POLICY
ON RECOVERY OF DAMAGES TO NON-INSURED CITY OF CAPE TOWN PROPERTY

APPROVED BY COUNCIL: 25 MAY 2010

C 20/05/10

CITY OF CAPE TOWN

POLICY ON RECOVERY OF DAMAGES TO NON-INSURED CITY OF CAPE TOWN PROPERTY

POLICY ON RECOVERY OF DAMAGES TO NON-INSURED CITY OF CAPE TOWN PROPERTY

1. THE OBJECTIVES, SCOPE AND APPLICATION OF THE POLICY

The objectives of this policy include:

1.1 To promote the recovery, from the responsible parties, of damages to City-owned property; whether that damage is caused negligently or maliciously;

1.2 To provide direction to the City's directorates with regards to damages recovery and to ensure a focus point within the corporate structure where the necessary investigation will be carried out or to indicate where assistance and advice on this recovery will emanate from;

1.3 To raise awareness amongst the public to the fact that persons responsible for causing damage to City property will be held liable.

SCOPE AND APPLICATION

This policy addresses all incidents that cause damage to City property throughout the City of Cape Town municipal area.

2. POLICY STATEMENT

2.1 Where incidents cause damage to City Of Cape Town property, the responsible parties will be held liable.

2.2 The quantum of damages claimed will be determined by the law of damages; generally speaking this will be the actual loss to the City.

2.3 The City will adopt a "zero tolerance" attitude towards damage caused to City property.

2.4 The City shall thoroughly investigate incidents of damage, with the objective of identifying the responsible parties and of recovering the damages from such parties.

2.5 Once liability has been established, the responsibility for collection of the damages will fall to the Revenue Branch of the City's Finance Directorate via billing and debt collection in accordance with the City's Credit Control and Debt Collection Policy.

3. BACKGROUND AND PROBLEM STATEMENT

3.1 Throughout the municipal area, infrastructure belonging to the City of Cape Town is frequently damaged or defaced as a consequence of actions by members of the public. Vehicle accidents, building activities, vandalism and graffiti defacement cause damage to items such as, for example, crash barriers, bollards, streetlights, traffic lights, control boxes, street name signs, overhead direction signs, statutory signs, fences, handrails, trees, bridges, footways, road surfaces, kerbs and storm water facilities.

3.2 These types of City property are not insured against damage and the cost to the City to repair or replace such infrastructure is debilitating to each directorate's budget.

3.3 It is therefore the intention of the City of Cape Town, in all incidents where uninsured property has been damaged, to identify and hold accountable the persons responsible for causing that damage.

3.4 In the past Directorates have found it difficult to regularly investigate and recover costs in all damage incident cases. The main impediments in this regard have been the shortage of staff, within the various Directorates, to devote to this, and a lack of expertise in the investigative type work often required to identify and pursue the parties responsible.

4. Management of Assets

Those Directorates within the City's corporate structure which are most affected by damage to assets under their care are Electricity, Transport, Roads and Storm Water, Water and Sanitation, City Parks and Sport and Recreation.

The intent of this policy is not restricted only to the items and Directorates enumerated above, but may be used for damage or loss to ALL uninsured City property or assets, no matter which Directorate they fall under.

5. Damage Caused as a Result of Vehicle Accidents

Non-insured City property is constantly being damaged as a result of vehicle accidents throughout the municipal area.

5.1. In instances where drivers or liable parties who cause damage to City property are insured, the City will attempt to recover those damages from the insurance company.

5.2. In instances where drivers or liable parties are not insured or the insurance claim has been repudiated by the insurance company, and where investigation indicates that the drivers or liable parties have the financial means (whether by virtue of their employment or asset base) to liquidate the damages, the City's Debt Collection By Law will be used to recover the damages from those drivers or liable parties.

5.3. In instances where an investigation indicates that the drivers or liable parties do not posses the financial means to liquidate the damages then the City may make a decision not to pursue the recovery of damages.

6. Damage Caused as Result of Building Activity

Damage to Council property is also regularly brought about by owners, contractors and material suppliers associated with building developments. Cable laying contractors and the like can also cause damage to City property. This policy shall apply to all such damages.

6.1. The City Electrical Department have a separate system in operation to claim for damage caused to their infrastructure as a result of negligence by builders or contractors.

6.2. In instances where damage to a Directorate's infrastructure is not covered by a separate claims system, then the process will follow the guidelines for the implementation of this policy (see section 13 of this policy) and the City's Debt Collection By-Law will be used to recover such costs.

7. DAMAGE CAUSED BY OTHER CAUSES

Vandalism and graffiti also cause damage, the latter visibly marring the built environment.

Where culprits are identified to have caused damage maliciously, they will in the first instance be held criminally liable for the damage caused, and they will also be pursued for the recovery of damages.

8. A CENTRAL INVESTIGATIVE UNIT

Given the difficulties outlined in the last paragraph of clause 3 above, there is a need for a central operational unit with the specialised investigative type expertise in this work.

The City Manager has identified the Special Task Unit in the Directorate of Safety and Security as the responsible unit to manage the investigative and claims process.

9. RESPONSIBLE PERSONS

Responsible persons are those who admit liability or who, after due process, are found liable for costs of damages caused to City property:

(a) during the course of vehicle accidents

(b) during the course of building operations

(c) by deliberate acts of vandalism and graffiti defacement

(d) by violating laws, regulation and by-laws.

It includes any Council employee who, while acting outside the course and scope of his/her employment, has or causes an incident which results in damage to City Property.

10. RATIONALE/ JUSTIFICATION

In the absence of a standard City-wide policy dealing with recovery of losses resulting from damage to City property, the City will continue to suffer losses, the public would remain unaware of their responsibilities, and City staff would remain unsure of their duty in this regard.

11. Principles

This policy is founded on the following principles:

(a) Duty of care over public property

(b) Duty of care over public funds

(c) Holding perpetrators responsible for damage to Council property

(d) Ensuring legal and fair recovery of those damages.

12. Legal Mandate:

Constitution:

In terms of sections 151(3) and 156(1)(a) of the Constitution, a Municipality has executive authority and the right to administer matters listed in part B of schedule 4 and part B of schedule 5 of the Constitution, which includes, inter alia, Municipal Roads, Street Lighting, Fencing, Traffic and Parking. The municipal assets such as described in section 3 of this policy are considered to all be covered by these sections.

Local Government: Municipal Finance Management Act 56 of 2003.

This policy is consistent with the object of the Local Government Municipal Financial Management Act (MFMA), as stated in sections 2(a) of the Act. Cognisance is taken of the revenue management and revenue collection responsibility of municipalities in terms of sections 2 and 64 (2) of the Act.

Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)

Section 96 of this Act is of relevance to this policy in that it states, inter alia: "a municipality must collect all money that is due and payable to it .."

City of Cape Town: Credit Control and Debt Collection Policy (2008)

Section 97(1)(h) of the Municipal Systems Act states *"A credit control and debt collection policy must provide for matters relating to unauthorised consumption of services, theft and damages…"*

(Note: Although the City's Credit Control and Debt Collection Policy (CC&DCP) is formulated in terms of section 96(b) of the Municipal Systems Act, it currently does not specifically provide for the implementation of section 97(1)(h) of the Municipal Systems Act. This oversight in the current CC&DCP is highlighted herein as a matter to be corrected.)

City of Cape Town Debt Collection By-Law, 2006.

(Note: In an oversight/omission similar to that in the CC&DCP, this By-Law provides in section 11 for the recovery of costs, but the wording of the section is narrow and therefore excludes other costs not covered in the narrow wording. The By-Law limits the City Manager to recover only the costs listed in section 11 and excludes other costs that may be incurred by the City as a result of damage to non insured assets. This oversight is likewise highlighted as a matter to be corrected.)

13. PROCESS FLOW

The process flow for implementation of this policy is set out in a separate document entitled 'Guidelines to the Implementation of the Recovery of Damages Policy'. It is not part of the policy proper as the processes may be changed from time to time.

14. CONCLUSION

14.1 This policy requires that responsible parties who cause damage to non-insured City property will be held liable for those damages, and that the relevant personnel in the City of Cape Town municipality shall be obliged to pursue the recovery of these damages from those parties, wherever possible.

14.2 This policy is to commence when approved by Council and is to be reviewed at least once a year by the Transport Roads and Storm Water Portfolio Committee in conjunction with representatives from the Finance Portfolio Committee.
