

# UMUZIWABANTU MUNICIPALITY



## ANTI-CORRUPTION POLICY

## **1. DEFINITIONS**

### 1. When used in this policy:

1.1 “The Municipal Manager” shall mean the municipal manager of the Municipality;

1.2 “the Municipality” shall mean Umuziwabantu Municipality

## **2. SCOPE OF THE POLICY**

This policy applies to all corruption, fraud, theft and maladministration and dishonest activities of a similar nature (hereinafter jointly referred to as “corrupt conduct”) involving the following persons or entities:

2.1 all members of the Council of the Municipality;

2.2 all employees of the Municipality; and

2.3 consultants, suppliers, contractors and other providers of goods or services to the Municipality

## **3. THE POLICY**

It is the policy of the Umuziwabantu Municipality that:

3.1 corrupt conduct will not be tolerated;

3.2 such conduct will be investigated and followed up by the application of all remedies available within the full extent of the law;

3.3 all managers are responsible for the detection, prevention and investigation of all corrupt conduct;

3.4 appropriate prevention and detection controls will be rigorously applied, and to that end, the provisions of the Municipal Finance Management Act and regulations issued thereunder will be strictly observed;

3.5 the Municipality will take appropriate legal action to recover losses or damages arising from fraud, corruption, theft or maladministration

#### **4. ACTIONS CONSTITUTING CORRUPT CONDUCT**

4. Actions constituting corrupt conduct collectively refer to, but are not limited to:

- 4.1 any dishonest, fraudulent or corrupt act;
- 4.2 theft of funds, supplies, or other assets;
- 4.3 maladministration or financial misconduct in handling or reporting of money, financial transactions or other assets;
- 4.4 making a profit from insider knowledge;
- 4.5 disclosing confidential or proprietary information to outside parties;
- 4.6 irregularly accepting, requesting, offering or giving anything of material value to or from contractors, suppliers or other persons providing services/goods to the Municipality;
- 4.7 irregular destruction, removal or abuse of records, furniture and equipment;
- 4.8 unauthorised private use of municipal assets, including vehicles;
- 4.9 falsifying travel and subsistence claims;
- 4.10 conspiring unfairly with others to obtain a tender;
- 4.11 disclosing proprietary information relating to a tender to outside parties;
- 4.12 accepting inappropriate gifts from suppliers;
- 4.13 operating a private business in working hours;
- 4.14 stealing equipment or supplies from work;
- 4.15 accepting bribes or favours as an inducement to implement or give effect to requests;
- 4.16 accepting bribes or favours for turning a blind eye to a service provider who does not provide an appropriate service;
- 4.17 submitting or processing false invoices from contractors or other service providers;
- 4.18 misappropriating fees or other monies received from customers, and avoiding detection by not issuing receipts to those customers;
- 4.19 misappropriation of Municipal funds;

- 4.20 falsifying accounting records or documents
- 4.21 falsifying consumer debtors accounts or amending such accounts without authority;
- 4.22 any similar or related irregularity; and
- 4.23 deliberately omitting or refusing to report or act upon reports of any such irregular or dishonest conduct

## **5. RESPONSIBILITIES IN RELATION TO CORRUPT CONDUCT**

- 5.1 It is the responsibility of all employees and councillors of the Municipality to report all incidents of corrupt conduct.
- 5.2 Any corrupt conduct must be reported immediately through the mechanisms set out in the whistle blowing mechanism described in Policy.
- 5.3 All reports received will be acted upon, will be treated with the requisite confidentiality and will not be disclosed or discussed with parties other than those charged with investigation into such reports.
- 5.4 All Managers are responsible for the detection, prevention and investigation of fraud and corruption or any dishonest activities of a similar nature, within their areas of responsibility.

## **6. WHISTLE BLOWING**

The Protected Disclosures Act came into effect on 16 February 2001. This Act is commonly referred to as the Whistle blowing Act. In order to remain in compliance with the Act, the Municipality has created a whistle blowing program with the following objectives:

- 6.1 To encourage the reporting of matters that may cause financial or non-financial loss to the Municipality, or damage to the Municipality's reputation;

6.2 To enable the Municipality to deal effectively with reports from whistleblowers by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure;

6.3 To provide for the appropriate infrastructure including an alternative mechanism for reporting.

## **7. SCOPE OF WHISTLE BLOWING MECHANISM**

7.1 The whistle blowing mechanism is not a replacement for the existing Grievance Procedure and therefore grievances should not be reported in terms of this policy. Any grievances should be lodged in accordance with the provisions of the Grievance Procedure.

7.2 In terms of the Protected Disclosures Act, the following concerns may be raised:

7.2.1 That a criminal offence has been committed, is being committed or is likely to be committed;

7.2.2 That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;

7.2.3 That a miscarriage of justice has occurred, is occurring or is likely to occur;

7.2.4 That the health or safety of an individual has been, is being or is likely to be endangered;

7.2.5 That the environment has been, is being or is likely to be damaged;

7.2.6 That unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000 has occurred, is occurring or is likely to occur; or

7.2.7 That any matter referred to above had been, is being or is likely to be deliberately concealed.

## **8 PURPOSE OF WHISTLE BLOWING MECHANISM**

8.1 The Whistle Blowing mechanism has been developed to give effect to the objects of the Protected Disclosures Act, namely:

8.1.1 To protect an employee from being subjected to occupational detriment on account of having made a protected disclosure;

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

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

8.2 This mechanism is intended to encourage persons to report conduct referred to in section 4 by providing procedures for such reporting as well as ensuring that employees who make such reports in good faith are not victimised, harassed and do not suffer any occupational detriment.

## **9. PERSONS WHO MAY RAISE A CONCERN**

Any member of staff, councillor or member of the public who has a reasonable belief that any corrupt conduct has been committed may raise a concern under the procedure detailed below. Concerns must be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true. The issues raised may relate to a manager, another member of staff, or a group of staff.

## **10. CONFIDENTIAL REPORTING PROCEDURE**

Where a member of staff, a councillor or a member of the public wishes to raise a concern anonymously, such anonymity will be respected.

## **11. REPORTS BY MEMBERS OF STAFF**

If a member of staff has a concern to report, the concern should be raised:-

- 11.1 with the staff member's Manager; or
- 11.2 in the case of corrupt conduct involving the staff member's Manager, with the Municipal Manager; or
- 11.3 in the case of fraud or corruption or any other dishonest activities involving the Municipal Manager, with the Council through the Portfolio Councillor responsible for the department of the staff member concerned;
- 11.5 in the case of fraud or corruption or any other dishonest activities involving a Councillor, with the Mayor.

## **12. REPORTS BY COUNCILLORS OR MEMBERS OF PUBLIC**

If a councillor or a member of the public has an issue to report, the issue should be raised:-

- 12.1 with the Municipal Manager; or
- 12.2 in the case of corrupt activities involving the Municipal Manager, with the council, which issue, if it is reported by a member of the public residing in the area of the Municipality, shall be reported through the ward councillor for the ward in which that member of the public resides.

### **13. NATURE OF REPORT AND SUBSEQUENT ACTION**

13.1 When raising a concern, the person making the report should provide as much information about the concern as possible, including names, dates and places, where possible, as well as the reason why the person concerned is particularly concerned about the issue he/she wishes to report.

13.2 The person to whom the report is made will follow the various steps set out in this Policy.

13.3 The Municipal Manager must keep a register of all concerns raised with each manager, the Municipal Manager or the Council. Such register must record the nature of the concern, the name of the person raising it (unless such person wishes to remain anonymous) and the date on which it was raised.

### **14. HOT LINES**

The municipality will publish details of existing fraud hot lines through which persons may report corrupt conduct.

### **15. PROCEDURE IF INTERNAL MECHANISMS FAIL**

If a staff member, a councillor or a member of the public has exhausted the abovementioned internal mechanisms or has substantial reason to believe that there would be a cover-up or that evidence will be destroyed or that the matter might not be handled properly, the person concerned may raise the matter in good faith with the office of the Member of the Executive Council for Local Government of the Province. The Municipality will publicise the contact details of the appropriate person in such office who should be contacted for this purpose.



## **16. FALSE OR MALICIOUS ALLEGATIONS; ANONYMOUS ALLEGATIONS**

16.1 Persons wishing to make reports must guard against making allegations which are false and made with malicious intent. Persons making such reports will not enjoy the protection offered by the Protected Disclosures Act. Furthermore, there are resource and cost implications in respect of initiating investigations, which need to be considered in the event of a false or malicious accusation.

16.2 The Municipality encourages staff to put their names to allegations. Concerns expressed anonymously are difficult to investigate; nevertheless they will be followed up at the discretion of the municipality. This discretion will be applied by taking into account the following:

- 16.2.1 the seriousness of the issue raised;
- 16.2.2 the existence of evidence supporting the allegation;
- 16.2.3 the credibility of the concern; and
- 16.2.4 the likelihood of confirming the allegation.

## **17. RESPONSIBILITY FOR CONDUCTING INVESTIGATIONS**

17.1 The responsibility for conducting investigations relating to corrupt conduct lies with the Municipal Manager, who may delegate such responsibility, whether generally or in specific cases, to such manager or managers of the municipality as he may consider appropriate; provided that if the Municipal Manager is the subject of any complaint, then the responsibility for conducting the investigation shall lie with a [person appointed by the council](#) for this purpose.

17.2 The assistance of the following may be sought for purposes of carrying out any such investigation:

- 17.2.1 External and internal Audit Services;
- 17.2.2 External investigating agencies, for example the South African Police Services, where matters fall within their mandate;

- 17.2.3 External consultants, for example Forensic Accounting consultants;
- 17.2.4 Office of the National Director of Public Prosecutions;
- 17.2.5 Special Investigating Units established under any law;
- 17.2.6 The Public Protector ;
- 17.2.7 Any other authority as determined by Council.

17.3 The municipality will make all evidence collected during the course of an investigation available to law enforcement agencies and will pursue the prosecution of all parties involved in criminal activities.

## **18. PROCEDURE WHEN ALLEGATION OF CORRUPT CONDUCT MADE**

- 18.1 The person receiving the allegation will ensure that the Municipal Manager is advised at the earliest opportunity
- 18.2 The Municipal Manager or the person appointed by the council pursuant to 17.1 as the case may be, will conduct an initial evaluation to decide whether an investigation is appropriate and, if so, what form the investigation should take. Concerns raised may not necessarily require an investigation to resolve them.
- 18.3 Anonymous reports may warrant a preliminary investigation before any decision to implement an independent investigation is taken.
- 18.4 Where an internal investigation is considered appropriate:
  - 18.4.1 In cases where a person other than the Municipal Manager is the subject of the investigation, the Municipal Manager will appoint an appropriately qualified and experienced person who is independent of the section/unit where investigations are required, who may be a senior manager within the Municipality itself, an external consultant or a law enforcement agency;

- 18.4.2 In cases where the Municipal Manager is the subject of the investigation, the person appointed under 17.1 shall himself conduct the investigation or shall appoint an external consultant or a law enforcement agency to do so.
- 18.5 All investigations performed and evidence obtained will be in accordance with acceptable practices and legal requirements. Independence and objectivity of investigations will be paramount.
- 18.6 Upon receipt of an allegation of a suspected fraud, the immediate concern of the manager or investigating officer must be the preservation of evidence and the containment of loss.
- 18.7 The extent of the contact between the manager or investigating officer investigating the issues and the persons raising the concern (if not anonymous) will depend on the nature of the concern raised and the investigations which may require to be performed. If required, further information may be sought from the person who made the report.
- 18.8 All information relating to irregularities that is received and investigated by Managers will be treated confidentially. Investigations will be handled in a confidential manner and will not be disclosed or discussed with any other person(s) other than those who have a legitimate right to such information. This is important in order to avoid harming the reputations of suspected persons who are subsequently found innocent of wrongful conduct.
- 18.9 No person is authorised to supply any information with regard to the issues covered within this policy to the media without the express permission of the Municipal Manager.

## **19. NATURE OF PROCEDURES**

- 19.1 Investigations of fraud and corruption must be conducted in a manner which avoids:-
- 19.1.1 defamation;

19.1.2 action against an employer for wrongful dismissal;

19.1.3 inadmissible or poor control over the collection of evidence; and

19.1.4 destruction of physical evidence.

19.2 If external consultants are utilised as contemplated in 17.2 , they may be assisted by experienced personnel within the Municipality who are sufficiently independent of the area or the matter under investigation. The Municipal Manager, within his/her delegated authority, will have the discretion to determine the appropriate external consultants and/or the Municipal personnel to conduct investigations: provided that if an allegation of fraud or corruption concerns the Municipal Manager, the authority of the Municipal Manager to determine the appropriate external consultants and/or the Municipal personnel shall vest in the Chairperson of the Anti-Fraud and Corruption Committee.

19.3 Investigations may involve one or more of the following activities:

19.3.1 Interviewing of relevant witnesses, internal and external, including obtaining statements where appropriate;

19.3.2 Reviewing and collating documentary evidence;

19.3.3 Forensic examination of computer systems;

19.3.4 Examination of telephone records;

19.3.5 Enquiries from banks and other financial institutions (subject to the granting of appropriate approval/Court orders);

19.3.6 Enquiries with other third parties;

19.3.7 Data search and seizure;

19.3.8 Expert witness and specialist testimony;

19.3.9 Tracing funds/assets/goods;

19.3.10 Liaison with the police or other law enforcement or regulatory agencies;

- 19.3.11 Interviewing persons suspected of involvement in fraud and corruption;  
and
- 19.3.12 Any other reasonable action legally required or necessary to investigate  
the matter.

## **20. REPORT ON INVESTIGATION**

- 20.1 The appointed investigator must submit a written report to the Municipal Manager detailing the circumstances and recommending appropriate remedial action following the investigation: provided that in the case of an investigation concerning the Municipal Manager, the report and recommendations must be submitted to the Council.
- 20.2 Any investigation initiated must be concluded by the issue of a report by the person appointed to conduct such investigations. Such reports will only be disseminated to those persons required to have access thereto in order to implement whatever action is deemed appropriate as a result of the investigation.

## **21. DISCIPLINARY PROCEEDINGS**

- 21.1 If the report referred to above recommends the taking of disciplinary action, then the Municipal Manager must institute disciplinary proceedings, within a reasonable period, in terms of the disciplinary code and procedure of the Municipality; provided that if it is recommended that action be taken against the Municipal Manager, then the council must institute disciplinary proceedings.
- 21.2 As soon as a disciplinary hearing on a charge concerning any matter contemplated in 21.1 is completed, the outcome must be reported to the Municipal Manager or to the council , as the case may be. Such report shall deal with the following:

- 21.2.1 The name and position of the staff member against whom proceedings are instituted;
  - 21.2.2 The disciplinary charges, indicating the misconduct the staff member is alleged to have committed;
  - 21.2.3 The findings of the disciplinary hearing;
  - 21.2.4 Any sanction imposed on the staff member; and
  - 21.2.5 Any further action to be taken against the staff member, including criminal charges or civil proceedings.
- 21.3 The Municipal Manager, or the council as the case may be, is also required to ensure that losses or damages suffered by the municipality as a result of an act committed or omitted by an staff member must be recovered from such a staff member if he is liable in law. The Municipal Manager or the council must determine the amount of the loss or damage and, in writing request that staff member to pay the amount within 30 days or in reasonable installments. If the staff member fails to comply with the request, the appropriate legal process will then be initiated by the Municipal Manager or the council to recover such loss or damage.

## **22 PROSECUTION**

Should investigations uncover evidence of fraud or corruption in respect of an allegation or series of allegations, the Municipality will review the facts at hand to determine whether the matter is one that ought to be reported to the relevant law enforcement agency for investigation and possible prosecution. Such reports must be submitted to the South African Police Service in accordance with the requirements of the Municipal Finance Management Act and the Municipal Systems Act. The Municipality will give its full co-operation to any such law enforcement agency including the provision of reports compiled in respect of investigations conducted.

### **23. INTERNAL CONTROL REVIEW**

23.1 In each instance where corrupt conduct is detected, Line Management will reassess the adequacy of the current internal control environment (particularly those controls directly impacting on the fraud incident) to consider the need for improvements.

23.2 The responsibility for ensuring that the internal control environment is re-assessed and for ensuring that the recommendations arising out of this assessment are implemented will lie with Line Management of the Department concerned.

### **24. HARASSMENT OR VICTIMISATION**

The Municipality will not tolerate harassment or victimisation of any person who reports any incident of corrupt conduct and will take action to protect staff when they report incidents in good faith.

### **25. ANTI-FRAUD AND CORRUPTION IMPLEMENTATION PLAN**

The Municipality shall develop an anti-fraud and corruption implementation plan

### **26. TRAINING, EDUCATION AND AWARENESS**

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

26.2 It is the responsibility of all heads of department and managers to ensure that all staff are made aware of, and receive appropriate training and education with regard to this Policy.

## **27. ADMINISTRATION**

27.1 The custodian of this policy is the Municipal Manager who is supported in its implementation by the all Heads of Department.

27.2 The Municipal Manager is responsible for the administration, revision, interpretation, and application of this policy. It will be reviewed annually, and revised as required by council

## **28. COMMENCEMENT**

This policy has been considered and approved by the **COUNCIL OF THE UMUZIWABANTU LOCAL MUNICIPALITY** as follows:

Resolution No:.....

Approval Date:...30 May 2017...