. Internal Audit through their risk assessment programmes and continuous monitoring of internal controls shall ensure that a corrupt free environment exists within the Council.
- 11.2. Human Resources department through the implementation of recruitment and selection policy shall ensure that qualified and credible candidates are appointed and also prevent criminal elements from gaining access to the Council systems.
- 11.3. Public Safety and Transport through a host of security policies and procedures shall ensure that personnel are protected against undue influences. The department shall, through cooperation with other institutions, further ensure that service providers intending doing business with the Council, are thoroughly screened.
- 11.4. The anti-corruption unit envisaged by the department shall be given a clear mandate and a set of objectives as any other "business function" within Council.
- 11.5. Line management at treasury shall monitor the integrity of key operations such as supply chain management, lending insurance, payments, etc. Treasury shall take responsibility for the broader stewardship of assets, and control over financial accounting, Council's bank accounts and the payments of suppliers.

12. MANAGER'S RESPONSIBILITY

- 12.1. HOD's and supervisors at all levels shall ensure that employees are familiarised with the Code of Conduct as enshrined in the Municipal Systems Act and accordingly sign the Code.

- 12.2. HOD's shall assist in the creation of a culture of disclosure by being exemplary and creating or levelling the playing field for employees to report any incidents of fraud and corruption.

- 12.3. HOD's shall ensure that a "Principle of need to know" is strictly adhered to and that access to sensitive information, patents, plans etc, is restricted to those with mandate to work with them. This must however, be executed with serious circumspection, taking the Promotion of Access to Information Act into consideration.

- 12.4. HOD's shall ensure that ethical standards are set in their respective work areas and provide their staff with guidance and support.

- 12.5. HOD's shall be exemplary in their deeds and words to encourage employees to report these offences.

- 12.6. HOD's shall take responsibility for the security of their own operations, and for fraud loss control through the normal setting and achieving Council objective.

13. EMPLOYEES RESPONSIBILITIES

13.1. Rights and responsibilities of Council employees at all levels

- Request to be informed and guided about ethical conduct.
- Request to be sensitised about Council standards of ethical business conduct in order to always follow them.
- Request information about the details of the procedures and policies affecting his/her work, and understand and follow them. The appropriate level of knowledge needed will depend on responsibilities involved in one's work.
- Request to be made aware of, and be alert to situations that could lead to a person or others to engage in illegal, improper or unethical actions and seek guidance to avoid potential problems.
- Question others who may be acting in an apparently unethical way, and report conduct which is, or appears to be in conflict with Council anti-corruption policy, Code of Conduct, policies and guidelines.
- Do not allow, suffer, or cause any form of victimisation, discrimination or retribution against those who are, or have been, or intend to be ethically and morally responsible in protecting Council's and other employee's interests by reporting breaches of this policy.
- Perform duties with honesty and to the best of their ability.
- Do not allow anyone to be misled.
- Communicate openly and honestly and act with a commitment to achieve a prudent fair transparent and responsible result.
- Treat people with fairness, courtesy and sensitivity to their rights.
- Where applicable to their posts, take responsibility and accept accountability for actions and decisions taken.
- The Disciplinary Code requires employees to comply with all the, rules regulations and agreements that regulate and apply to Council, its systems and the conduct of its business. In terms of the disciplinary code, employees are required to obtain appropriate authority for any public statement that may be interpreted as being an official comment of Council.

An employee who is or becomes aware of an existing or future contravention but takes no appropriate action to protect Council's interests and/or the interests of other employees, may be held accountable in terms of the Disciplinary Code in this regard, as this inaction or omission could prejudice Council and would not be ethically correct.

14. Responsibilities of Council managers:

14.1. In addition to their general rights and responsibilities as employees of Council, managers (and where appropriate supervisors) will have additional responsibilities resulting from their seniority and the nature of their managerial/supervisory duties, namely;

- Make a personal commitment to act in accordance with Code of Conduct (Municipal Systems Act, schedule 2) and this Anti-corruption policy. Communicate this commitment to their employees, and lead by example.
- Maintain a work environment that encourages open communication regarding Council ethical issues and concerns, and that promotes compliance with such ethics.
- Periodically discuss Council ethical issues and review standards of conduct with employees during working hours, for example at team briefings and forums.
- Ensure that appropriate ethics sensitisation and training is provided.
- Familiarise themselves with resources and processes available to assist in the resolution of questions and concerns about Council ethics.
- Identify areas of risk within departmental activities and establish ways to address potential contraventions of the Code of Conduct.

- Take responsibility for the conduct of their staff to ensure that any misconduct that is so serious, recurrent or widespread that action should already have been taken to prevent it, is dealt with appropriately.
 - Ensure that the Anti-Corruption Policy and Code of Conduct are communicated clearly and are available to all staff members. The policy should be included in the sign-on documentation for new employees.
 - Do not delegate discretionary authority to subordinates who are unaware of, or who have demonstrated insensitivity to the requirements of the policy and guidelines.
- 14.2. It shall be the obligation and responsibility of all employees to report reasonably suspected incidents of fraud, theft and corruption and any other perceived malpractice, as defined in this policy. However, the COUNCIL will not hesitate to take disciplinary steps or have the matter criminally prosecuted if applicable laws or regulations indicate that an employee's involvement constitutes a criminal act/omission or an act of misconduct in itself.

15. STAFF TRAINING AND MOTIVATION

- 15.1. Loyal staffs committed to fraud and corruption prevention and detection is the key to success. Council's approach to training regarding fraud shall be as follows:
- Fraud to be a regular topic for discussion at staff meetings.
 - New employees to be given induction training and documentation which includes details on Council's policy, approach and Strategy's on fraud as well as the relevant employees responsibilities in this regard.
 - Fraud training should be provided to all relevant staff-training sessions and should focus on individual products and services, and use as many practical case studies as possible.

- Fraud risk and prevention should be included in staff training related to new systems and services prior to launch.
- Annual refresher training.
- Publication of in-house newsletters on fraud which include latest trends, latest cases and detection successes by Council in terms of beating the fraud criminal.
- Appropriate rewards for staff that have prevented fraud. Despite the fact that prevention should be part of the employee's job description anyway; the receipt of a box of chocolates or bottle of champagne from the departmental manager, or a special dinner for branch/departmental staff can have a considerable effect on morale and motivation

16. REPORTING INCENTIVES

- 16.1. In exceptional circumstances the Municipal Manager may, to the extent to which it is in his/her power, provide a reporting member with immunity from internal disciplinary action for reporting instances of serious/major fraud and/or corruption.
- 16.2. In instances of exceptional sensitivity the Municipal Manager may authorise that a reporting member be placed under "witness protection" for the duration of the time required for a successful investigation and prosecution.
- 16.3. In cases where members have reasonable grounds to suspect victimisation, as a result of a reported issue, such suspected victimisation should be reported to the Accounting Officer or the mechanism.
- 16.4. The Municipal Manager shall exercise his/her discretion in rewarding any employee reporting any incidents of fraud and corruption after the successful prosecution of the suspects.

17. PROCEDURES FOR HANDLING INFORMATION BY THE MECHANISM

17.1. After receiving and assessing this information, written reports shall be produced and brought to the attention of the Municipal Manager within 72 hours, depending on the seriousness of the information.

17.2. The reports shall have the minimum classification of **CONFIDENTIAL**.
The mechanism shall put administrative processes into place.
All steps taken by the Municipal Manager shall be in compliance with applicable legislations, regulations and other policies of the COUNCIL.

17.3. The Municipal Manager shall take steps to ensure that he/she is kept abreast of progress with all investigations, in a manner determined by him/her.

17.4. The Municipal Manager or his/her delegated nominee shall be the custodian of all information gathered as a result of allegations made.

The Municipal Manager shall determine where the abovementioned information needs to be stored or destroyed after the completion of an investigation.

The mechanism shall be the only custodian of the names of reporting members.

18. PROTECTION OF REPORTING EMPLOYEES

18.1. No employees may be subjected to disciplinary action on account of having disclosed any information, if:

The employees in good faith reasonably believe at the time of the disclosure, that he/she was disclosing information relating to a contravention of the law, corruption, dishonesty or serious maladministration within the COUNCIL.

18.2. Any employees who made, or indicated that he/she intends making a disclosure, or who refused to participate in an misdemeanour may not as a

result thereof, or partly as a result thereof, in respect of his/her employment, profession or office:

Be dismissed, suspended, demoted, harassed or intimidated;

Be transferred against his/her will;

Be refused transfer or promotion;

Be subjected to a term or condition of employment or retirements which is altered or kept unaltered to his/her disadvantage, or

Be otherwise detrimentally affected in respect of that employment, profession or office, including, but not limited to, employment opportunities and work security;

Be denied appointment or election to any employment, profession or office.

Anyone involved by his/her superior in a campaign of revenge against a reporting employee, whilst knowing that bad faith is involved/intended, should realise that the law prohibits adherence to ostensibly illegal orders or instructions.

19. INITIATING AND COMPLETING INVESTIGATIONS

19.1. All reported information from the mechanism shall be handled as unproven allegations in an appropriate and sensitive manner to the Municipal Manager.

Municipal Manager shall exercise his/her discretion in determining whether the matter should be investigated and finalised internally by the anti-corruption unit or be reported to the external law enforcement agencies for criminal prosecution.

19.2. The COUNCIL does not have an initial obligation to advise the suspect that he/she is been investigated or accused. Upon submission of the final investigation report, the Municipal Manager shall determine an appropriate course of action in accordance with the Conditions of Service. (Disciplinary Procedures).

- 19.3. In an event that a COUNCIL employee/s is convicted and sentenced for fraud, theft and corruption by a disciplinary hearing or a criminal court and the COUNCIL suffered financial prejudice, the Municipal Manager shall instruct treasury to "freeze" the employee's pension, accrued leave pay, bonus and other benefits so as to recover the loss incurred by the COUNCIL.
- 19.4. In an event that a COUNCIL employee/s is convicted and sentenced for fraud, theft and corruption by a criminal court, the Municipal Manager shall instruct that the affected employee immediately be dismissed or suspended depending on the circumstances of the case.
- 19.5. On completion of the investigation and after all necessary disciplinary actions have been taken, the Municipal Manager shall determine where all such documents should be kept.

20. NON-ADHERENCE TO THE POLICY GUIDELINES

- 20.1. Employees will not be accountable for responsibilities and duties of which they had not been made aware through proactive communication of, and training related to the policy and guidelines. Alleged or apparent violation of this policy may not in itself be a disciplinary matter, but misconduct leading to disciplinary action which could result from non-compliance with Council's procedures directives or resolutions.
- 20.2. The possibility of non-adherence to the policy can be avoided or significantly reduced by seeking guidance from the policy itself, or from senior managers or from labour relations, etc.

21. GUIDELINES**GUIDANCE ON SPECIFIC ISSUES**

21.1. These guidelines provide specific guidance on certain aspects of conduct which could reflect on ethical behaviour and which is frequently encountered in an organisation. Should a situation arise which is not specifically covered in this section, then the general principles explained in the policy itself should be applied and further guidance should be obtained if necessary.

The specific issues covered in this section are:

Offering business courtesies

Accepting business courtesies

Conflict of interests

Relationships with colleagues

Relationships with suppliers

Health, safety and environmental protection

Using Council, customer or supplier resources

Expenditure

22. OFFERING BUSINESS COURTESIES

22.1. Management is ultimately responsible for determining whether a business courtesy should be offered. In determining this, management must ensure that a proposed business courtesy would not violate any law or regulation, the reasonable customs of the marketplace, cultural norms, or Council policy and practice. In addition, the circumstances surrounding the offer, the nature of the business courtesy, the possible appearance of such an offer and its value must be considered. If there is any doubt regarding the potentially negative impact an offer of a business courtesy could have on the reputation of Council, or of those involved it should not be offered.

22.2. Business courtesies are exchanged in order to strengthen and maintain good business relationships. They should be offered or accepted only if the recipient is willing to reciprocate in the form of superior service or a courtesy of commensurate value, which has no negative impact on Council. Reciprocity is essential to ensure that some form of debt is not incurred.

23. What is a business courtesy?

23.1. A business courtesy is a gift or favour from a person or a firm, regardless of whether a business relationship exists between Council and that person for which fair market value is not paid by the recipient. A business courtesy may be a tangible or an intangible benefit such as non-monetary gifts, meals, drinks, entertainment, hospitality, recreation, attendance prizes, transportation, discounts, tickets, promotional items or the use of a donor's time, materials or equipment.

24. Points to consider

24.1. A business courtesy may never be offered under circumstances that might create the appearance of impropriety or cause embarrassment to Council or the recipient. Business courtesies must be accounted for in accordance with approved Council supply chain management policy and practice. Any employee or representative who offers or approves the offer of a business courtesy must ensure that it is ethical and proper in all respects and that it cannot reasonably be interpreted as an attempt to gain an unfair business advantage or otherwise reflect badly on Council reputation. Council employees are not only bound by Council's regulations concerning business courtesies, they must also be aware of and not transgress similar regulations binding the recipient.

24.2. Council funds expended on a business courtesy must be recorded in accordance with required set procedures.

25. Rules for giving

25.1. Council employees may offer business courtesies provided the following conditions are met:

- The business courtesy does not violate any law or regulation the culture or the known policy of the recipient.
- The business courtesy is customary and consistent with the reasonable and ethical business practices of the marketplace in which it is offered.
- Management approval at an appropriate level is obtained.
- The business courtesy is properly accounted for and recorded in the gift register.
- The business courtesy does not gain for the giver any right or privilege that he might otherwise not enjoy.

26. ACCEPTING BUSINESS COURTESIES

26.1. Employees who award or can influence the allocation of business or create specifications that result in the placement of business or participate in the negotiation of contracts or concessions are particularly vulnerable to criticism relating to business courtesies, if an employee find him/herself in that position, he/she should not take any action that could create the appearance for favouritism in allocating Council's business or that could adversely affect Council's reputation for impartiality and fair dealing, this constraint applies not only to employees but also to the members of their immediate families.

26.2. Do not accept a business courtesy when it appears or could appear that,

- The donor may expect something substantial in return.
- An attempt is being made to persuade an employee to do something that is prohibited by law regulations or Council's policy.

- An attempt is being made to gain an unfair competitive advantage by influencing an employee's discretionary decisions.
- You are using your Council position to obtain business courtesies.
- The donor may obtain a right or privilege that he would otherwise not be granted.

26.3. Under the new act, any person who directly or indirectly gives or accepts or agrees or offers to give or accept any gratification from another person with the purpose of acting personally or influencing another person to act in a manner that amounts to an illegal, dishonest, or unauthorized action or an abuse of authority, a breach of trust, or a violation of a legal duty.

26.4. "Gratification" has purposefully been very widely defined. It incorporates money, donations, indemnities, offers of employment, discharge of a debt, the granting of favours, rights or privileges, aid, votes, consent or benefits of any kind.

26.5. The acceptance of gratuities from suppliers or customers is generally not permitted. Gratuities are paid in appreciation of a job well done or to secure good service or support in the future, suppliers and customers should be encouraged to show such appreciation through informing Council management.

26.6. The solicitation of sponsorship from a supplier must be done in such a way that it is clear that a refusal will not threaten Council's continued goodwill. Managers should be aware of such approaches to suppliers and should ensure that no supplier is approached too often.

27. Guidelines for accepting courtesies

- 27.1. Meals paid for or provided by an individual or company with which Council conducts or may conduct business may be accepted on an infrequent basis, provided all the following conditions are met:
- The meal is in the interest of building necessary business relationships.
 - The meal is not likely to be extravagantly priced.
 - The acceptance of the meal will not create the appearance of a conflict interest.
 - Management approval has been obtained when required by business unit procedures.
 - Novelty or advertising items may be accepted when they have no appreciable value and are widely distributed by the donor to other firms, examples include inexpensive calendars, pens, cups and other promotional items carrying the distributing company's name or logo.
- 27.2. Tangible or intangible gifts of appreciable value if accepted should be recorded in the Council gift or courtesies register. The record should include details of the nature of the courtesy from whom it was received and its approximate value, all courtesies valued at more than R 350-00 must be recorded (the amounts will be adjusted for inflation). The recording of the courtesy does not imply its acceptability; Managers may at any stage stipulate that courtesies from a particular supplier can no longer be accepted.
- 27.3. Business courtesies are intended to strengthen relations or confirm healthy relations, they should be of the kind which is common in the business circles in which Council operates and of a nature and value that make it possible to reciprocate. Council relationships with its customers may involve circumstances in which business courtesies are exchanged as an accepted business practice without inference of unethical conduct. In certain countries, for example local custom may dictate the exchange of business courtesies. Employees who have contact with foreign suppliers, vendors or customers, or their

representatives or employees should anticipate these situations and discuss them with their management.

27.4. When an employee is in doubt about the acceptability of a courtesy he/she should when possible obtain his/her manager's approval before accepting it.

27.5. What to do about unacceptable business courtesies:

Employees and managers should try to anticipate and avoid situations that might lead to an offer of an unacceptable business courtesy, however when management determines that a business courtesy offered to an employee should not be accepted or that a business courtesy already received should not be retained one of the following options must be selected:

- The employee or manager should politely refuse the business courtesy at the time it is offered and explain that Council policy prohibits its acceptance.
- The employee or manager may accept the business courtesy initially on behalf of Council and then return it to the donor with a polite explanation that Council policy prohibits its retention.
- The employee or manager may accept the business courtesy initially, on behalf of Council, and then promptly give it to the Executive Mayor for disposal for example donating it to a charitable or educational organisation.

28. Gift or courtesy register

28.1. A system for recording all business courtesies (other than those of nominal value or facilities provided during the normal course of business) offered to employees must be established and maintained by each department. These records must be reviewed regularly and must also be available for inspection by internal Audit and senior management must record gifts in registers

maintained by the executive managers to whom they report. The authority of the manager approving the acceptance of the courtesy must be specified in the register and it should not be seen as a control to ensure that all gifts are recorded but as a record providing transparency and employee protection, non-disclosure could result in disciplinary action being taken against the recipient of the business courtesy.

29. CONFLICT OF INTERESTS

29.1. A conflict of interests exists when an employee has a personal interest that could be seen to have the potential to interfere with his objectivity in performing his/her Council duties or exercising his/her judgment on behalf of Council, any such personal interest on the part of an employee or a member of his/her family is not permitted unless formally approved in writing in terms of the conditions of service.

30. What constitutes a conflict of interests?

30.1. Activities that could be taken to constitute a conflict of interests include outside employment in areas similar to those in which Council is involved outside work for customers, suppliers, vendors or competitors and other activities that have the potential to affect the employee's objectivity and work performance and activities that could reflect negatively on the reputation of Council and its employees.

30.2. There need not be an actual conflict of interests to constitute a violation activities that create the appearance of a conflict of interest must also be avoided. A conflict of interests may exist even when the Council employee has no direct involvement but when family and possibly friends of the employee do.

31. Requirements

- 31.1. All actual or potential conflict of interests should be declared as soon as the employee is aware of them. This declaration should be in writing and be approved as set out in the Conditions of Service.

32. Avoiding conflict of interests

- 32.1. Get approval first before doing any of the following:
- Holding a passive investment interest (either directly or indirectly) in any supplier or customer.
 - Acting as an officer, director, partner, consultant, representative, agent, advisor or employee of a supplier, customer or competitor of Council.
 - Any business that is involved in technical areas or product lines that are similar to those of the Council.
- 32.2. Examples of activities that could create the appearance of a conflict of interests:
- Having a financial involvement with an employee or representative of a supplier, vendor, customer or competitor of Council with whom the Council employee regularly comes into contact while performing Council business.
 - Accepting personal discounts (on products, services or other items) from an employee or representative or a supplier or customer on terms not available to all Council employees.
 - Participating in any activity that might lead to the disclosure of Council proprietary information owned by others who have entrusted it to Council.
 - Dealing directly in the course of normal Council responsibilities with or through a spouse or family member (as generally regarded by common law and within the diverse cultures) who is a supplier, vendor, customer or competitor or is employed by one.

- 32.3. These requirements apply as set out in the business conduct policy to contractors, consultants and anyone else acting on behalf of the Council.
- 32.4. Council encourages employees to participate in non-profit industrial professional, civic, or charitable activities and these are generally not viewed as constituting a conflict of interests. The employee is responsible for declaring the possibility of a conflict of interests, if a conflict of interests could not have been foreseen an employee would not be considered to have contravened the business conduct policy by not declaring it.
- 32.5. Where business units or departments issue specific policies or directives concerning conflict of interests, these must be followed.

33. Insider dealing

- 33.1. Insider dealing is the improper exploitation by an employee of privileged information from any source to secure profit for himself or other through dealing in securities, commodities, property or any other assets it is unethical and where it concerns publicly traded securities likely to be illegal. Imparting privileged information that makes it possible for someone to undertake insider dealing, or to secure a profit is a serious matter. If deliberate it is likely to be illegal, if negligent it is potentially a disciplinary matter.

34. RELATIONSHIPS WITH COLLEAGUES

- 34.1. There is only one way to treat people-fairly:

Council respects and values the cultural diversity of its customers and employees. Council also respects its employee's personal privacy but it does

expect them to be law-abiding and to conduct their personal affairs like good and responsible citizens especially where any indiscreet or antisocial behaviour could affect the individual's performance or reflect badly on Council.

- 34.2. Employees should treat diversity as an asset and help every person to reach his or her full potential. Employees may not attempt to intimidate fellow employees and should recognise one another's right to freedom of association.

35. RELATIONSHIPS WITH SUPPLIERS

- 35.1. The following applies particularly to employees who have direct contact with outside suppliers or who are indirectly involved in source selection or evaluation. Purchase contracting must be made on the basis of quality, service, price and availability. All approved suppliers and contractors should have an equal opportunity to compete for Council's business, however proper consideration must be given to small business development and support.
- 35.2. Business and personal activities must be kept separate having both a personal and business involvement with a supplier or potential supplier may create a conflict of interests.**
- 35.3. The proprietary data of a supplier or potential supplier must be protected. Employees are responsible for complying with supplier-imposed limitations governing the use of supplier information including documents and computer software. Council purchasing power should not be misused for personal benefit to buy goods, materials or services at terms not available to all Council employees.
- 35.4. It is unethical to force a concession from a supplier for personal benefit which would not otherwise be obtainable. Information about

Council that is restricted proprietary or sensitive must not be revealed to a supplier or potential supplier unless authorised.

35.5. All employees, contract labour, consultants and other acting for Council or its subsidiaries are prohibited from providing, attempting to provide or offering to provide kickback, and from soliciting, accepting, or attempting to accept a kickback and no form of improper influence, bribery or unethical conduct by suppliers or customers is to be tolerated and such conduct should be reported.

36. Suppliers who do not comply with the policy

- 36.1. Failure of suppliers to adhere to the principles of this policy should be brought to the attention of the Municipal Manager. The Municipal Manager should inform the supplier of the non-compliance and request remedial action; if the supplier does not accede to this request Council may stop dealing with the supplier subject to the contractual and legal implications.
- 36.2. Council is particularly concerned about suppliers that wish to appoint Council officials as directors, partners or member of their business, if a supplier wishes to do so, he/she must first submit this proposal to Council for approval.

THIS POLICY IS WILL REVIEWED ON AN ANNUAL BASIS