

BOOKLET ON THE OFFICE OF THE INTEGRITY COMMISSIONER

PREFACE

This booklet is intended to be of assistance to councillors of the Johannesburg City Council in providing easy reference to their duties laid down in the Local Government Municipal Systems Act No32 of 2000. ("The Act")

In Schedule 1 of the Act the Code of Conduct for councillors is set out and it is this Code which obliges Councillors, as public representatives, to set an example of honesty and selflessness which will foster public trust in, and improve the public perception of the Council and its members.

It has been often been said that questions of ethics and the conduct of public representatives are as old as the origin of democracy, and it is a matter for serious consideration that in many countries, and South Africa is unfortunately no exception, there is a widespread perception that politicians are untrustworthy, lack credibility and are not true to their word. In recent surveys in Australia and Canada, as examples, polls which ranked politicians against other occupations for trustworthiness, placed politicians 39th out of 40 – ahead only of telemarketers and car sales people, respectively.

With this sorry picture in mind no doubt, the Mayoral Committee in July 2008, requested that this Council should consider establishing an office of the Integrity Commissioner to work in close liaison with the Ethics Committee to provide the highest level of support and advice, and, in so doing, to ensure integrity on all issues relating to the Code of Conduct.

The office was duly created and I was appointed as the first Integrity Commissioner in March 2010 with Mr Aubrey Ncongwane as my assistant. The first step that was taken was for me to have a private discussion with each councillor the object of which was to get to know each other so that there could be established mutual respect and an understanding of the true functions of this office. The arrangements for these meetings

were all made by Aubrey Ncongwane without whose dedication and efficiency they would not have taken place. It is worth recording that in an address to an anti- corruption conference in Australia, the Canadian Senate Ethics Officer said,

“In my experience, the most important tool in the prevention of corruption kit is the face-to-face annual meeting. There is a real need for ethics commissioners to inform and guide legislators, especially those who are new to public office. Annual personal meetings with each legislator are a vital cog in the machinery for regulating standards of conduct in the Council. Some may think that completing a disclosure of assets statement once in the year is all that is required, but I suggest that this is not good enough. There is a need to establish a rapport and develop a personal relationship so that legislators are comfortable dealing with the ethics commissioner, and will think about consulting with him first before acting”.

It is my hope that this booklet will serve as a useful reference to councillors and that the relationship between the Council and the office of the Integrity Commissioner will, as a result, be a harmonious one. In working together we can make progress in eradicating corruption from public representatives, which our young democracy needs so badly.

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1. INTRODUCTION

The Johannesburg City Council is required to ensure implementation and enforcement of the provisions of the Code of Conduct for Councillors as laid down in the Local Government Municipal Systems Act No 32 of 2000 ("The Act"). The Act deals with the general principles of ethical conduct which are required of Councillors both in the performance of their office as public representatives and also at all times to act in the interests of the municipality in such a way that the credibility and integrity of the municipality are not compromised.

This booklet is intended to be a source of easy reference for Councillors to those duties and in so doing to encourage Councillors to take advice from the Integrity Commissioner before embarking on any venture which they consider might be in breach of the Code of Conduct.

It needs to be stressed that one of the most important duties relates to the Declaration of Interests which all councillors must complete in writing within 60 days of their election or appointment. This declaration is the main instrument which is employed in democratic countries to avoid conflicts of interest which may rise in the course of their service to the public of its elected or appointed representatives.

It is also with that register in mind that the Integrity Commissioner adopted as a policy the need to meet privately and individually each councillor and thus to ensure that any difficulty that councillors may encounter in the completion of the register is discussed and overcome.

2. THE CODE OF CONDUCT

It is of interest to note that in establishing the Office of the Integrity Commissioner the Council of the City of Johannesburg Metropolitan Municipality stated the following:-

“ We as councillors in the City of Johannesburg Metropolitan Municipality

- Noting that whereas the Constitution of the Republic of South Africa requires that all levels of government promote accountability, responsibility and openness;
- Recognising that councillors as elected representatives are accountable to the electorate and have a duty to maintain public trust in democratic institutions;
- Affirming that councillors have an obligation to perform their duties with honesty, integrity, and regard to the common good;
- Therefore agree, individually and collectively, to abide by the principles, rules and obligations of the Code of Conduct for councillors as contained in the Municipal Systems Act (Act 32 of 2000);

accordingly, as Council we seek to ensure that councillors are provided with advice, counsel, and guidance by establishing the Office of the Integrity Commissioner as outlined hereunder”

The resolution of the Council encompasses an acceptance of the following:-

- (i) Every citizen should be confident that all public representatives will place loyalty to the constitution, laws and ethical principles above private gain.
- (ii) All councillors must perform the functions of their office in good faith, honesty and a transparent manner.

- (iii) A councillor must disclose to the Council or any committee of which the councillor is a member, any direct or indirect personal or private business interest which the councillor or his/her spouse partner or business associate may have in any matter before the Council or that committee.
- (iv) Unless the Council considers his/her interest to be trivial or irrelevant, a councillor must withdraw from the proceedings concerning any matter referred to in (iii) above.
- (v) A councillor may not use the position of a councillor or confidential information obtained as a councillor for private gain.
- (vi) Unless consent is given by the Council or the MEC for Local Government in the Province, no councillor may be a party to or beneficiary under a contract for, inter alia, the provision of goods or services to the Municipality nor may a councillor obtain a financial interest in any business of the municipality.

The above provisions are not all the obligations of councillors enunciated in the prescribed Code of Conduct. Councillors should study the Act and when in doubt should consult the Integrity Commissioner with whom discussion will help to clarify the effect of any intended conduct by the councillor.

3. THE REGISTER OF INTERESTS

In the terms of reference prescribed by the Council for the Integrity Commissioner the following was laid down:-

“The Integrity Commissioner shall

1. Open and keep a register called the Register of Financial Interests;
2. Record in the Register particulars of councillors’ registerable interests;
3. Amend any entries in the Register as and when necessary.”

This duty of the Integrity Commissioner is carried out by enforcing the provisions of Section 7 of Schedule 1 of the Act which provides that when elected or appointed, a

councillor must within 60 days declare in writing the financial interests held by that councillor .

The Interests are set out in the schedule as follows:-

7. (1) When elected or appointed, a councillor must within 60 days declare in writing to the Integrity Commissioner the following financial interests held by that councillor;

- (a) shares and securities in any company;
- (b) membership of any close corporation;
- (c) interest in any trust;
- (d) directorships;
- (e) partnerships;
- (f) other financial interests in any business undertaking;
- (g) employment and remuneration;
- (h) interest in property
- (i) pension; and
- (j) subsidies, grants and sponsorships by any organization,

and it is also specifically stated that gifts received by a councillor above a prescribed value must be declared.

It is important to understand why the disclosure of interests is regarded as being so important and why many democratic countries have introduced a similar register in attempting to develop a system designed to avoid corruption in public life. In a most informative study of the financial disclosure requirements in South Africa the Institute for Security Studies states the following:-

“In 2009 a study of 179 countries shows that 109 have disclosures laws. Disclosure regulations are regarded as a powerful tool for combating corruption and enhancing democratic principles such as accountability and transparency.”

The study then quotes experts who assert that declarations of interest may be seen as the single most important component of a framework for tackling conflicts of interest; they are a fundamental instrument of transparency and provide an incentive for officials to put their affairs in order.

It should always be borne in mind that the disclosure is not intended to reveal how rich or poor the declarant is – it is designed to protect public representatives from unfair accusations and to avoid, by statements available for public scrutiny, conflicts of interest. The point is also made in the study referred to that public disclosure of elected representatives' private interests can contribute to a more informed electorate and an increase in public trust and confidence in political parties, politicians and institutions in which they serve.

In compiling the register the Integrity Commissioner has to rely, to a great extent, on the honesty of the members. There is no provision for an audit of the disclosures made and consequently disclosures are regarded as correct until proved otherwise. In the usual course the need to test the honesty of the disclosure will only emerge and be an issue as a result of an investigation made by the Integrity Commissioner pursuant to a complaint or, as happens from time to time, as the result of an active investigation by the news – hungry media – particularly the press. Newspapers have the resources to carry out extensive researches of directorships, shareholdings, and the acquisition by public representatives of property and luxury vehicles and it has often happened that wide publicity has been given to allegations that a representative has not made proper disclosure in the register of interests.

Councillors are therefore advised to study the terms of the Act and particularly Section 14 of Schedule 1. In essence it provides for an investigation in Gauteng by the Integrity Commissioner, of any alleged breach of the code, and dependent on the finding, a recommendation made by the Commissioner to the Council.

If the finding is that the councillor concerned has breached the code the Council may, if it accepts the findings,

- (a) Issue a formal warning to the councillor;
- (b) Reprimand the councillor;
- (c) Request the MEC for Local Government in the province to suspend the councillor for a period
- (d) Fine the councillor;
- (e) Request the MEC to remove the councillor from the Office

There are, of course, provisions for appeal from any adverse finding made by the Council pursuant to a recommendation of the Integrity Commissioner. In the light of what is referred to above, and the serious need for proper disclosure, all councillors are advised to consult with the Integrity Commissioner should there be any doubt regarding completion of the Register.

Complaints

The terms of reference for the Integrity Commissioner include the following;

- (a) The integrity Commissioner may on his/her own accord investigate any alleged violation of the Code of Conduct by any councillor in so far as such violation relates to the disclosure and declaration of financial interests by the councillor.
- (b) Should the Integrity Commissioner find evidence of a violation, he/she must report the facts and conclusions to the Ethics Committee of the Council.

In regard to other alleged breaches of the Code of Conduct any councillor, or official of the City of Johannesburg, or any member of the public who believes that a councillor of

the City has violated the Code may make a written complaint in regard thereto to the Integrity Commissioner.

It is important to note that the Integrity Commissioner is obliged to assist any person wishing to report such violation and who needs assistance. Councillors should note that a complaint must be in writing and must state the complainant's name and address and also the name of the councillor who is the subject of the complaint. The complaint must set out the facts relevant to the conduct complained about and must at the same time submit any supporting evidence if available.

The Integrity Commissioner is then obliged to investigate the matter, and to produce a report that includes detailed recommendations for action on the matter. The report must be submitted to the Ethics Committee for consideration. If it be found that a councillor has breached the Code, the various steps that may then be taken are set out in Section 14 of Schedule 1 of the Act and which have been referred to above.

Conclusion

TO ALL COUNCILLORS:-

1. WHEN IN DOUBT CONSULT WITH THE INTEGRITY COMMISSIONER
2. MAKE FULL DISCLOSURE IN THE REGISTER OF MEMBERS' INTERESTS
3. WHEN COMPLETING THE DISCLOSURE DO SO CAREFULLY AND LEGIBLY BEFORE APPENDING YOUR SIGNATURE
4. COMPLETE A FRESH AND UP-TO DATE DISCLOSURE EACH YEAR
5. REMEMBER THAT YOU ARE A REPRESENTATIVE OF THE PEOPLE WHO EXPECT YOU TO BE HONEST AND TO ADHERE TO CODE OF CONDUCT

