



CITY OF CAPE TOWN
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WHISTLE BLOWING POLICY

Director	
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1. DEFINITIONS AND ABBREVIATIONS

'Anonymous' means instances where a person or entity's name and identity is unknown or withheld;

'City' means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or any structure or employee of the City acting in terms of delegated authority;

'City Manager' means a person appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and 'Accounting Officer' shall have the same meaning;

'Constitution' means the Constitution of the Republic of South Africa, 1996;

'Corruption' is defined in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004). Corruption is either in active or passive form and can be described in the following terms:

Anybody who

- (a) accepts any gratification from anybody else, or
- (b) gives any gratification to anybody else

in order to influence the receiver to conduct him/herself in a way which amounts to the unlawful exercise of any duties, commits corruption¹;

'Council' means the Municipal Council of the City;

'Discrimination' as per the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) means "any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly –

- (a) imposes burdens, obligations or disadvantage on; or

¹ CR Snyman, Criminal Law, Sixth Edition, 403

- (b) *withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds*";

'Disclosure' as per the Protected Disclosures Act, 2000 (Act No. 26 of 2000), as amended, means any disclosure of information regarding any conduct of an employer, or of an employee or of a worker of that employer, made by any employee or worker who has reason to believe that the information concerned shows or tends to show one or more of the following –

- (a) that a criminal offence 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 is likely to be endangered;
- (e) that the environment has been, is being or is likely to be damaged;
- (f) unfair discrimination as contemplated in Chapter II of the Employment Equity Act, 1998 (Act No. 55 of 1998) or the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); or
- (g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed.

'Employee' means

- (a) any person, excluding an independent contractor, who works or worked for another person or for the State, and who receives or received, or is entitled to receive, any remuneration; and
- (b) any other person who in any manner assists or assisted in carrying on or conducting or conducted the business of an employer;

'Employer' means any person –

- (a) who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or

(b) who permits any other person in any manner to assist in the carrying on or conducting of his, her or its business;

'EMT' means the Executive Management Team which consists of the City Manager and those Executive Directors and/or Directors who serve together as the top management committee of the City's administration;

'Forensic Services' an independent internal assurance provider which provides a proactive and reactive forensic service across the City and is led by the Chief: Forensic Services;

'Fraud' means the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another party;

'Good faith' means that the employee and worker reasonably believes the allegations to be correct and acts with honesty, fairness, and lawfulness of purpose i.e. the absence of any intent to defraud, act maliciously, or take unfair advantage;

'Harassment' as per the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to –

- (a) sex, gender or sexual orientation; or
- (b) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group.

'Impropriety' means any conduct which falls within any of the categories referred to in paragraphs (a) to (g) of the definition of *'disclosure'*;

'Occupational Detriment' in relation to an employee or a worker, means –

- (a) being subjected to any disciplinary action;
- (b) being dismissed, suspended, demoted, harassed or intimidated;
- (c) being transferred against one's will;
- (d) being refused transfer or promotion;
- (e) being subjected to a term or condition of one's employment or retirement which is altered or kept altered to one's disadvantage;
- (f) being refused a reference, or being provided with an adverse reference from the City;
- (g) being denied appointment to any employment, profession or office with the City;
- (h) being subjected to any civil claim for the alleged breach of a duty of confidentiality or a confidentiality agreement arising out of the disclosure of a criminal offence or information which shows or tends to show that a substantial contravention of, or failure to comply with the law has occurred, is occurring or is likely to occur;
- (i) being threatened with any of the actions referred to in paragraphs (a) to (h) above; or
- (j) being otherwise adversely affected in one's employment, profession or office with the City, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services.

'Person' means a natural person or a juristic person;

'Policy' means the Whistle Blowing Policy of the City;

'Protected Disclosures Act' means the Protected Disclosures Act, 2000 (Act No. 26 of 2000) as amended, herein after referred to as 'Protected Disclosures Act' and any reference to regulations made in terms of section 10 of the Protected Disclosures Act;

'Protected Disclosure' means a disclosure made in accordance with certain sections of the Protected Disclosures Act, as follows –

- (a) to a legal adviser in accordance with section 5;
- (b) to an employer in accordance with section 6;

- (c) to a member of Cabinet or of the Executive Council of a province in accordance with section 7;
- (d) to a person or body in accordance with section 8; or
- (e) to any other person or body in accordance with section 9, but does not, subject to section 9A, include a disclosure –
 - i. in respect of which the employee or worker concerned commits a criminal offence by making that disclosure; or
 - ii. made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5;

'SAPS' means the South African Police Service;

'Temporary employment service' means any person who, for reward, procures for or provides to a client other persons who –

- (a) render services to, or perform work for, the client; and
- (b) are remunerated by the temporary employment service.

'Victimisation' means to punish or discriminate against an employee or worker selectively or unfairly; and

'Worker' means –

- (a) any person who works or worked for another person or for the State; or
- (b) any other person who in any manner assists or assisted in carrying on or conducts or conducted the business of an employer or client, as an independent contractor, consultant, agent; or
- (c) any person who renders services to a client while being employed by a temporary employment service.

2. PROBLEM STATEMENT AND UNDERTAKINGS

- 2.1 One of the key obstacles in the fight against fraud, corruption and other improprieties is that, without legal protection, individuals are often intimidated and do not speak out or blow the whistle on criminal conduct and other

improprieties observed in the workplace. The following problems were identified as the most significant barriers in potentially preventing employees from reporting workplace misconduct:

- a) improper conduct which appears to be condoned and/or accepted when it should not be, resulting in an ethical dilemma for the employee and/or worker;
- b) the attitude that there is no point in reporting fraud, corruption and other improprieties as nothing will be done about it as there is a lack of confidence in the process;
- c) concerns about personal and professional implications as a result of intimidation and/or fear of victimisation i.e. occupational detriment; and
- d) not knowing how and where to report fraud, corruption and other improprieties and the remedial actions available should occupational detriment be suffered.

2.2 The City is committed to the highest standards of openness, integrity and accountability. The City promotes a culture in which its employees and workers are able to make disclosures to the City on any of the aspects listed under the definition of the term “disclosure” in clause 1 above without fear of victimisation, discrimination or being disadvantaged. Members of the public and service providers are also encouraged to raise concerns about activities within the City regarding any irregular conduct that should be investigated. It is therefore recognised that –

- a) criminal conduct and other improprieties within the City are detrimental to achieving good corporate governance;
- b) there is a need for procedures in terms of which employees and workers should, without fear of reprisals, disclose information relating to suspected or alleged criminal conduct and/or other improprieties in good faith;
- c) every City employee and worker has a responsibility to disclose criminal conduct and/or other improprieties in the workplace; and

- d) City employees and workers who disclose information relating to criminal conduct and other improprieties in good faith will be protected from any reprisals as a result of such disclosure.

3. DESIRED OUTCOMES

- 3.1 The Protected Disclosures Act came into effect on 16 February 2001. This Policy is aligned to the requirements of this Act (and subsequent amendments thereto) and promotes good governance as an organ of State. This legislation is available at http://cityweb.capetown.gov.za/en/ForensicServices/Documents/Protected_Disclosures_Act.pdf (<https://www.justice.gov.za/legislation/acts/2017-005.pdf>)
- 3.2 This Policy informs the employee or worker that there is legislation which regulates disclosures and the importance of compliance with such legislation when making disclosures.
- 3.3 This Policy aims to ensure that the City:
 - a) creates a culture which facilitates the disclosure of information in good faith by employees and workers relating to criminal conduct and other improprieties in the workplace. This is undertaken in a responsible manner through the implementation of guidelines for the disclosure of such information, which includes protection against reprisals as a result of such disclosure; and
 - b) promotes the eradication of criminal conduct and other improprieties within the organisation and, as a good corporate citizen per King IV, the broader society in which it operates.
- 3.4 Furthermore this Policy:
 - a) reassures employees and workers that they are protected from reprisals or victimisation as a result of whistle blowing in good faith;
 - b) provides channels, within the City, through which employees and workers are able to raise their concerns;

- c) assures employees and workers of the anonymity of the above channels (per 3.4 b) if so requested when making disclosures, and the professionalism associated with the management thereof; and
- d) informs employees and workers of the escalation processes should they be dissatisfied with the initial response.

3.5 This Policy encourages and enables employees and workers to raise their concerns rather than disregarding a problem or blowing the whistle through other channels, which may result in the whistle blower not being afforded protection.

3.6 In addition to the above, this Policy informs the employee and worker that there is legislation which regulates disclosures and the importance of compliance with such legislation when making disclosures. A lack of understanding of the applicable legislation may lead to protection of the employees and workers, not being invoked.

3.7 Regular and ongoing steps will be taken to educate employees and workers on the relevant provisions of the Protected Disclosures Act, and the protection, which that Act, affords to employees and workers who make protected disclosures in good faith.

3.8 This Policy also provides for remedial action as per section 4 of the Protected Disclosures Act, in the event that an employee or worker makes a protected disclosure in good faith and as a consequence, suffers occupational detriment.

4. STRATEGIC INTENT

4.1 The City's Integrated Development Plan (IDP) focuses on six (6) priorities, namely, Economic Growth, Transport, Safety, Basic Services, Housing, Public Space, Environment and Amenities. These priorities rest on three (3) foundations which comprise of:

- a) A resilient City;

- b) A more spatially integrated and inclusive City; and
- c) A capable and collaborative City government.

4.2 The City is committed to the fight against fraud and corruption and this Policy aligns to Objective 16: "A *capable and collaborative City government*" and Programme 16.1 "*Operational Sustainability Programme*", which ensures financial sustainability through good governance, zero tolerance for corruption, and managing public resources for the maximum benefit of all residents.

4.3 Forensic Services within the Office of the City Manager contributes to Objective 16: "A *capable and collaborative City government*" and is aligned to Programme 16.1 "*Operational Sustainability Programme*".

5. POLICY PARAMETERS

5.1 There are existing grievance procedures for employees and workers to raise grievances relating to their employment. This Policy covers matters that fall outside the scope of grievance procedures. These matters, which resort under the Protected Disclosures Act and fall within the ambit of this Policy, concern information demonstrating or likely to demonstrate:

- a) That a criminal offence 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 which that person is obligated to uphold;
- 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 is likely to be endangered;
- e) That the environment has been, is being or is likely to be damaged;
- f) Unfair discrimination as contemplated in Chapter II of the Employment Equity Act, 1998 (Act No. 55 of 1998) or the

Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); or

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

6. ROLE PLAYERS

6.1 The following are role players with respect to this policy:

- a) Council;
- b) Councillors;
- c) City Manager;
- d) EMT;
- e) Directors, Managers and Heads; and
- f) All employees and workers of the City.

7. REGULATORY CONTEXT

7.1 The following legislation and regulations affect, *inter alia*, the subject of this policy:

- a) Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- b) Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
- c) Protected Disclosures Act, 2000 (Act No. 26 of 2000) as amended
This legislation is available at http://cityweb.capetown.gov.za/en/ForensicServices/Documents/Protected_Disclosures_Act.pdf (<https://www.justice.gov.za/legislation/acts/2017-005.pdf>);
- d) Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);
- e) Labour Relations Act, 1995 (Act No. 66 of 1995);
- f) Employment Equity Act, 1998 (Act No. 55 of 1998); and

- g) Any other legislation, City by-law, City policy and/or City procedure that may be applicable.

8. POLICY DIRECTIVE DETAILS

8.1 Protected Disclosures Act

8.1.1 Section 2 of the Protected Disclosures Act, clearly defines the "Objects of the Act" as follows:

- a) To protect an employee or worker from being subjected to an occupational detriment on account of having made a protected disclosure;
- b) To provide for remedies in connection with any occupational detriment suffered on account of having made a protected disclosure; and
- c) To provide for procedures in terms of which an employee or worker can, in a responsible manner, disclose information regarding improprieties by his or her employer.

8.1.2 This Policy is implemented to achieve the objects of the Protected Disclosures Act, which encourages and places a duty on employees and workers within the City to make disclosures on any of the matters included in the definition of the term "disclosure" as defined in clause 1 above.

8.1.3 The provisions in this Policy must be read with the provisions of the Protected Disclosures Act, which provides for procedures for employees and workers to disclose information regarding unlawful and irregular conduct by their employers or other employees and workers in the employ of their employers. It also provides for the protection of employees and workers who make a disclosure, which is protected in terms of the Protected Disclosures Act. Compliance with the provisions of the Act will ensure that the requirements therein, which provide for, *inter alia*, protection against occupational detriment, are invoked.

8.2 Harassment or Victimisation

8.2.1 Harassment or victimisation of any employee or worker will not be tolerated and action will be taken to protect employees and workers when they raise a concern in good faith. Any act of harassment or victimisation against an employee or worker who has made a protected disclosure should be reported to the Chief: Forensic Services. The Chief: Forensic Services is the first point of reference unless the employee or worker who has made a protected disclosure has concerns that the Chief: Forensic Services is involved in the allegations, in which case they may approach the City Manager directly.

8.2.2 This does not mean that if an employee or worker is already the subject of disciplinary or other action, that action will be halted as a result of their whistle blowing.

8.3 Remedial Action

8.3.1 Employees or workers should consult section 4 of the Protected Disclosures Act, which provides for remedial action in instances where employees or workers have made a protected disclosure in good faith and as a consequence, suffers occupational detriment.

8.3.2 If an employee or worker is subjected to occupational detriment, they can approach any court that has jurisdiction for relief, such as the Labour Court. Furthermore, an employee or worker who has made a protected disclosure may pursue any other process allowed by law, such as approaching the Commission for Conciliation, Mediation and Arbitration (CCMA).

8.3.3 The Labour Relations Act, 1995 (Act No. 66 of 1995) also protects employees or workers who have made a protected disclosure from unfair labour practice and unfair dismissal.

8.4 Confidentiality

8.4.1 The City will do its best to protect an individual's identity when he/she raises a concern 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 or worker may be required as part of the evidence. It is furthermore a possibility that the employee or worker may be required in due course to give evidence at a hearing or trial before a court or other tribunal, in proceedings related to or flowing from the disclosure made by the employee or worker.

8.5 Anonymous Allegations

8.5.1 Employees and workers are encouraged to include their names when reporting fraud, corruption and other improprieties. The investigation of complaints made anonymously, depending on the circumstances and the nature of such complaints, may be rendered difficult or impossible due to paucity of information. Nonetheless, anonymous complaints will be investigated, the nature of such investigation will be determined by the:

- a) seriousness of the improprieties raised;
- b) credibility of the concern;
- c) likelihood of confirming the allegation(s) of fraud, corruption and other improprieties; and
- d) sufficiency of information provided or available.

8.5.2 Note that when employees and workers utilise the Fraud Hotline and do not provide their names and contact details, it may prove difficult to inform them of the status of the investigation and inform them of steps taken arising from the allegations, as required in terms of section 3B of the Protected Disclosures Act.

8.6 False Allegations

“ALLEGATIONS NOT MADE IN GOOD FAITH”

- 8.6.1 Employees, workers or other parties must understand that any disclosure must, in order to qualify as a protected disclosure and be afforded the protection under the Protected Disclosures Act and this Policy, be made in good faith. Employees and workers do not enjoy the protection afforded by the Protected Disclosures Act, if they do not act in good faith, or do not have reason to believe that the disclosures made by them are true and correct.
- 8.6.2 The onus is not on employees and workers to prove that the information provided relating to criminal conduct and other improprieties is correct. The employee or worker making the disclosure must, however, base such disclosure on facts which the employee or worker reasonably believe to be true and credible.
- 8.6.3 Accordingly, the employee or worker must guard against reporting rumours or "hunches", or suspicions that they "smell a rat" without supporting information/evidence.
- 8.6.4 Employees and workers must not deliberately make allegations which he/she knows or ought reasonably to know to be false and/or which are made with malicious intent. Such allegations will preclude the employee or worker from benefiting from the protection offered by the Protected Disclosures Act and this Policy.
- 8.6.5 The making of allegations such as those referred to in clause 8.5.4 above, whilst the employee or worker knows or ought reasonably to have known the information to be false, with the intention to cause harm to the affected party and where the affected party suffers harm as a result, constitutes a criminal offence in terms of the Protected Disclosures Act and may result in disciplinary proceedings being instituted against any employee.

8.7 Reporting of Concerns

8.7.1 The employee or worker must approach his/her immediate supervisor/manager unless he/she is the subject of the disclosures, in which case the Chief: Forensic Services should be informed. Should the disclosures be found by the line manager to be substantiated, he/she may consult with Forensic Services on whether the matter should be investigated internally or referred to the appropriate external body (e.g. the SAPS).

8.7.2 It is preferred that disclosures are in writing. The background and history of the disclosures, giving names, dates and places where possible should be set out and the reason why the individual is particularly concerned about the situation. The sooner the complaint is reported after the employee or worker becomes aware thereof, the easier it is to take action where necessary.

Those who do not want to place their disclosures in writing can call the City's independent Fraud Hotline number. The Fraud Hotline is independently operated by an external service provider. The Fraud Hotline operates 24/7 and 365 days a year and all information received is treated in the strictest of confidence. The Fraud Hotline can be accessed through the following channels:

Hotline:	0800 32 31 30 Operators are available 24 hours a day, 7 days a week, 365 days a year
External E-mail	hotline@kpmg.co.za
Post:	BNT 371 PO Box 14671 Sinoville 0129

8.7.3 The City also has an electronic mail (email) facility that can be utilised. The particulars thereof are as follows:

City E-mail	Fraud.hotline@capetown.gov.za
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8.7.4 The City's [Forensic Services](#) website contains a template under the 'How to Report' tab to guide complainants through the process of reporting allegations and ensuring that all relevant data is captured.

8.7.5 The onus is not on employees and workers to prove the veracity of disclosures, however, they will need to demonstrate that there are sufficient grounds (*prima facie*) for concern.

8.7.6 Advice and guidance on how matters of concern may be pursued can be obtained from the Chief: Forensic Services on 021 487 2742.

8.7.7 Should the complainant elect not to report allegations and/or raise concerns via the City's internal channels, the Protected Disclosures Act provides that disclosures can be made to, *inter alia*, the following persons:

- a) Legal Advisor as per section 5;
- b) Member of Cabinet or Executive Council as per section 7;
- c) Public Protector as per section 8; or
- d) Auditor-General as per section 8.

8.7.8 Annexure A illustrates the process to be followed when a whistle blower elects to make a protected disclosure as defined in this Policy.

8.8 How a Complaint will be dealt with

8.8.1 The action taken will be informed by the nature of the reported disclosures and may, amongst others, be:

- a) investigated by line management;
- b) investigated by Forensic Services;
- c) outsourced/co-sourced investigation conducted by a forensic consulting firm with Forensics Services being the project manager(s); and/or

d) referred to the SAPS or other relevant agencies.

8.8.2 To protect employees and workers and the City, initial enquiries (preliminary fact-finding exercise) may be initiated to decide whether an investigation is appropriate and if so, what form it should take.

8.8.3 Note that certain complaints can be resolved without initiating the steps as detailed in paragraphs (b), (c) and (d) of clause 8.7.1 above. The appropriate channels of investigation will be decided on by the delegated authorities and employees and workers cannot prescribe the nature of the investigation(s) to be undertaken.

8.8.4 Employees and workers who do not provide their names and contact particulars when raising their complaint/concern must note that it will not be possible for the employee or worker to be informed of the steps taken by the City arising from the allegation, as required in the Protected Disclosures Act.

8.8.5 The City will keep the employee or worker informed as required by the provisions of the Protected Disclosures Act, provided the identity of the whistleblower is known. The amount of contact, in addition to the legislative requirements, between the investigating body and the persons raising the disclosure, is dependent on the nature of the matters raised, the potential difficulties or complexities involved and the sufficiency of the information provided. Where required, further information will be sought from the employee or worker.

8.8.6 Employees and workers will be assured that the matter has been properly addressed. Apart from complying with the requirements in the Protected Disclosures Act, to keep the employee or worker who raised the complaint/concern informed, the progression of the investigations will be handled in a confidential manner, and such status update(s) will not be disclosed or discussed with any persons other than those who have a legitimate right to such information.

8.8.7 Employees and workers must throughout all investigations referred to in clause 8.7.1 above, keep the facts disclosed by them confidential and refrain from divulging such facts to any other person, save where necessary to do so for purposes of the investigation being conducted.

8.8.8 All information constituting part of a disclosure made by an employee or worker, in terms of the Protected Disclosures Act, or the provisions of this Policy will be dealt with in the strictest confidence, throughout the investigation and will only be divulged by the authorised staff member(s) to any person or entity where it is necessary to do so, in order to further the investigation and/or take steps to redress or rectify any matter raised in or forming the subject of a protected disclosure.

8.9 Creating Awareness

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

8.9.2 It is the responsibility of all Executive Directors, Directors and Managers to ensure that all employees and workers are made aware of, and receive appropriate training and education with regard to the Whistle Blowing Policy.

9. PROTECTED DISCLOSURES MADE BY PERSONS NOT EMPLOYED BY THE CITY

9.1 The amendment to the Protected Disclosures Act promulgated by Act 5 of 2017 extends the application of the Act to workers as defined in Section 1 thereof who suffer one or more of the occupational detriments as defined in Section 1 thereof.

9.2 This Policy, and the rights created thereby, are intended for the protection of employees of the City and workers employed by companies who enter into any agreements with, or provide goods or services to, the City.

10. IMPLEMENTATION PROGRAMME

10.1 This Policy will be implemented once approved by Council and will be referred to during Fraud Awareness training sessions conducted by Forensic Services.

11. REVIEW

11.1 This Policy will be reviewed as required by changes in the business or legislative environment, but at least once during every Council term. Any amendments will be submitted to Council for approval.

Annexure A

CLAUSE 8.6 - REPORTING OF CONCERNS

