

EMAKHAZENI LOCAL MUNICIPALITY



WHISTLE BLOWING POLICY

2016/17

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1. INTRODUCTION

1.1. Emakhazeni Local Municipality encourages culture of good governance and whistle blowing.

The employees are often the first to realize when something has gone seriously wrong within the Council. However, they may not come out and express their concerns because they feel that doing so would be disloyal to their colleagues or to the Council. They may also hold back in fear of harassment or victimization. In these circumstances it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

1.2. Whistle Blowing Policy makes it clear that you can do so without fear of victimization, subsequent discrimination or disadvantage. This policy is intended to encourage and enable employees and the public to raise serious concerns within Emakhazeni Local Municipality rather than overlooking a problem or 'blowing the whistle' outside.

2. BACKGROUND

2.1. The Protected Disclosure Act, No 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, No 26 of 2000 employees can blow the whistle on fraud and corruption in the working environment without fear of suffering an occupational detriment as defined by the Act. .

3. PURPOSE

3.1 The purpose of this policy is:

3.1.1 To encourage whistle blowing around suspected impropriety within Emakhazeni Local Municipality

3.1.2 To protect those who have blown the whistle against any form of occupational detriment; and

3.1.3 To provide for procedures in which an employee can disclose information regarding improprieties in the workplace.

4. DEFINITIONS

In this policy unless the context otherwise indicates: -

4.1 “Councillor “ means a member of municipal council

4.2 “Employee” means any person-

- (a) Excluding an independent service provider, who works for Emakhazeni Local Municipality and who receive, any remuneration; and

- (b) Other who in any manner assists in carrying on or conducting the business of an employer.

4.3 “Employer” means -

- (a) Who employs or provides work for any other person who remunerates or expressly or tacitly undertakes to remunerate that other person; or
- (b) Who permits any person in any manner to assist in the carrying on or conducting of his, her or its business, including any person acting on behalf of or on the authority of such employer.

4.4 “Protected disclosure” or **“disclosure,”** means a disclosure made in terms of this policy or the Act;

4.5 “The Act” means the Protected Disclosure Act, 2000 (Act 26 of 2000);

4.6 “Whistle blower” means a person who has made a disclosure in terms of this policy or the Act;

4.7 “Whistle blowing” means the process of disclosing information relating to some kind of malpractice or mistreatment which members of the staff may have come across during the course of their work and which they feel would put the interest of the Municipality at risk.

5. POLICY STATEMENT

5.1 Emakhazeni Local Municipality is committed to integrity and ethical behaviour by helping to foster and maintain an environment where employees, councilors and stakeholders can act appropriately, without fear of retaliation. To maintain these standards, Emakhazeni Local Municipality encourages its employees, councilors and stakeholders who have concerns about suspected serious misconduct or any breach or suspected breach of law or regulation that may adversely impact the municipality, to come forward and express these concerns without fear of punishment or unfair treatment.

5.2 Emakhazeni Local Municipality conducts business based on the principles of fairness, honesty, openness, decency, integrity and respect. It is the policy of Emakhazeni Local Municipality to support and encourage its employees, councilors, the community and other stake-holders to report and disclose improper or illegal activities, and for the Municipality to fully investigate such reports and disclosures.

5.3 It is also the policy of Emakhazeni Local Municipality to address any complaints that allege acts or attempted acts of interference, reprisal, retaliation, threats, coercion or intimidation against employees who report, disclose or investigate improper or illegal activities (the “Whistleblowers”) and to protect those who come forward to report such activities.

5.4 Emakhazeni Local Municipality assures that all reports will be treated strictly confidentially and promptly investigated and that reports can be made anonymously, if desired.

5.5 Emakhazeni Local Municipality is committed to the fight against fraud and corruption whether the perpetrators are internal or external. The Whistle-blowing policy and procedures is part of the Municipality's commitment to working towards a culture of openness and transparency. It could be added that confidentiality will be maintained, and that nobody will be penalized for disclosing in good faith, information that might be in the Municipality's interest.

6. SCOPE OF THE POLICY

6.1 This policy applies to all employees, councilors and stakeholders of Emakhazeni Local Municipality.

6.2 The policy will not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct. Details on these procedures are obtainable from Corporate Services Department.

6.3 The policy covers all genuine concerns raised including:

- i) conduct which is an offence or a breach of law;
- ii) disclosures related to miscarriages of justice;
- iii) healthy and safety risks, including risks to the public as well as other employees;
- iv) damage to the environment;
- v) the unauthorized use of public funds;
- vi) possible fraud and corruption;
- vii) other unethical conduct;
- viii) serious failure to comply with appropriate professional standards;
- ix) abuse of power, or use of Company powers and authority for any unauthorized use or personal gain;
- x) deliberate breach of Council's policy.

7. RESPONSIBILITY OF EMPLOYER

7.1 Emakhazeni Local Municipality commits itself to encouraging a culture that promotes openness. This will be done by:

- i) Involving employees, listening to their concerns and encouraging the appropriate use of this policy/process on whistle-blowing promoted by the Municipality.

- ii) Educating/training/informing/explaining to employees what constitute fraud, corruption and malpractice and its effect on the Municipality.
- iii) Promoting awareness of standards of appropriate and accepted employee conduct and establishing common understanding of what is acceptable and what is unacceptable behaviour.
- iv) Promoting the fraud hotline to employees and the community.
- v) Encouraging unions to endorse and support this approach.
- vi) Having policy to combat fraud.
- vii) Annual reporting to Council on the number of fraud/corruption matters reported and the outcomes.

8. ASSURANCE TO WHISTLE BLOWERS

8.1 Whistle blowers safety

8.1.1 The Municipality is committed to the enforcement of this policy by ensuring that any member of staff, councillors or stakeholders who makes disclosure in the above mentioned circumstances will not be penalized or suffer any occupational detriment for doing so.

8.1.2 Occupational detriment as defined by Protected Disclosure Act includes being dismissed, suspended, demoted, transferred against your will, harassed or intimidated, refused a reference or being provided with an adverse reference, as a results of your disclosure.

8.1.3 If you raise a concern in good faith in terms of this policy, you will not be at risk of losing your job or suffering any form of retribution as a result.

8.1.4 This assurance is not extended to employees and councillors who maliciously raise matters they know to be untrue. 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, may be subjected to disciplinary proceedings.

8.2 Whistle blowers confidence

8.2.1 In the view of the protection offered to a member of staff raising a bona fide concern, it is encouraged that the individual puts his/her name to the disclosure. Emakhazeni Local Municipality will not tolerate the harassment or victimization of anyone raising a genuine concern.

8.2.2 However, it is permissible that you may nonetheless wish to raise a concern in confidence under this policy. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent. However we do expect the same confidentiality regarding the matter from you.

9. POLICY DIRECTIVES AND PROCEDURES

9.1 Who can raise a concern

9.1.1 Any member of staff, councillor or community who has a reasonable belief that there is corruption or misconduct relating any of the protected matters specified in this policy may raise a concern under the procedure detailed in 9.3.

9.1.2 Concerns must be raised without malice, in good faith and not for personal gain and the individuals must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true.

9.1.3 The issue raised may relate to a manager, another member of staff, a group of staff, the individual own section or different section of the Municipality. The perpetrator can be an outsider, an employee, a manager, a customer or an ex-employee.

9.2 How to blow a whistle

Members of staff, councilors or community should feel free to contact and raise their concerns with any of the following;

- 9.2.1 Office of the Municipal Manager
- 9.2.2 The Head of Department/Unit
- 9.2.3 The Public Protector.
- 9.2.4 Relevant Authority e.g. SAPS
- 9.2.5 Corruption Watch
- 9.2.5 To the National Anti-Corruption hotline number at **0800 701 701**

9.3 How the matter will be handled

9.3.1 A written allegation should set out the background and history of the concern (giving names, dates and places where possible) and the reason why the employee, councilor or member of community is particularly concerned about the situation. It is preferable for that employee, councilor or member of community to record this in writing him-/herself and can utilize the whistle

blowing form in **Annexure A**. However, where the person to whom the concerns are voiced writes these down, a copy will be sent to the employee's home address or via his/her representative to give him/her an opportunity to agree to this as a correct record. Although it is not expected of the whistle-blower to prove the truth of an allegation, he/ she will need to demonstrate to the person contacted that there are sufficient grounds for concern.

- 9.3.2 This may be done verbally or in writing. It must be stated whether he/she wishes to raise the matter in confidence so that they can make appropriate arrangements
- 9.3.3 The concerned will be taken to the Sub- Committee for Whistle Blowers, which will comprise of Chairperson: Risk Management Committee, Deputy Manager: Legal Services (Internal) and two (2) Senior Managers.
- 9.3.4 Once a concern is raised, it will be assessed by Sub- Committee for Whistle Blowers to decide what action should be taken. This may involve an internal inquiry or a more formal investigation. The issue raised will be acknowledged **within 7 working days**.
- 9.3.5 If it is requested, an indication of how the matter will be dealt with and a likely time scale could be provided. If the decision is made not to investigate the matter, reasons will be given.
- 9.3.6 If the concern falls more properly within the Grievance Procedure, he/she will be informed accordingly.
- 9.3.7 Whistle-blowers will be given as much feedback as possible, full information may not always be given on the precise action taken where this could infringe a duty or confidence owed to someone else.

9.4 Dissatisfaction with response

9.4.1 If an employee, councilor or member of community is at any stage unhappy with the response, he/she can go to the other levels and bodies detailed in this policy. While it cannot be guaranteed that the response will in all instances be the way that he/she might wish, the Council is committed to handle the matter fairly and properly. By using this policy, employees, councilor or member of will help to achieve this.

10. CONTRAVENTIONS

- 10.1 An employee who makes a disclosure in bad faith or who makes an allegation without having reasonable grounds for believing it to be true or who makes it maliciously or vexatiously may be subjected to disciplinary action.
- 10.2 Any person who subjects an employee in any form of occupational detriment on account or partly on account of having made a protected disclosure may be subjected to disciplinary action.
- 10.3 Any person who contravenes or fails to comply with any provision of this policy may be subjected to disciplinary action

11. Policy Review

This Policy shall be reviewed annually to review the implementation of the Policy and will be approved by the Council.

**ANNEXURE A:
ELM WHISTLE BLOWING REGISTRATION FORM**



**EMAKHAZENI LOCAL MUNICIPALITY
WHISTLE BLOWING REGISTRATION FORM**

Date -----

Time -----

Contact Person-----

Tel/Cell -----

E-mail -----

Area/District -----

Address -----

Department -----

Method of reporting -----

Allegation/What Happened -----

Additional questions:

Who is involved -----

Where did it happen -----

When did it happen -----

Motive of alleged incident -----

Impact -----

Additional Information -----

Complied by -----

Signature -----