

METSIMAHOLO LOCAL MUNICIPALITY

WHISTLEBLOWING POLICY

(Annexure B to the Anti-Fraud & Corruption Strategy)

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1. GLOSSARY OF TERMS

Throughout this document, unless otherwise stated, the words in the first column below have the meanings stated opposite them in the second column (and cognate expressions shall bear corresponding meanings):

GLOSSARY OF TERMS

Throughout this document, unless otherwise stated, the words in the first column below have the meanings stated opposite them in the second column (and cognate expressions shall bear corresponding meanings):

Act	Protected Disclosures Act 26 of 2000
METSIMAHOLO	Metsimaholo Local Municipality
Policy	Whistle Blowing Policy
SAPS	South African Police Services
EXCO	Executive Management Committee
Impropriety	means any conduct which falls within any of the categories referred to section 4.1 a) to g) below, irrespective of whether or not. a) the impropriety occurs or occurred in the Republic of South Africa or elsewhere; or b) the law applying to the impropriety is that of the Republic of South Africa or of another country

Occupational detriment
employee, means

In relation to the working environment of

- a) being subjected to any disciplinary;
- b) being dismissed, suspended, demoted, harassed or intimidated;
- c) being transferred against his or her will;
- d) being refused transfer or promotion;
- e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- f) being refused a reference or being provided with an adverse reference from his or her *employer*;
- g) being denied appointment to any employment, profession or office;
- h) being threatened with any of the actions referred to paragraphs a) to g) above; or
- i) being otherwise adversely affected in respect of his or her employment; profession or office, including employment opportunities and work security

Minor offences

means any offence involving dishonesty by municipal officials and councillors which includes giving municipal information to the third parties, misuse of municipal assets for personal use, using of municipal time for personal matters.

Auditor General

means the person appointed as Auditor-General in terms of section 193 of the

Constitution, and includes a person— (a) acting as Auditor- General; (b) acting in terms of a delegation by the Auditor-General; or (c) designated by the Auditor-General to exercise a power or perform a duty of the Auditor-General.

Public Protector means the person appointed by the President, on the recommendation of the National Assembly, in terms of Chapter 9 of the Constitution.

Unethical conduct, fraud and corruption Includes, but is not limited to, the following:
(Refer to Anti-Fraud and Response Policy for other Glossary of terms).

2. INTRODUCTION

2.1 METSIMAHOLO recognises the fact that –

- Criminal and other irregular conduct within METSIMAHOLO is detrimental to good, effective, accountable and transparent governance within METSIMAHOLO and can endanger the economic stability of METSIMAHOLO and have the potential to cause social damage;
- There is a need for procedures in terms of which employees/members of the community may, without fear of reprisals, disclose information relating to suspected or alleged unethical conduct, fraud and corruption affecting METSIMAHOLO;

- Every employer and employees/members of the community has a responsibility to disclose unethical conduct, fraud and corruption in the workplace; and
- Every employer has a responsibility to take all necessary steps to ensure that employees/members of the community who disclose such information are protected from any reprisals as a result of such disclosure.

3. OBJECTIVE OF THE POLICY

3.1 The Protected Disclosures Act 26 of 2000 came into effect on 16 February 2001. In order to remain in compliance with the Act, METSIMAHOLO will –

- Strive to create a culture which will facilitate the disclosure of information by employees/members of the community relating to unethical conduct, fraud and corruption 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
- Promote the eradication of unethical conduct, fraud and corruption within METSIMAHOLO.

3.2 The Policy is intended to encourage and enable employees/members of the community to raise improprieties within METSIMAHOLO rather than overlooking a problem or blowing the whistle to inappropriate channels.

3.3 Furthermore the Policy aims to –

- Provide avenues for employees/members of the community to raise improprieties and receive feedback on any action taken;

- Inform employees/members of the community on how to take the matter further if they are dissatisfied with the response; and
- Reassure employees/members of the community that they will be protected from reprisals or victimisation for whistle blowing in good faith.

4. SCOPE OF THE POLICY

4.1 There are grievance procedures in place to enable employees of METSIMAHOLO to raise grievances relating to their employment/members of the community who have serious concerns about METSIMAHOLO's business practices, to come forward and voice those grievances. This Policy is intended to cover improprieties that fall outside the scope of grievance procedures. These improprieties indicated in the Act, are the following:

- (a) That a criminal offence or other irregular conduct 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 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 4 of 2000 as well as Bill of Rights as contained in the Constitution; or

(g) That any matter referred to in paragraphs 4.1 (a) to (f) has been, is being or likely to be deliberately concealed.

5. THE POLICY

5.1. HARASSMENT OR VICTIMIZATION

METSIMAHOLO acknowledges the fact that the decision to report an impropriety can be a difficult one to make for fear of reprisals from those responsible for the said impropriety or other irregular conduct. METSIMAHOLO does not tolerate harassment or victimisation and will take necessary action to protect employees when they report an impropriety in good faith. This does not mean that if an employee is already the subject of disciplinary or other action, that action will be halted as a result of their whistle blowing unless such disciplinary action arises out of protected disclosure or falls within the definition of “occupational detriment” as contemplated by the Act.

5.2. CONFIDENTIALITY

METSIMAHOLO will do its best to protect an individual's identity when he/she reports an impropriety and does not want their identity to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the employee/members of the community may be required as part of the evidence. It is, furthermore, a possibility that the employee may be required in due course to provide evidence at a hearing or trial.

5.3. ANONYMOUS ALLEGATIONS

METSIMAHOLO encourages employees/ members of the community to put their names to allegations. Improprieties expressed anonymously are difficult to investigate; nevertheless, they will be followed up at the discretion of METSIMAHOLO. This discretion will be applied by taking into account the following:

- the seriousness of the issue raised;
- the credibility of the impropriety;
- the likelihood of confirming the allegation; and
- sufficiency and admissibility of information provided.

5.4. UNTRUE ALLEGATIONS

5.4.1 Management should discourage employees/members of the community or other parties from making allegations, which are false and made with malicious intentions. Where such malicious, vexatious or false allegations are discovered, the person who made the allegations will be subjected to firm disciplinary action or other appropriate action in the case of external parties.

5.4.2 Employees/members of the community or other parties must understand that they need to make the allegations of impropriety in good faith. This means that the person who makes the allegations must honestly believe that such allegations are true and correct.

5.4.3 Employees/members of the community must guard against reporting rumours or hunches and may not base their allegations on unreasonable suspicions.

5.4.4 Employees/members of the community must also guard against deliberately making allegations which they know, should reasonably know or suspect to be false and/or which are made with malicious intent.

6. REPORTING

6.1 For some minor offences, employees should normally raise the improprieties with their immediate manager or supervisor. In general, however, the whistle blowing procedure is expected to be used for potentially more serious and sensitive matters (e.g. fraud and corruption).

6.2 The first step will be for the employee to approach their immediate manager or supervisor unless he/she or senior management is the subject of the complaint, in which case Municipal Manager should be informed. Should the complaint be found to be substantiated, he/she will consult with Municipal Manager of METSIMAHOLO on referring it to the appropriate body (e.g. the South African Police Services and appropriate bodies in terms of sections 5, 6, 7 and 8 of the Protected Disclosures Act 26 of 2000).

6.2.1. In instances where you have substantial evidence to believe that the matter would not be handled properly using the above processes you may approach the following regulators:

6.2.1.1 South African Police Services

6.2.1.2 The Auditor-General

6.2.1.3 The Public-Protector hotline facility **(0800 70 701)**

6.3 Allegations of impropriety must be in writing. The background and history of the impropriety, giving names, dates and places where possible should be set out and the reason why the individual is particularly concerned about the situation. Employees or other parties who are not able to put their impropriety

in writing can phone the Fraud Hotline number **(to be established in union with the call centre)**. The sooner the impropriety is reported, the easier it is to take action as well as initiating recovery procedures where necessary.

6.4 Employees/members of the community or other parties are required to prove the truthfulness of their allegations and they will need to demonstrate to the person contacted that there are sufficient grounds for believing that a particular act of impropriety or irregular conduct has been, is being or is likely to be committed.

6.5 Advice and guidance on how matters relating to allegations of impropriety may be pursued can be obtained from the Internal Audit Unit or the Directorate for Organisational Development and Corporate Services per Legal and Human Resource (Labour Relations) division.

7. HOW THE COMPLAINT WILL BE DEALT WITH

7.1 The action taken by METSIMAHOLO will depend on the nature of the impropriety. The possible actions may, among others be to:

- be investigated internally; or
- be investigated by external bodies as contemplated by the Protected Disclosures Act; or
- be referred to the South African Police Services or other relevant law enforcement agency i.e. Public Protector; Auditor General and/or
- be referred to the Audit Committee.

7.2 In order to protect individuals and METSIMAHOLO, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take. Other allegations which fall within the scope of other procedures will normally be referred for consideration under those procedures.

7.3 Some improprieties may be resolved by agreed action without the need for investigation.

7.4 The Internal Audit Manager or any person authorised to act in place of the latter may, upon receiving a report of the alleged or suspected fraud or corruption, inform the complainant in writing or through the Fraud Hotline service provider of METSIMAHOLO:

- Acknowledging that the report has been received;
- Indicating how it proposes to deal with the matter and whether any initial enquiries have been made;
- Giving an estimate of how long it will take to provide a final response; and
- Informing them whether or not further investigations will take place.

7.5 The amount of contact between the body investigating the issues and the persons raising the impropriety will depend on the nature of the matters raised, the potential difficulties involved and the clarity of the information provided. If necessary, further information will be sought from the individual.

7.6 METSIMAHOLO accepts that employees/members of the community and other parties need to be assured that the matter has been properly addressed. However, the progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any persons

other than those who have a legitimate right to such information. This is important in order to avoid damaging the reputation of suspected persons who are subsequently found innocent of wrongful conduct.

8. CREATING AWARENESS

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

8.2 It is the responsibility of management to ensure that all councillors, municipal employees, members of the community, suppliers and agents, are made aware of, and receive appropriate training and education with regard to the Whistle Blowing Policy.

9. ADMINISTRATION

9.1 The Municipal Manager has overall responsibility for the maintenance and operation of this policy. He/She will be supported by the Risk Management Unit and the Directorate for Organisational Development and Corporate Services to maintain a record of reports of improprieties raised and the outcomes, but in the form which does not compromise an acceptable degree of confidentiality.

10. ADOPTION OF THE POLICY

Signature

Date

Prepared by

Person responsible for Risk management

Recommended by

Chairperson: Risk management Committee

Acknowledged by

The Municipal Manager

Council Resolution No: _____

Date: _____