

SOL PLAATJE MUNICIPALITY



SEXUAL HARASSMENT POLICY

Final version of 2007

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In terms of Council resolution C206/07

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1. DEFINITIONS

'day' refers to a working day;

'councillor' means a member of the Municipal Council;

'disciplinary procedure' refers to the approved disciplinary procedure of the Sol Plaatje Municipality;

'grievance procedure' refers to the approved grievance procedure of the Sol Plaatje Municipality;

'Labour Relations Act' refers to the Labour Relations Act (Act No. 66 of 1995);

'management' in relation to a Municipality refers to but is not limited to managers referred to in section 57 of the Municipal Systems Act (Act No. 32 of 2000), and in terms of this policy, it also refers to all officials in supervisory and management positions;

'council' means the council of the Sol Plaatje Municipality.

'sexual Favoritism' refers to when a person who is in a position of authority rewards only those employees who respond to his / her sexual advances.

'The Code of Good Practice' refers to the Code of Good Practice on the Handling of Sexual Harassment Cases, Notice 1367 of 1998, issued in terms of section 203 (2) of the Labour Relations Act, (Act No 66 of 1995);

'municipality' refers to the Sol Plaatje Municipality;

'speaker' refers to a Councillor elected as a Speaker by Council in terms of section 36; and assigned functions in terms of section 37 of the Municipal Structures Act (Act No. 117 of 1998);

2. INTRODUCTION

Sexual harassment is any kind of unwanted sexual advance and can include physical, verbal or non-verbal behaviour.

Sex related crimes are not merely sexual acts, they are acts of violence which command dominance and the need for power. Sexual harassment is no different but it is complex because it takes different forms. The scope of behaviours that constitute sexual harassment are vast and range on a continuum from offensive gestures to rape. The whole issue of sexual harassment raises the subject of gender equality and human rights, but more than these issues, it elicits thoughts about respect and tolerance. The Code of Good Practice provides the policy framework and the procedures that encourage the development and implementation of policies that will lead to the creation of workplaces that are free of sexual harassment, where employers and employees respect one another's integrity and dignity.

3. PURPOSE

The objective of this policy is:

- 3.1 To eliminate sexual harassment within the Sol Plaatje Municipality.
- 3.2 To encourage and promote the creation of an environment that is free of sexual harassment, where employees and members of the public respect one another's integrity and dignity, their privacy, and their right to equity in the Municipality.

4. SCOPE

This policy is applicable to members of council and all employees of the Municipality, temporary and permanent. Consistent with section 2.2 of the Code of Good Practice on the Handling of Sexual Harassment Cases, nothing confers authority or obligation on the Municipality to take disciplinary action in respect of non-employees who are alleged perpetrators of sexual harassment. As a general guideline this policy covers all possible work environments including office, off-sites, all functions, conferences and seminars.

5. INPUTS

The Conditions of Service of the Municipality, its Disciplinary Procedure and Grievance Procedure; and all applicable legislation shall apply to this Policy.

6. OUTPUTS

This policy and procedure will serve as a sensitive and confidential mechanism in dealing with situations of sexual harassment. The Municipality will ensure that ongoing training and sensitising of all councillors, management and employees will take place.

7. IMPERATIVES

- 7.1 Sexual harassment is unwanted or unwelcome conduct of a sexual nature.
- 7.2 The unwanted nature of sexual harassment distinguishes it from behavior that is welcome and mutual.
- 7.3 The victim can be a male or female, of the same or opposite sex.
- 7.4 The harasser can be male or female, of the same or opposite sex.
- 7.6 Sexual attention becomes sexual harassment if:
 - 7.6.1 The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment, or
 - 7.6.2 The recipient has made it clear that the behaviour is considered offensive, or
 - 7.6.3 The perpetrator should have known that the behaviour is regarded as unacceptable.
- 7.7 Councillors, management and employees are expected to refrain from committing acts of sexual harassment. An approach of zero tolerance will be adopted against acts of sexual harassment.
- 7.8 Sexual harassment in the Municipality will not be permitted or condoned.

- 7.9 Allegations of sexual harassment will be dealt with seriously, expeditiously, sensitively and confidentially.
- 7.9.1 When councilors are involved, the Speaker and the Municipal Manager must ensure that grievances or complaints about sexual harassment are investigated and handled in a manner that ensures the identities of the persons involved are kept confidential.
- 7.9.2 In cases of sexual harassment, council, management, employees and other parties concerned must endeavor to ensure confidentiality in the grievance enquiry. Only appropriate members of management or Human Resources as well as the aggrieved person, his / her, his or her representative, the alleged perpetrator and his or her representative, witnesses, if required, must be present in the disciplinary enquiry.
- 7.9.3 Management are required to disclose to either party or to their representatives such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this policy.
- 7.9.4 The relevant provision of Section 16 of the Labour Relations Act will apply to the disclosure of information.
- 7.10 Persons who have been or are being subjected to sexual harassment in the Municipality have a right to raise a complaint about it, should it occur, management would take appropriate action.
- 7.11 Management should create and maintain a working environment in which the dignity of employees is respected.
- 7.12 Management is required to implement this policy and take disciplinary action against any employee who does not comply with this policy. Serious incidents of sexual harassment or continued harassment are dismissible offences.
- 7.13 It is a dismissible offence to victimize or retaliate against an employee who in good faith lodges a complaint of sexual harassment.
- 7.14 Anonymous complaints will be disregarded.

7.15 False or vindictive accusations shall be viewed in a very serious light and may be dealt with in terms of the disciplinary procedure of the Municipality.

7.16 Forms of Sexual Harassment

Sexual harassment may include unwelcome physical, verbal or non-verbal conduct, but is not limited to the examples listed as follows:

Form	Examples
Physical	<ul style="list-style-type: none">• All unwelcome physical contact, ranging from fondling, touching, caressing, grabbing, rubbing or pushing against someone.• Sexual assault and rape.• Includes a strip search by or in the presence of the opposite sex.• Any physical conduct of a sexual nature.
Verbal	<ul style="list-style-type: none">• Unwelcome innuendos, suggestions and hints.• Sexual advances.• Comments with sexual overtones.• Sex related jokes or insults.• Unwelcome graphic comments about a person's body made in their presence or directed towards them.• Unwelcome and inappropriate enquiries about a person's sex life.• Unwelcome whistling directed at a person or group of persons.
Non Verbal	<ul style="list-style-type: none">• Unwelcome gestures including leering.• Indecent exposure.• Unwelcome display of sexually explicit pictures and objects, including pornography.• This is known as creating a hostile environment. Distribution of jokes or material of a sexual nature or undertone via the e-mail.
Quid pro Quo	<ul style="list-style-type: none">• Occurs where councillors, management and employees undertake or attempt to influence the process of employment, promotion, training, discipline, dismissal, salary increment or other benefits of an employee or job applicant in exchange for sexual favours.• Sexual favouritism exists where a person who is in a position of authority rewards only those who respond to his/her sexual advances, whilst other deserving employees who do not submit themselves to any sexual advances are denied promotions, merit ratings or salary increases.

7.17 Harassment of non-employees

7.17.1 Non-employees include job applicants, clients, suppliers, contractors and any other person having dealings with the Municipality.

7.17.2 A non-employee who is a victim of sexual harassment may lodge a complaint with management, where harassment has taken place in the Municipality or in the course of the alleged perpetrator's employment with the Municipality.

7.17.3 Where a non-employee is the perpetrator of sexual harassment, an employee of the Municipality may lodge a complaint with management who, in turn, will pursue the matter with the perpetrator and with his / her employer.

7.17.4 Nothing however confers authority on the Municipality to take disciplinary action in respect of non-employees in terms of section 2(2) of the Code of Good Practice.

7.18 Conduct prohibited by the Municipality

Any conduct which has been stipulated in the definitions on 7.1, 7.2 and 7.3 above and which includes any of the following constitutes prohibited conduct:

7.18.1 Unwelcome sexual advances.

7.18.2 Requests for sexual favours.

7.18.3 Verbal or physical conduct of a sexual nature constituting harassment when:

8.3.1.1 Submission to such conduct is either an explicit or implicit term of condition of employment.

8.3.1.2 Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals.

8.3.1.3 Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive environment.

8.3.1.4 Retaliation or reprisal by councillors, management and employees against any employee who objects to, or has filed a complaint of, or has reported an occurrence of sexual harassment, shall be guarded against.

7.19 Where an employee, on medical advice, requires trauma counseling as a result of sexual harassment; his / her existing sick entitlement has been exhausted, management will give due consideration to the granting of additional sick leave in terms of section 10 of the Code of Good Practice.

8. PROCEDURES

8.1 The complainant of sexual harassment can obtain confidential advice and assistance from the Manager: Gender and / or the Labour Relations Officer, or

8.2 A complainant of sexual harassment may also decide to seek advice and assistance from a colleague, manager or an official of a union of which he / she is a member.

8.4 The complainant should be advised that there are two options to resolve a problem relating to sexual harassment. Either an attempt can be made to resolve the problem in an informal way or a formal procedure can be embarked upon. The employee should be under no duress to accept one or the other option.

8.4.1 Informal Procedures

8.4.1.1 It may be sufficient for the complainant to have an opportunity where he/she can explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.

8.4.1.2 The complainant could also ask someone to talk to the alleged perpetrator or to accompany him / her when he / she talks to the alleged perpetrator. This may include a member or official of a recognised Union or a fellow employee.

8.4.1.3 The Manager: Gender and/or the Labour Relations Officer will be available for assistance in these informal steps, should this be required.

- 8.4.1.4 If the behaviour continues, or if the informal approach does not resolve the matter satisfactorily, or the case is severe the complainant may embark on the formal procedure to resolve the matter. Severe cases may include sexual assault, rape, strip search, and quid pro quo harassment.

8.4.2 Formal Procedures

If it is a severe case of sexual harassment, the complainant may decide to embark on a formal procedure without resorting to an informal procedure.

Where the complainant decides to follow the formal procedure, he / she should:

- 8.4.2.1 Report the alleged incident to the Manager: Gender, or the Labour Relations Officer or if necessary to the next level of Management. Alternatively, the following grievance procedure shall apply.
- 8.4.2.2 **Step One:** An aggrieved employee must lodge in writing with his immediate superior a grievance on the prescribed form setting out the complaint and the desired result. Such an employee may, if he or she so wishes be assisted by a shop steward, fellow employee or union official.
- 8.4.2.3 The immediate superior shall endeavour, in consultation with the affected employee, to resolve the grievance within five (5) days of the grievance having been referred to him and shall inform the employee of the outcome in writing. Should the grievance concern the conduct of the employee's immediate superior, the employee may proceed directly to Step Two provided that he or she submits the grievance on the prescribed form.
- 8.4.2.4 **Step Two:** If a grievance has not been resolved to the satisfaction of the aggrieved employee, the immediate superior shall refer the matter in writing within five (5) days to the Head of Department.
- 8.4.2.5 The Head of Department shall arrange a meeting to consult and hold discussions with the affected parties in an attempt to

achieve a resolution. The employee may be assisted by a fellow employee, shop steward or union official at such a meeting and the immediate superior may also be required to attend.

- 8.4.2.6 The Head of Department or his nominee shall endeavour to resolve the grievance within five (5) days of the grievance being referred and shall inform the employee of the outcome in writing.
- 8.4.2.7 **Step Three:** If the grievance has not been resolved to the satisfaction of the aggrieved employee or group of employees, the Head of Department shall refer it to the Municipal Manager or his nominee within (5) days in writing who shall hold an enquiry into the grievance, attended by the employee, his/her representative, if required, and any other persons who, in the opinion of the Municipal Manager or his nominee should attend.
- 8.4.2.8 The Municipal Manager or his nominee shall hear details of the grievance including proposals to resolve the issue and shall endeavour to reach a decision within five (5) days.
- 8.4.2.9 The Municipal Manager shall inform the employee in writing of the outcome of the hearing as envisaged in 8.4.2.9 above, and such decision shall be final in terms of this procedure.
- 8.4.2.10 If the matter is not resolved satisfactorily by the internal procedures either party may refer the matter to the courts for an order seeking satisfaction. Particularly in cases of physical abuse, these procedures do not override the individual's right as a citizen to lay criminal charges against the person involved without consulting the Municipality.

9. MEASURES

A functional process that will ensure a work environment free of sexual harassment and a defined process to deal with transgressions.

10. REVIEW

Review of the policy will be dictated to by changes that might be brought by legislative requirements and/ or municipal related policies.

11. RELATED DOCUMENTS

- 11.1 Labour Relations Act, (No 66 of 1995);
- 11.2 Employment Equity Act (Act no 55 of 1998);
- 11.3 Basic Conditions of Employment Act, 1997 (Act no 75 of 1997);
- 11.4 Code of Good Practice on the Handling of Sexual Harassment Cases, (Notice 1367 of 1998);
- 11.5 Disciplinary Procedure of the Municipality.
- 11.6 Grievance Procedure of the Municipality.

ANNEXURE: PROCEDURAL OUTLINE: DEALING WITH CLAIMS

