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# WHISTLE BLOWING POLICY



## Toll free: 080 348 2600

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**COUNCIL RESOLUTION**

13 June 2019

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## **WHISTLE BLOWING POLICY – BREDE VALLEY MUNICIPALITY (WC025)**

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## 1. Introduction

When employees of Breede Valley Municipality and the public realize something is not right within the Municipality, they may not want to express their concerns because they feel that doing so would be disloyal to their colleagues or to the Municipality and they may also hold back in fear, for example fear of harassment or even victimization. Understood correctly, whistleblowing is not about informing in the negative, anonymous sense but rather about raising a concern about a malpractice within Breede Valley Municipality.

Breede Valley Municipality is committed to its Fraud and Corruption Prevention Policy and Response Plan, and also its Code of Ethics and to promote a high standard of honesty, openness and accountability.

## 2. Objectives

The objectives of this policy are to:

- Promote the zero tolerance on criminal and other irregular conduct within Breede Valley Municipality;
- Encourage the reporting of matters that may cause financial or non-financial loss to the Municipality or damage to the Municipality's reputation;
- Provide for the appropriate systems and mechanism for reporting.

## 3. Scope

This policy contains the detailed procedures that need to be followed when Councillors, Municipal Staff Members, Service Providers and Members of the Public want to raise and report serious concerns within Breede Valley Municipality on a confidential basis and without fear of reprisals.

This policy is not a grievance procedure document. There is an existing grievance procedure in place to enable employees to raise grievances relating to their employment. This whistleblowing policy will help Breede Valley Municipality to break the cycle of silence and inaction and minimise fraud and corruption in the municipality.

## 4. Reporting and Complaint Procedures

4.1 It is the responsibility of any recipient of a complaint to promptly report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to the attention of the Municipal Manager.



4.2 Where an employee is alleged to have committed an act of fraud, corruption, theft, or maladministration, the Municipal Manager must institute disciplinary proceedings in terms of the applicable disciplinary procedures, taking into account the employees right to just administrative practice prescribed in the Constitution.

4.3 Where a councillor is alleged to have committed an act of fraud, corruption, or theft, the Speaker or Council must institute an investigation in terms of section 13 and 14 respectively, of the Code of Conduct for Councillors as contained in the Municipal Systems Act, read with the applicable regulations applicable to said topic.

4.4 As soon as disciplinary hearings concerning charges of fraud, corruption, theft, maladministration and other suspected irregularities of this nature are completed, the outcome must be reported promptly to the Municipal Manager administratively and functionally to the Risk, Fraud and Corruption Management Committee.

4.5 The Municipality shall report all instances of prima facie criminal conduct to the appropriate authorities.

4.6 Consistent with section 32 of the MFMA and in terms of the Fraud and Corruption Policy, the Municipal Manager must inform the Executive Mayor, Council, the MEC for Local Government in the Province and the Audit-General South Africa (AGSA), in writing of-

- (a) Any unauthorized, irregular, fruitless and wasteful expenditure incurred by the Municipality; and in terms of the Fraud and Corruption Policy, shall also include serious incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature;
- (b) Whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and
- (c) The steps that have been taken-
  - i. To recover or rectify such expenditure; and
  - ii. To prevent a recurrence of such expenditure.

4.7 The writing off of any unauthorized, irregular, fruitless and wasteful expenditure or any other expenditure incurred as a result of fraud, corruption, theft, maladministration and any other suspected irregularity as irrecoverable, does not prevent criminal or disciplinary proceedings being instituted against a person charged with an offence relating to such expenditure. All legal procedures regulating this type of reporting will be adhered to.

4.8 The Municipality may, in terms of this policy and section 176 (2) of the MFMA, recover such losses or damages incurred by the Municipality. Therefore, an employee or councillor, who due



to deliberate or negligent unlawful actions, shall be held liable for the recovery of such financial loss.

4.9 In pursuance of section 4.7 of this policy, the Municipal Manager may utilize the amendments to the Pension Funds Act, which allows an employer, on registration of a criminal docket with the SAPS, to request the pension fund to freeze the employee's or the councillor's benefit payments who has been allegedly involved in financial misconduct, pending finalization of the criminal prosecution. Due process in this regard will be followed at all times.

4.10 If the employee or councillor is convicted, any losses caused by the employee or councillor shall be deducted from the benefits due to the employee or councillor concerned or shall be recovered from the assets owned by the person concerned.

4.11 Council, must take all reasonable steps to ensure that cases that are referred to in section 6.7 are reported to the SAPS if –

- (a) the charge is against the Municipal Manager
- (b) the Municipal Manager fails to comply with that section.

4.12 Consistent with section 171(4) of the MFMA, the Municipality shall institute an investigation regarding allegations of financial misconduct against the Municipal Manager, the CFO, any senior manager or other official of the Municipality, unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and

4.13 If the investigation warrants such a step, Council shall institute disciplinary proceedings against the Municipal Manager, the CFO or any other senior manager in accordance with the Disciplinary Code and Procedures for Senior Managers (Notice 1568 of 2009) and Local Government: Municipal Finance Management Act, 2003 (Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, Notice 37699 of 2014).

4.14 The Municipality shall also investigate allegations of financial misconduct involving any councillors; such allegations shall be dealt with in terms of the breaches of the Code of Conduct for Councillors as stipulated in schedule 1 of the Systems Act and the Municipality's Rules of Conduct for Councillors.

4.15 The Municipality will respond to all concerns and allegations. The investigation of concerns and allegations are not the same as either accepting or rejecting them.

4.16 In order to protect individuals and those accused of misdeeds or possible malpractices, initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form it should take.



4.17 Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required, then this will be taken before any investigation is conducted.

4.18 Concerns may be raised verbally or in writing. Those who wish to make a written report are invited to use the following format:

- the background and history of the complaint (giving relevant dates);
- the reason why they are particularly concerned about the situation;
- the extent to which they have personally witnessed or experienced the problem (provide documented evidence where possible).

4.19 The earlier they express the concern the easier it is to take action. Although employees are not expected to prove beyond doubt the truth of an allegation, they will need to demonstrate to the person contacted that there are reasonable grounds for their complaint.

4.20 Employees may wish to consider discussing their complaint with a colleague first and they may find it easier to raise the matter if there are two (or more) of them who have had the same experience or concerns. They may invite their trade union representative or a friend to be present during any meetings or interviews in connection with the concerns they have raised.

4.21 Should members of the public, employees and councilors wish to report allegations, they can contact the Municipal Manager, Directors or Manager: Integrated Risk Management.

Contact details:

- Toll free Hotline: 080 348 2600 (This process guarantees a person to remain anonymous) or
- Tel: +27 23 348 2600,
- Completed complaint forms to be posted: Civic Centre, Baring Street, Private Bag X3046, Worcester, 6849, South Africa.

4.22 All complaints implicating the Enterprise Risk Management and Internal Audit Units should be reported to the Accounting Officer.

4.23 Members of the public, employees and councillors can also contact the national public service hotline number at 0800 701 701.

## 5. Protection of Whistle Blowers

Breede Valley Municipality is committed to good practice and high standards and wants to be supportive of employees and members of the public. The Municipality recognizes that the decision to report a complaint can be a difficult one to make.



If what they are saying is true, they should have nothing to fear because they will be doing their duty to their employer and those for whom they are providing a service, or as a citizen.

This policy contains a number of safeguards:

5.1 The Municipality will not tolerate any harassment or victimisation (including informal pressures) and will take appropriate action to protect anyone who raises a concern in good faith.

5.2 Any investigation into allegations of potential malpractice will not influence or be influenced by any disciplinary or redundancy procedures that may already affect a member of staff.

5.3 The Municipality will do its best to protect their identity if they raise a concern and do not want their name to be disclosed. However, it must appreciate that the investigation process may reveal the source of information and a statement may be required as part of the evidence.

5.4 Allegations / Complaints can be made anonymously; however, it should be noted that such cases can be more difficult to investigate. The likelihood of action will mainly depend on the seriousness of the issue raised and the credibility of the allegation / complaint.

5.5 No action will be taken against whistle blowers if allegations are made in good faith.

5.6 The Protected Disclosures Act was promulgated to facilitate reporting by employees (whistle blowers) of fraud, corruption or other unlawful or irregular actions by their employer(s) or co-employees without fear of any discrimination or reprisal by their employers or co-employees.

5.7 The Municipality recognizes that employees or councillors will be concerned about potential victimization, recrimination and even threats to their personal safety as a consequence of disclosing such fraudulent and/or corrupt activities. The Municipality shall provide measures to protect the information and the identity of the person (when such protection is required).

5.8 However malicious and/or false allegations may result in disciplinary action and/or police investigation against the whistle blower.

## **6. Awareness**

The Accounting Officer and Council recognize that the continuing success of the Whistle Blowing Policy, and its credibility, will depend largely on the effectiveness of staff throughout

