CITY OMBUDSMAN POLICY –
(POLICY NUMBER 25635)

APPROVED BY COUNCIL : 25 SEPTEMBER 2014
C44/09/14
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DEFINITIONS

“Alternative Dispute Resolution” means to address the complaint in an informal, impartial and confidential manner;

“authorised official” means any employee of the City responsible for carrying out any duty or function or exercising any power and includes employees delegated to carry out or exercise such duties, functions or powers;

“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, or any structure or employee of the City acting in terms of delegated authority;

“City Manager” means the municipal manager appointed in terms of section 54A of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) as amended;

“complaint” means any written complaint that has been lodged with the Office of the City Ombudsman against the City;

“complainant” means any person or organisation who has lodged a complaint with the Office of the City Ombudsman;


“Council” means the Municipal Council of the City;

“councillor” means a member of the Council of the City;

“Executive Mayor” means the Executive Mayor of the City elected in terms of section 55 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) as amended;

“findings” means a final resolution on a complaint where the outcome of the complaint confirms that the Council has complied with relevant policies;

“maladministration” means any act or omission committed by the City or by an employee of the City which has the impact of infringing upon a person or organisation’s right to fair administrative action;

“Mayoral Committee” means the committee, established in terms of section 60 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) as amended;

“Ombudsman” means an official appointed to investigate complaints against maladministration;
“Policy” means the City Ombudsman’s policy;

“recommendation” means a final resolution on a complaint where the outcome of the complaint recommends corrective action to the department;

“Speaker” means a person elected in terms of section 36(2) of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) as amended;


ABBREVIATIONS

CCT  City of Cape Town
IDP  Integrated Development Plan
CDS  City Development Strategy
NDP  National Development Plan

1. PROBLEM STATEMENT

1.1 The City identified the need to establish an independent City Ombudsman’s Office whose primary function is to assist the City in fulfilling its obligation to provide accountable, democratic and transparent governance to the residents in the City’s area of jurisdiction.

1.2 There is a need for establishing a mechanism to enable residents of the city to formally lodge complaints against alleged acts of maladministration.

1.3 The Office of the City Ombudsman was established by a resolution of Council in 2002. The reason for its existence, addressing public complaints by means of alternative dispute resolution, was reaffirmed by the Consumer Protection Act, 2008 (Act No. 68 of 2008).

2. DESIRED OUTCOME

2.1 This policy is the implementing guideline to carry out the functions of the Office of the City Ombudsman;
2.2 The overarching outcome of the policy is to address each and every complaint as received by the Office of the City Ombudsman, subject to clause 4.3, in an effective and efficient manner ensuring that authorised officials provide courteous service with dignity, honesty and integrity;

2.3 This policy will provide the complainants with an independent internal investigation process to ensure adherence to the principles of procedural fairness and administrative justice;

2.4 The City will benefit as the Office of the City Ombudsman serves as an internal mechanism for resolution of complaints between the line department and the complainant, resulting in minimising the reputational risk for the City;

2.5 This policy sets out the roles, responsibilities, procedures and processes of the Office of the City Ombudsman when investigating cases;

2.6 This policy provides clear guidelines on the implementation of the recommended corrective measures to be taken and to ensure that any maladministration is addressed.

3. STRATEGIC INTENT

The policy seeks to align the Office of the City Ombudsman with the Integrated Development Plan in focus areas 4 and 5 as set out below:

3.1.1 Strategic focus area 4: an inclusive city
The IDP’s objective to ensure responsiveness by creating an environment for communication with citizens is expressed in the policy provisions for the creation of an alternative dispute resolution and provision of an oversight mechanism.

3.1.2 Strategic focus area 5: a well-run city
In line with the commitment to efficient and productive administration this policy provides for a more customer-focused and responsive service culture to improve community satisfaction, serves as a guarantee for administrative justice through alternative dispute resolution, and promotes accountable, democratic and transparent governance so as to support sound governance overall.

4. POLICY PARAMETERS

4.1 The Office of the City Ombudsman will investigate complaints as defined in this policy.

4.2 This policy will guide the Office of the City Ombudsman when dealing with complaints within the City’s jurisdiction. It will also guide authorised officials when approached by the Office of the City Ombudsman during the course of an investigation.

4.3 The Office of the City Ombudsman does not investigate any of the following matters:
4.3.1 any legislative or executive decisions by the Council, any of its portfolio committees or subcouncils;

4.3.2 any matter involving allegation of fraud, corruption or corporate crime as referred to in the City’s Fraud Prevention Policy;

4.3.3 any matter or dispute which must be dealt with or settled within the field of labour law;

4.3.4 any allegation relating to financial irregularities;

4.3.5 any cases where the complainant has not reported the matter to the line department as first port of call;

4.3.6 any alleged irregular conduct of a councillor;

4.3.7 any complaint which is vexatious or frivolous;

4.3.8 any tender-related matter, and

4.3.9 administrative appeals.

4.4 If in the course of the investigation of a complaint, which has been accepted by the Office of the City Ombudsman, a discovery is made of matters referred to in subsection 4.3.1 to 4.3.8 and which merits investigation by another department or institutions the complaint will be so referred in terms of this policy.

4.5 The processes of the Office of the Ombudsman do not replace internal processes within the City.

5. ROLES AND RESPONSIBILITIES

5.1 The roles and responsibilities set out in this policy are as follows:

5.1.1 Executive directors, directors, managers and authorised officials must provide information as requested by the Office of the City Ombudsman, stemming from investigations, for the implementation of the recommended corrective measures subject to clause 7.4.

5.1.2 The Executive Mayor provides oversight of the implementation and review of the policy;

5.1.3 The Office of the City Ombudsman investigates complaints set out in this policy and presents findings and recommendations to the Executive Director: Compliance and Auxiliary Services.
5.1.4 The Executive Director: Compliance and Auxiliary Services ensures implementation of the recommendations, or failing that, reports the matter to the City Manager;

5.2 The Office of the City Ombudsman furthermore conducts outreach and awareness campaigns in communities to create awareness and promote the services of the office.

6. REGULATORY CONTEXT

The following legislation applies:

6.1 Section 33 of the Constitution which provides for just administrative action

6.2 Section 34 of the Constitution, which provides that everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate an independent and impartial forum;

6.3 Sections 69, 70 and 82(6) of the Consumer Protection Act, 2008 (Act No. 68 of 2008) which require all suppliers to establish an alternative dispute resolution agency to address public complaints;


7. POLICY DIRECTIVE DETAILS

7.1 Submission of complaints

7.1.1 All complaints submitted to the Office of the City Ombudsman must be in writing.

7.1.2 Where a complainant is not able to compile a written complaint, he or she will be assisted by an authorised official in the Office of the City Ombudsman.

7.1.3 Each complaint must specify:

7.1.3.1 the nature of the matter in question;
7.1.3.2 the line department in question;
7.1.3.3 the grounds on which the complaint against the City of Cape Town is based;
7.1.3.4 such facts or other relevant information as are known to the complainant; and
7.1.3.5 any redress sought.

7.1.4 The Office of the City Ombudsman will only investigate complaints which comply with the requirements set out in this policy.
7.2 Preliminary investigation

7.2.1 The Office of the City Ombudsman conducts preliminary investigations to determine whether the complaint falls within its jurisdiction. If the matter falls:

7.2.1.1 outside the required jurisdiction, the office will redirect or refer the complaint to the correct or relevant institution or department as per subparagraph 7.3;

7.2.1.2 within the required jurisdiction, the office will investigate as per subparagraph 7.4.

7.2.2 The Office of the City Ombudsman will notify the complainant of the outcome of the preliminary investigation.

7.3 Complaints for referral

7.3.1 The Office of the City Ombudsman may act in respect of any one or more of the ways provided for in 7.3.2 – 7.3.6.

7.3.2 In the case of a suspected criminal offence, the matter will be referred to the City’s Forensics Department;

7.3.3 In the case of any improper or dishonest act related to the assets, property or finances of the Council, the matter will be referred to the City’s Forensics Department or Internal Audit Department;

7.3.4 In the case of any alleged improper or dishonest act involving councillors or any contravention or breach of the Code of Conduct for councillors as per Schedule 1 of the Systems Act, the matter will be referred to the Speaker for further action;

7.3.5 In the case of an alleged contravention by a councillor of section 119(1) of the Systems Act, the matter will be referred to the Speaker;

7.3.6 In the case of any contravention or breach of the Code of Conduct for Municipal Staff Members as per Schedule 2 of the Systems Act or of the Council’s Conditions of Service or of section 119(2) of the Systems Act, the matter will be referred to the Executive Director: Compliance and Auxiliary Services.

7.4 Investigations

7.4.1 When conducting an investigation the Office of the City Ombudsman may:

7.4.1.1 demand in writing that any employee of the City appear before the Ombudsman and produce any book, record, file, object or document whether written or in electronic form;

7.4.1.2 enter upon any premises owned, controlled or managed by the Council for the purposes of any investigation and while on such premises examine any book,
record, file, object, document, thing or vehicle as may be considered necessary;

7.4.1.3 take charge of and remove anything referred to in paragraph 7.4.1.1 for the purposes of an investigation; and

7.4.1.4 require the employee of the City or City department to provide relevant information within a stipulated timeframe.

7.4.2 Non-compliance with clauses 7.4.1.1 and 7.4.1.4 will result in the matter being referred to the relevant executive director for action.

7.4.3 Non-compliance by an executive director will result in escalation to the City Manager for intervention.

7.5 Complaints finalisation procedure

7.5.1 Where an investigation has merit, the Office of the City Ombudsman will approach the relevant employee of the City for the purpose of settling the complaint by:

7.5.1.1 negotiation between the Office of the City Ombudsman and the City to obtain the redress sought where such redress has been requested;

7.5.1.2 conciliation or mediation facilitated by the Office of the City Ombudsman between the complainant and the representative of the line department concerned, where in the opinion of the Office of the City Ombudsman, conciliation or mediation will remove the cause for the complaint;

7.5.1.3 the representative of the line department concerned providing an apology to the complainant;

7.5.1.4 recommending that corrective action be taken so as to remedy the maladministration if possible

7.5.1.5 recommending that the matter be further investigated by the relevant department so that disciplinary or any other action may be taken;

7.5.1.6 any other lawful means that will settle the complaint;

7.5.1.7 recommendation on apportionment of liability (including, but not limited to, reversal of interest, legal fees)

7.5.2 As a result of inconvenience and/or distress, the Office of the City Ombudsman may recommend to the City Manager to make an award in favour of the complainant by taking into consideration the following criteria, inter alia:

7.5.2.1 Did the complainant bear the ordinary and normal degree of inconvenience associated with correcting the problem?
7.5.2.2 Did the complainant take reasonable steps to minimise the inconvenience suffered?

7.5.2.3 To which extent did the complainant use his/her time to rectify the situation;

7.5.2.4 To what degree did the City apologise, if indeed.

7.5.3. The award made will not exceed R1 000 (one thousand rand).

7.5.4 Application of section 102 of the Systems Act will be adhered to when making the award.

7.5.5 The Office of the City Ombudsman will provide both the complainant and the City with a final report/letter informing them of the finding.

7.5.6 Where the Office of the City Ombudsman recommends corrective action the department or authorised official concerned must provide the Office of the City Ombudsman with written confirmation within 14 days of receipt of such recommendation that corrective action will be implemented or not.

7.5.7 If a line department will not be implementing a recommendation, it must forward comprehensive written reasons for such decision to the Office of the City Ombudsman.

7.5.8 Where recommended corrective action is not adhered to, the Office of the City Ombudsman may refer the matter to the Executive Director: Compliance and Auxiliary Services and the relevant management structures for intervention.

7.6 Reporting

7.6.1 The Office of the City Ombudsman must submit a quarterly report to the Executive Director: Compliance and Auxiliary Services, setting out:

7.6.1.1 the number of complaints lodged;

7.6.1.2 a sample of case summaries;

7.6.1.3 statistical information on the findings and recommendations reached; and

7.6.1.4 the awareness campaigns and information sessions held.

8. IMPLEMENTATION PROGRAMME

The implementation will be immediately after approval by Council.
9. MONITORING, EVALUATION AND REVIEW

9.1 The Office of the City Ombudsman will utilise the quarterly reports to:

9.1.1 monitor compliance within the City;

9.1.2 recommend reviewing of City policies based on trends identified during the financial year;

9.2 The Office of the City Ombudsman will undertake an ongoing survey to measure the effectiveness of this policy.

9.3 This policy must be reviewed when operational needs require this, but at least once during every term of Council.

9.4 Any queries or requests for amendments relating to this policy must be directed to the Office of the City Ombudsman.