

ELIAS MOTSOLEDI LOCAL MUNICIPALITY



Anti-Corruption and Fraud Prevention Strategy **2017/2018**

TABLE OF CONCEPTS

1.	INTRODUCTION	1
1.1	PURPOSE	1
1.2	STATEMENT OF ATTITUDE TO FRAUD	1
1.3	THE PUBLIC SERVICE ANTI-CORRUPTION STRATEGY	1
1.4	THE LOCAL GOVERNMENT ANTI-CORRUPTION STRATEGY	1
1.5	ELIAS MOTSOLEDI LOCAL MUNICIPLAITY'S ANTI-FRUD AND CORRUPTION STRATEGY AND PREVENTION PLAN	2
1.6	DEFINITION OF FRAUD AND CORRUPTION	2
1.6.1	FORMS OF FRAUD AND CORRUPTION	3
2.	POLICY ON FRAUD AND CORRUPTION	5
2.1	BACKGROUND	5
2.2	SCOPE OF THE POLICY	5
2.3	POLICY	5
2.4	ACTIONS CONSTITUTING FRAUD AND CORRUPTION	6
3.	FRAUD AND CORRUPTION CONTROL STRATEGIES	7
3.1	STRUCTURAL STRATEGIES	7
3.1.1	RESPONSIBILITIES FOR FRAUD AND CORRUPTION RISK MANAGEMENT	7
3.1.2	ANTI-FRAUD AND CORRUPTION COMMITTEE	7
3.1.3	AN ETHICAL CULTURE	8
3.1.4	SENIOR MANAGEMENT COMMITMENT	8
3.1.5	ASSESSMENT OF FRAUD AND CORRUPTION RISK	8
3.1.6	EMPLOYEE AWARENESS	10
3.2	OPERATIONAL STRATEGIES	11
3.2.1	INTERNAL CONTROLS	11
3.2.2	PREVENTION STRATEGIES	11
3.2.3	DETECTION STRATEGIES	13
3.2.4	RESPONSE STRATEGIES	14
3.3	MAINTENANCE STRATEGIES	17
3.3.1	REVIEW OF THE EFFECTIVENESS OF THE ANTI-FRAUD AND CORRUPTION AND PREVENTION STRATEGY	17
3.3.2	REVIEW AND UPDATING THE ANTI-FRAUD AND CORRUPTION STRATEGY AND PREVENTION STRATEGY	17
4.	PROCEDURES FOR INVESTIGATIONS	17
4.1	HANDLING A FRAUD ALLEGATION	18
4.2	DOCUMENTATION OF THE RESULTS OF THE INVESTIGATION	18
4.3	OTHER MATTERS	18
4.4	REPORTING FRAUD TO POLICE AND /OR EXTERNAL PARTIES	18
4.5	RECOVERY AND OTHER REMEDIES	19

A. REGULATORY FRAMEWORK

- A.1 SUMMARY OF STATUTORY OFFENCES RELATING TO DISHONESTY
- A.2 STATUTES COMBATING FRAUD AND CORRUPTION

B. APPENDIXES

- B.1 CODE OF CONDUCT FOR COUNCILLORS
- B.2 CODE OF CONDUCT FOR STAFF MEMBERS
- B.3 WHISTLE BLOWING POLICY

1 Introduction

1.1 Purpose

The purpose of this strategy is to prevent fraudulent activities before they occur by encouraging a culture within the Municipality where all employees, members of the public and stakeholders strive towards the promotion of integrity and the prevention and detection of unethical conduct, fraud and corruption impacting or having the potential to impact on the Municipality.

To improving accountability, efficiency and effective administration within municipality, including decision-making and management conduct which promotes integrity.

1.2 Statement of attitude to fraud

Fraud represents a significant potential risk to the Municipality's assets, service delivery efficiency and reputation. The Institution will not tolerate corrupt or fraudulent activities, whether internal or external to the Municipality, and will vigorously pursue and prosecute any parties, by all legal means available, which engage in such practices or attempt to do so.

1.3 The Public Service Anti-Corruption Strategy

During 1997, Government initiated a national anti-corruption campaign. This campaign progressed to a National Anti-corruption Summit held in April 1999 at which all sectors of society (public and private) committed themselves to establishing sectoral anti-corruption strategies. At the same time, they also committed to the co-responsibility for fighting corruption through the coordination of these sectoral strategies.

A range of other resolutions emanated from this Summit and all the sectors committed to implementing these.

The Department of Public Service and Administration (DPSA) was instructed to forge various initiatives across the public service into a coherent strategy with the support of other Departments. A Public Service Task Team (PSTT) consisting of key Departments was convened for this task and representation from local government and public entities were included in order to establish a platform for the roll-out of the strategy to the whole of the Public Sector (Public Service, Local Government and Public Entities).

1.4 The Local Government Anti-Corruption Strategy

Local Government developed the Local Government Anti-Corruption Strategy (LGACS), which is modelled around the Public Service Anti-Corruption Strategy. The main principles upon which the LGACS is based are the following:

- i. Creating a culture within municipalities which is intolerant to unethical conduct, fraud and corruption;

- ii. Strengthening community participation in the fight against corruption in municipalities;
- iii. Strengthening relationships, with key stakeholders, that are necessary to support the actions required to fight corruption in municipalities, for example, South African Local Government Association (SALGA), Employee Representative Unions, and Communities;
- iv. Deterring and preventing of unethical conduct, fraud and corruption;
- v. Detecting and investigating unethical conduct, fraud and corruption;
- vi. Taking appropriate action in the event of irregularities, for example, disciplinary action, recovery of losses, prosecution, and
- vii. Applying sanctions, which include redress in respect of financial losses.

1.5 Elias Motsoaledi Local Municipality's anti-fraud and corruption strategy and prevention plan

This Anti-Corruption Strategy and Fraud Prevention Plan have been developed as a result of the expressed commitment of Government to fight corruption. It is also an important contribution to the National Anti-Corruption Strategy of the country and supplements both the Public Service Anti-Corruption Strategy and the Local Government Anti-Corruption Strategy.

1.6 Definition of fraud and corruption

In South Africa, the Common Law offence of **fraud** is defined as *"the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another"*. The term "fraud" is also used in a wider sense by the general public.

In this regard, the term is used in this document in its widest possible meaning and is intended to include all aspects of economic crime and acts of dishonesty. In other words, fraud can be described as any conduct or behaviour of which a dishonest representation and/or appropriation forms an element.

The general offence of corruption is contained in Section 3 of The Prevention and Combating of Corrupt Activities Act. This section provides that any person who gives or accepts or agrees or offers to accept / receive any gratification from another person in order to influence such other person in a manner that amounts to:

- i. The illegal or unauthorised performance of such other person's powers, duties or functions;
- ii. An abuse of authority, a breach of trust, or the violation of a legal duty or a set of rules;
- iii. The achievement of an unjustified result; or
- iv. Any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of Corruption.

Corruption in its wider meaning, and as referred to in this document, includes any conduct or behaviour where a person accepts, agrees or offers any gratification for him/her or for another person where the purpose is to act dishonestly or illegally. Such behaviour also includes the misuse of material or information, abuse of a position of authority or a breach of trust or violation of duty.

1.6.1 Forms of corruption

Corruption takes various forms in the public service and elsewhere in society. The following are examples of different types of corruption.

a) **Bribery**

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of public servants.

b) **Embezzlement**

This involves theft of resources by persons who control such resources.

c) **Fraud**

Any conduct or behaviour of which a dishonest representation and/or appropriation forms an element.

d) **Extortion**

Coercion of a person or entity to provide a benefit to a public servant, another person or an entity, in exchange for acting (or failing to act) in a particular manner.

e) **Abuse of power**

The use by a public servant of his or her vested authority to improperly benefit another public servant, person or entity (or using vested authority to improperly discriminate against another public servant, person or entity).

f) **Conflict of interest**

The failure by a public servant to act or to consciously fail to act on a matter where the public servant has an interest or another person or entity that has some form of relationship with the public servant has an interest.

g) **Abuse of privileged information**

This involves the use, by a public servant of privileged information and knowledge that a public servant possesses as a result of his/ her office to provide unfair advantage to another person or entity to obtain a benefit.

h) Favoritism

The provision of services or resources according to personal affiliation (for example cultural or religious) of a public servant.

i) Nepotism

A public servant ensuring that family members are appointed to public service positions or that family members receive contracts from the state is regarded as nepotism.

These manifestations are by no means exhaustive as corruption appears in many forms and it is virtually impossible to list all of these.

2. Policy on Fraud and Corruption

2.1 Background

This policy is established to facilitate the development of controls which will assist in the prevention and detection of fraud and corruption, as well as provide guidelines as to how to respond should instances of fraud and corruption be identified. This policy is also established to give effect to the various legislative instruments as described in the previous section.

2.2 Scope of the policy

This policy applies to all employees, stakeholders, contractors, vendors / suppliers and any other party doing business with the Institution.

Any fraudulent or corrupt behaviour must be reported immediately through the mechanisms as set out in this document, and such reports will be investigated and acted upon.

2.3 Policy

It is the policy of the Elias Motsoaledi Local Municipality that fraud, corruption, maladministration or any other dishonest activities of a similar nature will not be tolerated. Such activities will be investigated and actions instituted against those found responsible. Such actions may include the laying of criminal charges, civil and administrative actions and the institution of recoveries where applicable.

Prevention, detection, response and investigative strategies will be designed and implemented. These will include any existing controls (system controls and manual internal controls) and those currently prescribed in existing policies, procedures and other relevant prescripts to the activities of the Institution.

It is the responsibility of all employees to report all incidents of fraud and corruption that may come to his / her attention to his / her supervisor. Alternatively, such reports can be made by way of submitting a report through the prescribed whistle blowing mechanism.

All reports received will be treated with the requisite confidentiality and will not be disclosed or discussed with parties other than those charged with investigation into such reports.

All Managers are responsible for the detection, prevention and investigation of fraud and corruption, within their areas of responsibility.

2.4. Actions constituting fraud and corruption

Fraud and corruption manifests in a number of ways and varying degrees of intensity. These include, but are not limited to:

- a) Unauthorised private use of the Institution's assets, including vehicles;
- b) Falsifying travel and subsistence claims;
- c) Conspiring unfairly with others to obtain a tender;
- d) Disclosing proprietary information relating to a tender to outside parties;
- e) Accepting inappropriate gifts from suppliers;
- f) Employing family members or close friends;
- g) Operating a private business in working hours;
- h) Stealing equipment or supplies from work;
- i) Accepting bribes or favours to process requests;
- j) Accepting bribes or favours for turning a blind eye to a service provider who does not provide an appropriate service;
- k) Submitting or processing false invoices from contractors or other service providers; and
- l) Misappropriating fees received from customers, and avoiding detection by not issuing receipts to those customers.

3. Fraud and Corruption control strategies

The approach in controlling fraud and corruption is focused into 3 areas, namely:

- a) Structural Strategies;
- b) Operational Strategies; and
- c) Maintenance Strategies.

3.1 Structural strategies

Structural Strategies represent the actions to be undertaken in order to address fraud and corruption at the Structural level.

3.1.1 Responsibilities for fraud and corruption risk management

The following section outlines the fraud and corruption risk management responsibilities associated with different roles within the Institution.

3.1.1.1 Accounting Authority / Officer (MM)

The Accounting Authority / Officer bear the ultimate responsibility for fraud and corruption risk management within the Institution. This includes the coordination of risk assessments, overseeing the investigation of suspected fraud and corruption, and facilitation for the reporting of such instances.

3.1.1.2 Risk Management Committee

Elias Motsoaledi's Risk Management Committee will oversee the Municipality's approach to fraud prevention, fraud detection strategies and response to fraud and corruption incidents reported by employees or other external parties.

The Risk Management Committee shall meet at least once a quarter as per the Risk Management Committee Charter to discuss the following issues:

- a. Progress made in respect of implementing the Anti-Fraud and Corruption Strategies and Fraud Prevention Plans;
- b. Reports received by the Elias Motsoaledi Local Municipality regarding fraud and corruption incidents with the view to making any recommendations to the Accounting Authority / Officer and Chairman of the Audit Committee;
- c. Reports on all investigations initiated and concluded; and
- d. All allegations received via the Provincial hotline.

3.1.2 An ethical culture

Elias Motsoaledi Local Municipality is required to conduct itself in an ethical and moral way. Ethics are concerned with human character and conduct and deal with questions of right and wrong, appropriate and inappropriate behaviour and what constitutes good or evil. Ethical conduct is based on a set of principles referred to as values or norms. The collective ethical conduct of all the individual employees of the municipality reflects the Institution's ethical conduct. In this regard, the highest standards of ethics are required by employees when fulfilling their duties.

Good governance indicates that municipality should develop codes of conduct (ethics) as part of their corporate governance frameworks. All employees are expected to abide by the Code of Conduct for the Municipality. The code of conduct for councillors is in **appendix A. and Appendix B** Code of conduct for municipal staff.

3.1.3 Senior management commitment

Senior management is to be committed to eradicating fraud and corruption and ensuring that the municipality strives to be perceived as ethical in all its dealings with the public and other interested parties. In this regard, senior management, under the guidance of the Accounting Authority / Officer, will ensure that it does not become complacent in dealing with fraud and corruption and that it will ensure the municipality's overall fraud and corruption strategy is reviewed and updated regularly. Furthermore, senior management will ensure that all employees and stakeholders are made aware of its overall anti-fraud and corruption strategies through various initiatives of awareness and training.

3.1.4 Assessment of fraud and corruption risk

The Municipality, under the guidance of the Accounting Authority / Officer and the Chairman of the Anti-Fraud and Corruption Committee, will conduct annual fraud and corruption risk assessments to identify potential fraud and corruption risk exposures to the Institution. This process will ensure that actions to address the identified fraud and corruption risk exposures will be implemented to mitigate these exposures.

The above will be formulated into "Fraud Risk Assessment" and which will provide an indication of how fraud and corruption risks are manifested and, a "Fraud and Corruption Risk Register" which will prioritise the fraud and corruption risks and indicate actions to mitigate these risks.

3.1.4.1 Fraud and corruption risk assessment process

The fraud and corruption risk assessment will be conducted using the following framework elaborated in steps:

- a) Establish the structure
- b) Identify risk exposures

- c) Analysis of the risk exposures
- d) Evaluate risk exposures
- e) Implement prevention plans
- f) Monitor and review

It must be noted that communication and awareness is a step that cuts across the entire risk assessment process.

The following is more detailed summary of each of the steps of the risk assessment process as set out above having regard to the particular application of the process to the assessment of fraud and corruption risk:

I. Establishing the structure

This involves establishing an Anti-Fraud and Corruption Committee that will oversee the implementation of anti-fraud and corruption strategies and ensure that Fraud and Corruption Risk Assessments occur.

II. Identifying risk exposures

The objective of this phase is to generate a register (the Fraud and Corruption Risk Register) of all possible inherent risks for subsequent analysis. All inherent risks identified should be documented at this point regardless of whether a preliminary assessment concludes that internal controls currently in force will be fully effective in mitigating the risk. How each risk manifests itself should be documented as well as why it occurs.

III. Analysing the risk exposures

All internal controls that are currently in force and which would tend to have the effect of mitigating the risk of fraud and corruption under consideration will be recorded. The effectiveness of all mitigating internal controls will then be assessed. The assessment should conclude, in relation to each control, whether it is or is likely to be:

- a. Unsatisfactory; or
- b. Weak ; or
- c. Satisfactory; or
- d. Good; or
- e. Very Good

The assessment of each internal control considered should not represent an assessment of the control in terms of its ability to mitigate business risk generally. Rather, it is an assessment of that control's perceived impact on the specific fraud or corruption risk under consideration.

IV. Evaluating the risk exposures

Each risk exposure will be evaluated (high, medium, low) and this will allow the Municipality to prioritise which risk exposures require immediate action.

V. Implementing prevention plans

All fraud and corruption risks rated as “*High*” will require the development and implementation of proposed action aimed at achieving one or more of the following:

- a. Alteration to existing internal control procedures;
- b. Introducing new internal control procedures; and
- c. Introducing procedures aimed at detecting and preventing fraud.

Proposed action may also be developed in relation to risks assessed as being of a lower level of residual risk. All actions proposed by the risk assessment team will be evaluated by senior management, as appropriate, prior to implementation. Implementation will also be monitored periodically by the Anti-Fraud and Corruption Committee.

3.1.6. Employee awareness

The main purpose of fraud and corruption awareness workshops / training is to assist in the prevention, detection and reporting of fraud and corruption by raising the level of awareness as to how fraud and corruption is manifested in the workplace. In this regard, all employees will receive training on the following:

- a. Anti-Fraud and Corruption strategy;
- b. Code of Conduct for employees;
- c. Whistle blowing policy;
- d. How to respond to fraud and corruption; and
- e. Manifestations of fraud and corruption in the workplace.

The Municipality should identify the individuals that would be responsible for employee awareness and that will arrange and schedule awareness sessions throughout the year.

3.2 Operational strategies

3.2.1 Internal controls

Internal controls are the first line of defence against fraud and corruption. While internal controls may not fully protect the municipality against fraud and corruption, they are essential elements in the overall Anti-Fraud and Corruption Strategy.

All areas of operations require internal controls, for example:

- a. Physical controls (securing of assets);
- b. Authorisation controls (approval of expenditure);
- c. Supervisory controls (supervising day-to-day issues);
- d. Analysis of data;
- e. Monthly and annual financial statements;
- f. Reconciliation of bank statements, monthly; and
- g. Reconciliation of vote accounts, monthly.
- h. The Internal Audit Department will be responsible for implementing an internal audit program which will incorporate steps to evaluate adherence to internal controls.

3.2.2 Prevention strategies

A number of combined initiatives result in an overall preventative environment in respect of fraud and corruption. These include the following:

3.2.2.1 Employee awareness

Employee awareness of the Institution's Anti-Fraud and Corruption Strategy, Code of Conduct, Whistle blowing policy and the manifestation of fraud and corruption in the workplace all assist in the creation of an environment which may be considered to be hostile to a would-be transgressor.

3.2.2.2 Pre-employment screening

Pre-employment screening will be carried out for all appointments, and evidence of such screening will be maintained by the Corporate Department. Consideration should be given to the following pre-employment screening:

- a. Verification of identity.
- b. Police criminal history.
- c. Reference checks with the two most recent employers – this will normally require telephone contact.
- d. A consideration of any gaps in employment history and the reasons for those gaps.
- e. Verification of formal qualifications claimed.

The Elias Motsoaledi Local Municipality's policy of pre-employment screening will cover all new and promoted employees including those with administrative responsibilities or computer access. The screening will be performed by a person / people nominated by the Corporate Department in conjunction with the Accounting Authority / Officer to ensure that screening is consistent and appropriately resourced throughout all Departments. Screening will be conducted in accordance with the classification of the employee or the levels of screening outlined below by internal auditor.

Where an employee is promoted into a management position and has not been screened during the course of the previous three years, the applicant will be re-screened. *The levels of screening include:*

Level 1 – All employees (including those with administrative functions or computer access)

- a. Verification of claimed educational qualifications;
- b. An independent reference check directly with two referees nominated by the applicant or previous employers; and
- c. Criminal history checks (after authorisation has been obtained from the prospective employee)

Level 2 – All Managers and above, IT and Finance staff

- a. All employees;
- b. Employment history checks;
- c. Directorship and membership searches; and
- d. Insolvency/credit search.

3.2.2.3 Recruitment procedures

Recruitment will be conducted in accordance with the requisite recruitment procedure. It will be a transparent process and all appointments will be confirmed only after due recommendation. Any person, involved in any decision-making process, who may have a conflict of interest, must declare such a conflict in writing to the Corporate Department and withdraw from any further procedures.

3.2.2.4 Internal audit plan

A robust Internal Audit plan, which focuses on the prevalent high Fraud and Corruption risks, serves as an effective preventative measure. The Internal Audit section will compile such a plan on an annual basis, and such a plan will also include "surprise audits".

3.2.2.5 Fraud and corruption prevention plan

The actions set out in this plan are all focused at mitigating the risk of fraud and corruption in the Institution.

3.2.2.6 Disclosure of interests

All senior managers, councillors and municipal employees of the Institution will be required to disclose their specific personal assets and business interests on an annual basis. This register will be kept with the Accounting Authority / Officer.

Any false disclosure by an official will cause the municipality to take action that will include criminal charges and / or disciplinary proceedings

3.2.3 Detection strategies

Detection of fraud and corruption may occur through:

- a. Vigilance on the part of employees, including line management;
- b. The Internal Audit function;
- c. Ad hoc management reviews;
- d. Anonymous reports; and
- e. The application of detection techniques.
- f. The individual identified at the Institution will be responsible for developing detection strategies, and will work closely with line management and the Internal Audit function for this purpose.
- g. The Institution will embark on a number of initiatives to detect fraud and corruption in the workplace.

3.2.3.1 Internal Audit

Similar to the prevention strategies, a robust Internal Audit plan which focuses on the prevalent high Fraud and Corruption risks also serves as an effective detection measure.

As part of the detection strategy, the Internal Audit plan will cover the following:

- a. **Surprise audits:** Unplanned audits conducted on specific business processes throughout the year;
- b. **Post-transaction reviews:** A review of transactions after they have been processed and completed can be effective in identifying fraudulent or corrupt activity. In addition to the possibility of detecting fraudulent transactions, such a strategy can also have a significant fraud prevention effect as the threat of detection may be enough to deter a staff member who would otherwise be motivated to engage in fraud and corruption;
- c. **Forensic data analysis:** The Institution's computer system is an important source of information on fraudulent and sometimes corrupt conduct. Software applications will

be used during internal audits, surprise audits and post-transaction reviews to assist in detecting any possible fraud and corruption; and

- d. **Management accounting reporting review:** Using relatively straightforward techniques in analysing the Institution's management accounting reports, trends can be examined and investigated which may be indicative of fraudulent conduct.

Some examples of the types of management accounting reports that can be utilised on a compare and contrast basis are:

- I. Budget reports for each section;
- II. Reports comparing expenditure against public sector benchmarks; and
- III. Reports highlighting unusual trends in bad or doubtful debts.

The Institution will implement a strategy to ensure appropriate management accounting report reviews are conducted.

3.2.3.2 External audit

The Institution recognises that the external audit function is an important control in the detection of fraud. The Chief Finance Officer will need to hold discussions with all engaged external auditors to ensure that due consideration is given, by the auditors, to ISA 240 *"The Auditors' Responsibility to Consider Fraud in the Audit of a Financial Statement"*.

3.2.4 Response strategies

3.2.4.1 Reporting fraud and corruption – a Whistle blowing policy

One of the key obstacles to fighting fraud and corruption is the fear by employees of being intimidated to identify or "blow the whistle" on fraudulent, corrupt or unethical practices witnessed in the work place. Those who often do "blow the whistle" end up being victimised and intimidated. For this reason, the Institution will adopt a Whistle Blowing Policy setting out the detailed procedure which must be followed in order to report any incidents of fraud and / or corruption. This policy will be designed to comply with the provisions of the Protected Disclosures Act.

Any suspicion of fraud and corruption will be treated seriously and will be reviewed, analysed, and if warranted, investigated. If an employee becomes aware of a suspected fraud, corruption or any irregularity or unethical behaviour, such issues should be reported in terms of a Whistle Blowing Policy.

3.2.4.2 Investigating fraud and corruption

- I. Dealing with suspected fraud and corruption

In the event that fraud or corruption is detected or suspected, investigations will be initiated, and if warranted, disciplinary proceedings, prosecution or action aimed at the recovery of losses will be initiated.

II. Investigations

Any reports of incidents of fraud and / or corruption will be confirmed by an independent investigation. Anonymous reports may warrant a preliminary investigation before any decision to implement an independent investigation is taken.

Investigations will be undertaken by appropriately qualified and experienced persons who are independent of the section where investigations are required. This may be a senior manager within the Institution itself, an external consultant or a law enforcement agency. All investigations performed and evidence obtained will be in accordance with acceptable practices and legal requirements. Independence and objectivity of investigations are paramount.

Any investigation initiated must be concluded by the issue of a report by the person/s appointed to conduct such investigations. Such reports will only be disseminated to those persons required to have access thereto in order to implement whatever action is deemed appropriate as a result of the investigation.

III. Investigations may involve one or more of the following activities:

- a. Interviewing of relevant witnesses, internal and external, including obtaining statements where appropriate;
- b. Reviewing and collating documentary evidence;
- c. Forensic examination of computer systems;
- d. Examination of telephone records;
- e. Enquiries from banks and other financial institutions (subject to the granting of appropriate approval/Court orders);
- f. Enquiries with other third parties;
- g. Data search and seizure;
- h. Expert witness and specialist testimony;
- i. Tracing funds / assets / goods;
- j. Liaison with the police or other law enforcement or regulatory agencies;
- k. Interviewing persons suspected of involvement in fraud and corruption; and

I. Report preparation.

Any investigation into improper conduct within the municipality will be subject to an appropriate level of supervision by a responsible committee, having regard to the seriousness of the matter under investigation.

IV. Disciplinary proceedings

The ultimate outcome of disciplinary proceedings may involve a person/s receiving written warnings or the termination of their services. All disciplinary proceedings will take place in accordance with the procedures as set out in the disciplinary procedures.

V. Prosecution

Should investigations uncover evidence of fraud or corruption in respect of an allegation or series of allegations, the Institution will review the facts at hand to determine whether the matter is one that ought to be reported to the relevant law enforcement agency for investigation and possible prosecution. Such reports must be submitted to the South African Police Service in accordance with the requirements of all applicable acts. The Institution will give its full co-operation to any such law enforcement agency including the provision of reports compiled in respect of investigations conducted.

VI. Recovery action

Where there is clear evidence of fraud or corruption and there has been a financial loss to the Institution, recovery action, criminal, civil or administrative, will be instituted to recover any such losses.

In respect of civil recoveries, costs involved will be determined to ensure that the cost of recovery is financially beneficial.

VII. Internal control review after discovery of fraud

In each instance where fraud is detected, Line Management will reassess the adequacy of the current internal control environment (particularly those controls directly impacting on the fraud incident) to consider the need for improvements.

The responsibility for ensuring that the internal control environment is re-assessed and for ensuring that the recommendations arising out of this assessment are implemented will lie with Line Management of the department / section concerned.

3.3 Maintenance Strategies

3.3.1 Review of the effectiveness of the Anti-Fraud and Corruption Strategy and Prevention Strategy

The Institution will conduct a review of the Anti-Fraud and Corruption Strategy and Prevention annually to determine the effectiveness thereof. The Accounting Authority /

Officer are ultimately accountable for this review and may appoint a person to take responsibility for this.

3.3.2 Review and updating the Anti-Fraud and Corruption Strategy and Prevention Strategy

A central part of any fraud and corruption control programme should involve an ongoing review of fraud and corruption risk exposures. Fraud and Corruption risk assessments will also be conducted annually at the same time as the review of the Anti-Fraud and Corruption Strategy and Prevention Plan. As with the review, the Accounting Authority / Officer are ultimately accountable for this and may delegate a person to take responsibility.

4. Procedures for investigations

The Institution has adopted a policy of investigating all reports of fraud and corruption, or other improper conduct. The investigation of fraud and corruption can be a complex and, at times, technical process and employees should be aware of the consequences of a poorly conducted investigation, including:

- a. Denial of natural justice;
- b. Defamation;
- c. Action against an employer for wrongful dismissal;
- d. Inadmissible or poor control over the collection of evidence; and
- e. Destruction of physical evidence.

To ensure that there is reasonable assurance that investigations are performed and reported properly, and recognising the limited resources within the Institution, external consultants (e.g. external auditors or forensic accountants) may be used to provide assistance to the Institution when a fraud is reported. The external consultant may be assisted by experienced personnel within the Institution who are sufficiently independent of the area or the matter under investigation. The Accounting Authority / Officer, within his / her delegated authority, will have the discretion to determine the appropriate external consultants and / or the Institution personnel to conduct investigations.

4.1 Handling a fraud allegation

Should a Line Manager receive an allegation of fraudulent or corrupt activity, through he or she will ensure that the Accounting Authority / Officer are advised at the earliest opportunity.

The Accounting Authority / Officer will refer the allegations to the Anti-Fraud and Corruption Committee to conduct or co-ordinate an investigation into the allegations.

Upon receipt of an allegation of a suspected fraud, the immediate concern of the Anti-Fraud and Corruption committee should be the preservation of evidence and the containment of loss.

4.2 Documentation of the results of the investigation

The appointed Anti-Fraud and Corruption committee is to submit a written report to the Accounting Authority / Officer detailing the circumstances and recommending appropriate remedial action following the investigation.

4.3 Other matters

The Accounting Authority / Officer, in conjunction with the Chairman of the Anti-Fraud and Corruption Committee, will provide the details of fraud / corruption or possible fraud / corruption to the Audit Committee.

In each instance where fraud is detected, the Institution will reassess the adequacy of the internal control environment (particularly those controls directly impacting on the fraud incident) and consider the need for improvements. Where improvements are required, they should be implemented as soon as practicable.

4.4 Reporting fraud to police and / or external parties

The Accounting Authority / Officer will be responsible for reporting to the police, in circumstances in which there is evidence of fraud:

- a. An employee/volunteer of the Institution;
- b. A client of the Institution;
- c. A research grant recipient of the Institution; or
- d. A supplier to the Institution.
- e. Reporting fraud to the police for investigation will be subject to the requirements as set out in all applicable acts.
- f. Any decision not to refer an allegation of fraud to the police for investigation (where there is sufficient evidence to justify making such a report) will be referred to the Audit Committee, together with the reasons for the decision.
- g. Responsibility for complainant statements lodged with Police will be assigned on a case by case basis by the Accounting Authority / Officer in consultation with the investigator.

4.5 Recovery and other remedies

The Institution has adopted a policy wherein it will actively pursue the recovery of any money or property lost through fraud, provided there is a strong prospect of a net benefit to the Institution from such action.

Where it is considered appropriate that the matter not be reported to the police, the Institution reserves its right to pursue a range of other remedies including appropriate

disciplinary action. Any disciplinary action pursued will be done in accordance with the disciplinary procedures.

Exit interviews and exit checklist procedures will be performed in the event of dismissal from the Institution for misconduct or fraud. This is necessary to ensure that factors contributing to misconduct and fraudulent activity by employees can be managed as a process to mitigate fraud risk.

A Regulatory Framework

A.1 Summary of statutory offences relating to dishonesty

A.1.1 Prevention and Combating of Corrupt Activities Act, 12 of 2004

The Prevention and Combating of Corrupt Activities Act (generally referred to as “PRECCA”) is aimed at the strengthening of measures to prevent and combat corrupt activities.

The Act refers to a wide range of offences relating to corrupt activities. In addition to specific offences, the Act also provides for the following:

- a. The provision of investigative resources;
- b. The establishment of a register relating to persons convicted of corrupt activities;
- c. Placing a duty on persons in a “position of authority” to report certain corrupt transactions; and
- d. Extraterritorial jurisdiction in respect of offences relating to corrupt activities.

As far as offences are concerned, the Act defines a general offence of corruption. In addition to the general offence, certain specific offences are defined relating to specific persons or specific corrupt activities.

The offences defined by the Act relate to the giving or receiving of a “gratification”. The term gratification is defined in the Act and includes a wide variety of tangible and intangible benefits such as money, gifts, status, employment, release of obligations, granting of rights or privileges and the granting of any valuable consideration such as discounts etc.

The general offence of corruption is contained in Section 3 of the Act. This section provides that any person who gives or accepts or agrees or offers to accept/receive any gratification from another person in order to influence such other person in a manner that amounts to:

- a. The illegal or unauthorised performance of such other person’s powers, duties or functions;
- b. An abuse of authority, a breach of trust, or the violation of a legal duty or a set of rules;
- c. The achievement of an unjustified result; or
- d. Any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of corruption.

The Act defines specific offences relating to the following categories of persons:

- a. Public Officers;
- b. Foreign Public Officials;
- c. Agents;
- d. Members of Legislative Authorities;
- e. Judicial Officers; and
- f. Members of the Prosecuting Authority.

The Act furthermore defines specific offences in respect of corrupt activities relating to the following specific matters:

- a. Witnesses and evidential material in certain proceedings;
- b. Contracts;
- c. Procuring and withdrawal of tenders;
- d. Auctions;
- e. Sporting events; and
- f. Gambling games or games of chance.

Section 34 of the Act places a duty on any person in a position of authority to report a suspicion of certain corrupt or illegal activities to a police official. These include certain offences of corruption created under the Act as well as fraud, theft, extortion and forgery where the amount involved exceeds R100 000. Failure to report such suspicion constitutes an offence.

“Position of authority” is defined in the Act and includes a wide range of persons in authority in both public and private entities.

Offences under the Act are subject to penalties including imprisonment for life and fines of up to R250 000. In addition, a fine amounting to five times the value of the gratification involved in the offence may be imposed.

Section 17 of the Act provides that a public officer who acquires or holds a private interest in any contract, agreement or investment connected with the public body in which he/she is employed, is guilty of an offence unless:

- a. The interest consists of shareholding in a listed company;

- b. The public officer's conditions of employment do not prohibit him/her from acquiring such interests; or
- c. In the case of a tender process, the said officer's conditions of employment do not prohibit him/her from acquiring such interests as long as the interests are acquired through an independent tender process.

A.1.2 Prevention of Organised Crime Act, 121 of 1998 (POCA)

The Prevention of Organised Crime Act, as amended, (generally referred to as "POCA") contains provisions that are aimed at achieving the following objectives:

- a. The combating of organised crime, money laundering and criminal gang activities;
- b. The criminalisation of conduct referred to as "racketeering";
- c. The provision of mechanisms for the confiscation and forfeiture of the proceeds of crime;
- d. The creation of mechanisms for the National Director of Public Prosecutions to obtain certain information required for purposes of an investigation; and
- e. The creation of mechanisms for co-operation between investigators and the South African Revenue Services (SARS).

Section 4 of the Act defines the "*general*" offence of money laundering and provides that a person who knows, or ought reasonably to have known, that property is, or forms part of the proceeds of unlawful activities, commits an offence if he commits an act in connection with that property which has the effect or is likely to have the effect of concealing the nature and source thereof.

Section 5 of the Act creates an offence if a person knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities and provides assistance to such other person regarding the use or retention of such property.

Section 6 of the Act creates an offence if a person knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and acquires uses or possesses such property.

The above offences are regarded as very serious and the Act contains exceptionally harsh penalties relating to these offences. A person convicted of one of the above offences is liable to a maximum fine of R100 million or to imprisonment for a period not exceeding 30 years.

A.1.3 Financial Intelligence Centre Act, 38 of 2001 (FICA)

The Financial Intelligence Centre Act, as amended, (generally referred to as "FICA") was signed by the President in November 2001. Its provisions were implemented over time, commencing during January 2002.

The Act (FICA) establishes a Financial Intelligence Centre and a Money Laundering Advisory Council. The purpose of these entities is to combat money laundering activities.

FICA imposes certain reporting duties and compliance obligations.

The Act imposes compliance obligations on so-called “accountable institutions” which are defined in Schedule 1 to the Act. These obligations include:

- a. A duty to identify clients;
- b. A duty to retain records of certain business transactions;
- c. A duty to report certain transactions; and
- d. The adoption of measures to ensure compliance, namely, the implementation of so-called “internal rules”, provision of training etc.

Regarding the reporting of suspicious transactions, FICA makes provision for a duty to report “*suspicious or unusual transactions*”. In this regard it provides that any person who carries on a business or who manages is in charge of or is employed by a business and who knows or suspects certain facts has a duty to report their knowledge or suspicion to the FICA within a prescribed period.

Matters that require reporting include knowledge or suspicion of the following:

- a. The receipt of proceeds of unlawful activities;
- b. Transactions which are likely to facilitate the transfer of proceeds of unlawful activities;
- c. Transactions conducted to avoid giving rise to a reporting duty under FICA;
- d. Transactions that have no apparent business or lawful purpose;
- e. Transactions relevant to the investigation of tax evasion; or
- f. The use of a business entity for money laundering purposes.
- g. A person who fails to make a report as required commits an offence and is liable to a fine not exceeding R10 million or imprisonment not exceeding 15 years.

A.1.4 Protection of Constitutional Democracy Against Terrorist and Related Activities Act, Act 33 of 2004 ("POCDATARA")

On May 20, 2005, the Protection of Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA) came into effect criminalising terrorist activity and terrorist financing and gave the government investigative and asset seizure powers in cases of suspected terrorist activity.

POCDATARA provides for two new reporting obligations under section 28A and section 29 of FICA. The Money Laundering Control Regulations under FICA have also been amended, with effect from 20 May 2005, for this purpose. The amended regulations now provide for detailed reporting related to terrorist financing, under new sections 28A and 29 of FICA.

The POCDATARA amends section 29 of FICA to extend the reporting of suspicious and unusual transactions to cover transactions relating to *"property which is connected to an offence relating to the financing of terrorist and related activities"* or to *"the financing of terrorist and related activities"*. The POCDATARA introduces a new section 28A of FICA that requires the reporting of any property that is associated with terrorist and related activities to the FIC.

A.2 Statutes combating fraud and corruption

A.2.1 Protected Disclosures Act, 26 of 2000

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.

Any employee who has information of fraud, corruption or other unlawful or irregular action(s) by his/her employer(s) or co-employees can report such actions, provided that he/she has information that:

- a. A crime has been, is being, or is likely to be committed by the employer or employee(s);
- b. The employer or employees has/have failed to comply with an obligation imposed by law;
- c. A miscarriage of justice has or will likely occur because of the employer's or employee(s) actions;
- d. The health or safety of an individual has been, is being, or is likely to be endangered;
- e. The environment has been, is being or is likely to be endangered;
- f. Unfair discrimination has been or is being practiced; or
- g. Any of the above has been, is being, or is likely to be concealed.

The Act prohibits the employer from:

- a. Dismissing, suspending, demoting, harassing or intimidating the employee;
- b. Subjecting the employee to disciplinary action;
- c. Transferring the employee against his or her will;

- d. Refusing due transfer or promotion;
- e. Altering the employment conditions of the employee unilaterally;
- f. Refusing the employee a reference or providing him/her with an adverse reference;
- g. Denying appointment;
- h. Threatening the employee with any of the above; or
- i. Otherwise affecting the employee negatively

A.2.2 Municipal Finance Management Act 2003 (“MFMA”)

The MFMA was promulgated to facilitate the formal management of municipal finances and associated activities. The controls and administrative systems implemented by any Municipality are very relevant to the content of the Act; certain aspects of the Act refer specifically to activities which might be regarded as being corrupt or fraudulent in nature. Some relevant aspects are as follows:

A.2.3 Unauthorised, irregular of fruitless and wasteful expenditure

Section 32 of the Act indicates that, without limiting the liability of the common law or other legislation, the following office bearers in a Municipality are mandated with certain responsibilities, as follows:

- (a) A political office bearer of a Municipality is liable for unauthorised expenditure if that office bearer knowingly instructed an official of the Municipality to incur expenditure, which was likely to be considered unauthorised expenditure;
- (b) The accounting officer (i.e. Municipal Manager) is liable for unauthorised expenditure deliberately or negligently incurred by the accounting officer, unless the expenditure was incurred following a decision by the mayor or executive committee of the Municipality, resulting in fruitless or wasteful expenditure, provided that the accounting officer has notified the council, the mayor or the executive committee, in writing, that the expenditure is likely to be considered unauthorised, irregular or fruitless and wasteful;
- (c) Any political office bearer or official of a Municipality who deliberately or negligently committed made or authorised an irregular expenditure, is liable for that expenditure;
- (d) Any political office bearer or official of a Municipality who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.

Furthermore, in the event of such unauthorised, irregular or wasteful expenditure, the Municipality is required to recover the expenditure from the person liable for the expenditure, unless, the council retrospectively authorizes/condones the expenditure on the grounds that it represented an authorized adjustment, or that it is deemed irrecoverable and written off by the council.

The writing off of the expenditure by the council, however, is no excuse in criminal or disciplinary proceedings against the person. The writing off of the expenditure does not signify a condoning of the expenditure.

In the event of unauthorised expenditure, the accounting officer is obliged to advise promptly the mayor, the MEC for local government in the province and the Auditor General, in writing, providing details as to:

- a. The fruitless or wasteful expenditure;
- b. Whether any person is responsible or is under investigation with regard to the expenditure; and
- c. The steps taken to recover or rectify such expenditure.

Where irregular expenditure constitutes a criminal offence, or theft or fraud, the accounting officer must report all such cases to the South African Police. Under the event that the accounting officer is the person responsible for the unauthorised expenditure, then the council must take all reasonable steps to ensure that the police are advised accordingly.

A.2.4 Funds transferred to organizations and bodies outside government

Section 67 of the Act refers to the transfer of funds and stipulates, *inter alia*, that no funds will be transferred from the Municipality unless the accounting officer is satisfied that the organisation or body implements effective, efficient and transparent financial management and internal control systems **to guard against fraud, theft and financial mismanagement.**

A.2.5 Supply chain management policy to comply with prescribed framework

Section 112 stipulates that the supply chain management policy of a Municipality must be fair, equitable, transparent, competitive and cost effective and comply with prescribed regulatory framework for municipal supply chain management, which must cover, *inter alia*, measures for:

- (a) Combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and
- (b) Promoting ethics of officials and other role players involved in municipal supply chain management.

A.2.6 Implementation of system

Aligned with the supply chain management policy is section 115, which stipulates that the accounting officer of a Municipality must take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in the place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.

A.2.7 Audit Committees

Section 166 of the Act stipulates the procedures aligned to Audit Committees. Each Municipality must have an Audit Committee, which is regarded as an independent advisory body which must:

(a) Advise the municipal council, political office bearers, the accounting officer and management staff on matters relating to, *inter alia*:

- i. Internal financial control and internal audits
- ii. Risk management
- iii. Effective governance

(b) Carry out such investigations into the financial affairs of the Municipality as the council may request.

A.2.8 Financial misconduct by municipal officials

Section 171 sets out the stipulations relating to disciplinary proceedings to be adopted in the event of financial misconduct by municipal officials.

The accounting officer commits financial misconduct if he/she deliberately or negligently:

- a. Contravenes the provisions of the Act;
- b. Fails to comply with a duty imposed by a provision of the Act on the accounting officer of a Municipality;
- c. Permits or instructs another official of the Municipality to make an unauthorised, irregular or fruitless and wasteful expenditure;
- d. Provides incorrect or misleading information in any document which, in terms of the Act, must be submitted to the Mayor, Council, Auditor General, National Treasury or other organ of state, or made public.

The chief financial officer of a Municipality commits an act of financial misconduct if he/she fails to carry out delegated duties in terms of the Act. In addition financial misconduct is committed if he/she permits or instructs another official to make unauthorised or fruitless and wasteful expenditure, or provides incorrect or misleading information to the accounting officer.

The Act stipulates further, under this paragraph, that a Municipality must:

(a) Investigate allegations of financial misconduct against the accounting officer, the chief financial officer, senior manager or other official of the Municipality unless those allegations are frivolous; and

(b) If the investigation warrants it, institute disciplinary proceedings against the accounting officer, chief financial officer or any other official in accordance with stipulations set out in the Municipal Systems Act.

A.2.9 Municipal Systems Act, No 32 of 2000 (“MSA”)

The MSA sets out procedures to be adopted by municipal management with regard to a number of aspects affecting the management of a Municipality. The Act also stipulates procedures to be adopted with regard to certain aspects related to misconduct and the investigation thereof.

2.2.3.1 Human resources development

In section 67, the Act stipulates that a Municipality, in accordance with the Employment Equity Act 1998, must develop and adopt appropriate systems and procedures to ensure, *inter alia*, the investigation of allegations of misconduct and complaints against staff.

2.2.3.2 Code of conduct

Sections 69 and 70 of the Act deal with the Code of Conduct, details of which appear in Schedule 2 of the Act, to be provided to staff members and communicated to the local community. The municipal manager of a Municipality must:

- (a) Provide a copy of the Code of Conduct to every member of the municipality staff;
- (b) Provide every member of staff with any amendments to the Code;
- (c) Ensure that the purpose, contents and consequences of the Code of Conduct are explained to staff members who cannot read; and
- (d) Communicate sections of the Code of Conduct that affect the public, to the local community.

2.2.3.3 Regards, gifts and favours

Under section 9 of the act, it is stipulated that a councillor may not request, solicit or accept any reward, gift or favour for:

- (a) Voting in a particular manner

If the disclosure is made in terms of the Act.

APPENDIX A

CODE OF CONDUCT FOR COUNCILLORS

Preamble

Councillors are elected to represent local communities on municipal councils, to ensure that municipalities have structured mechanisms of accountability to local communities, and to meet the priority needs of communities by providing services equitably, effectively and sustainable within the means of the municipality.

In fulfilling this role councillors must be accountable to local communities and report back at least quarterly to constituencies on council matters, including the performance of the municipality in terms of established indicators. In order to ensure that councillors fulfil their obligations to their communities, and the achievement by the municipality of its objectives set out in section 19 of the Municipal Structure Act, the following Code of Conduct is established.

Definitions

1. In this schedule “partner” means a person who permanently lives with another person in a manner as if married.

General conduct of Councillors

2. A councillor must:
 - a) Perform the functions of office in good faith, honestly and a transparent manner; and
 - b) At all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

Attendance at meetings

3. A councillor must attend each meeting of the municipal council and of a committee of which that councillor is a member, except when:
 - a) Leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the council; or
 - b) That councillor is required in terms of this Code to withdraw from the meeting.

Sanctions for non-attendance of meetings

4. (1) A municipal council may impose a fine as determined by the standing rules and 30 orders of the municipal council on a councillor for:
 - a) Not attending a meeting which that councillor is required to attend in terms of item 3; or
 - b) Failing to remain in attendance at such a meeting.
- (2) A councillor who is absent from three or more consecutive meetings of a municipal council, or from three or more consecutive meetings of a committee, which that councillor is required to attend in terms of item 3, must be removed from office as a councillor,
- (3) Proceedings for the imposition of a fine or the removal of a councillor must be conducted in accordance with a uniform standing procedure which each municipal council must adopt for the purpose of this item. The uniform standing procedure must comply with the rules of natural justice.

Disclosure of interests

5. (1) A councillor must:
 - a) Disclose to the municipal council, or to any committee of which that councillor is a member, any direct or indirect personal or private business interest that, that council, or any spouse, partner or business associate of that councillor may have in any matter before the council or the committee; and
 - b) Withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the councillor's direct or indirect interest in the matter is trivial or irrelevant.
- (2) A councillor who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which the councillor is aware at the first meeting of the municipal council at which it is possible for the councillor to make the disclosure.
- (3) This section does not apply to an interest or benefit which a council or, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.

Personal gain

6. (1) A councillor may not use the position or privileges of – councillor, or confidential information obtained as a councillor, for private gain or to improperly benefit another person.
- (2) Except with the prior consent of the municipal council, a councillor may not-
 - a) Be a party to or beneficiary under a contract for-
 - i. The provision of goods or services to the municipality; or
 - ii. The performance of any work otherwise than as a councillor for the municipality
 - b) Obtain a financial interest in any business of the municipality; or
 - c) For a fee or other consideration appear on behalf of any other person before the council or a committee.

- c) If more than one quarter of the councillor's object to consent being given to a councillor in terms of sub item (2) such consent may only be given to the councillor with the approval of the MEC for the local government in the province.

Declaration of interests

- 7. (1) When elected or appointed, a councillor must within 60 days declare in writing to the Municipal Manager 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) Directorship;
 - 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 organisation.
- (2) Any change in the nature or detail of the financial interests of a councillor must be declared in writing to the municipal manager annually.
- (3) Gifts received by a councillor above a prescribed amount must also be declared in accordance with sub item (1).
- (4) The municipal council must determine which of the financial interests referred in sub item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

Full time-councillors

- 8. A councillor who is {full-time council} or may not undertake any other paid work, except with the consent of a municipal council which consent shall not unreasonably be withheld.

Rewards, gifts and favours

- 9. A councillor may not request, solicitor accept any reward, gift or favour for-
 - a) Voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member;
 - b) Persuading the council or any committee in regard to the exercise of any 5power, function or duty;

- c) Making a representation to the council or any committee of the council; or
- d) Disclosing privileged or confidential information.

Unauthorised disclosure of information

10. (1) A councillor may not without the permission of the municipal council or a 10 committee discloses any privileged or confidential information of the council or committee to any unauthorised person.

(2) For the purpose of this item “privileged or confidential information” includes any information-

- a) Determined by the municipal council or committee to be privileged or confidential;
- b) Discussed in closed session by the council or committee;
- c) Disclosure of which would violate a person’s right to privacy; or
- d) Declared to be privileged, confidential or secret in terms of law.

(3) This item does not derogate from the right of any person to access to information in terms of national legislation.

Intervention in administration

11. A councillor may not, except as provided by law-

- a) Interfere in the management or administration of any department of the municipal council unless mandated by council; 25
- b) Give or purposeful to give any instruction to any employee of the council except when authorised to do so;
- c) Obstruct or attempt to obstruct the implementation of any decision of the council or a committee by an employee of the council; or
- d) Encourage or participate in any conduct which would cause or contribute to maladministration in the council.

Council property

12. A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that council {or has no right}

Duties of the chairperson of Municipal council

13. (1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must-
- a) Authorise an investigation of the Facts and circumstances of the alleged breach;
 - b) Give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and
 - c) Report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been compiled with.
- 2) A report in terms of sub item (1) (c) is open to the public.
- 3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.
- 4) The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.

Breaches of Code

14. 1) A municipal council may-
- a) Investigate and make a finding on any alleged breach of a provision of this Code; or
 - b) Establish a special committee- 5
 - i. To investigate and make a finding on any alleged breach of this Code; and
 - ii. To make appropriate recommendations to the council.
- 2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may-
- a) Issue a formal warning to the councillor: 10
 - 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; and
 - e) Request the MEC to remove the councillor from office.
- 3) (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of sub item (2) may within 14 days of having been notified of the decision of council appeal to the MEC for local government in writing setting out the reasons on which the appeal is based.
- b) A copy of the appeal must be provided to the council.

- c) The council may within 14 days of receipt of the appeal referred to in paragraph
- d) Make any representation pertaining to the appeal to the MEC for local government in writing.
- e) The MEC for local government may, after having considered the appeal, confirm, set aside or vary the decision of the council and inform the councillor and the council of the outcome of the appeal.
- 4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the councillor should be suspended or removed from office.
- 5) The Commissions Act, 1947 (Act 8 of 1947), may be applied to an investigation in terms of sub item (3).
- 6) If the MEC is of the opinion that the councillor has breached a provision of this Code, and that such contravention warrants a suspension or removal from office. The MEC may-
 - a) Suspend the Councillor for a period and on conditions determined by the MEC; or
 - b) Remove the Councillor from office;
 - c) Any investigation in terms of this item must be in accordance with the rules of natural justice.

Application of Code to traditional leaders

15. (1) Items 1, 2, 5, 6, 9 (b) to (d) 10, 11, 12, 13 and 14 (1) apply to a traditional leader who participates or has participated in the proceedings of a municipal council in terms of section 81 of the Municipal Structures Act.
- (2) These items must be applied to the traditional leader in the same way they supply to councillors
- (3) If a municipal council or a special committee in terms of item 14 (1) finds that a traditional leader has breached a provision of this Code, the council may-
- a) Issue a formal warning to the traditional leader; or
 - b) Request the MEC for local government in the province to suspend or cancel the traditional leader's right to participate in the proceedings of the council. 50
- (4) The MEC for local government may appoint a person or a committee to investigate any alleged breach of a provision of this Code and to make a recommendation on whether the right of the traditional leader to participate in the proceedings of the municipal council should be suspended or cancelled.
- (5) The Commissions Act. 1947, may be applied to an investigation in terms of sub item (4)
- 6) If the MEC is of the opinion that the traditional leader has breached a provision of this Code, and that such breach warrants a suspension or cancellation of the traditional leader's right to participate in the council's proceedings, the MEC may-

- a) Suspend that right for a period and on conditions determined by the MEC; or
 - b) Cancel that right.
- 7) Any investigation in terms of this item must be in accordance with the rules of natural justice.
- 8) The suspension or cancellation of a traditional leader's right to participate in the proceedings of a council does not affect that traditional leader's right to address the council in terms of section 81 (3) of the Municipal Structures Act.

APPENDIX B

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

1. Definitions

In this Schedule “**partner**” means a person who permanently lives with another person in a manner as if married

2. General Conduct

A staff member of a municipality must at all times

- a) Loyally execute the lawful policies of the municipal council;
- b) Perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- c) Act in such a way that the spirit, purport and objects of section 50 are promoted;
- d) Act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- e) Act impartially and treat all people, including other staff members, equally without favour or prejudice.

3. Commitment to serving the public interest –

A staff member of a municipality is a public servant in a developmental local system, and must accordingly –

- a) Implement the provisions of section 50 (2);
- b) Foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
- c) Promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;
- d) obtain copies of or information about the municipality’s integrated development plan, and far as possible within the ambit of the staff member’s job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;

e) Participate in the overall performance management system for the municipality, as well as the staff member's individual performance appraisal and reward system, if such exists, in order to maximise the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

4. Personal gain –

(1) A staff member of a municipality may not –

- a) use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person; or
- b) Take a decision on behalf of the municipality concerning a matter in which that staff member, or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.

(2) Except with the prior consent of the council of a municipality a staff member of the municipality may not –

- a) Be a party to a contract for –
 - I. The provision of goods or services to the municipality; or
 - II. The performance of any work for the municipality otherwise than as a staff member;
- b) Obtain a financial interest in any business of the municipality; or
- c) Be engaged in any business, trade or profession other than the work of the municipality.

5. Disclosure of benefits –

(1) A staff member of a municipality who, or whose spouse, partner, business associate, or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the Municipality must disclose in writing full particulars of the benefit to the council.

(2) This item does not apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.

6. Unauthorised disclosure of information-

(1) A staff member of a municipality may not without permission disclose any privilege or confidential information obtained as a staff member of the municipality to unauthorised person.

(2) For the purpose of this item "privileged or confidential information" includes any information-

- a) Determined by the municipal council or any structure of functionary of the municipality to be privileged or confidential;
- b) Discussed in closed session by the council or a committee of the council
- c) Disclosure of which would violate a person's right to privacy; or

d) Declared to be privileged, confidential or secret in terms of any law.

(3) This item does not derogate from a person's right of access to information in terms of national legislation.

7. Undue influence

A staff member of a municipality may not-

- a) Unduly influence or attempt to influence the council of the municipality, or a structure or functionary of the council, or a councillor, with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for a family member, friend or associate;
- b) Mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or
- c) Be involved in a business venture with a councillor without the prior written consent of the council of the municipality.

8. Rewards, gifts and favours.

(1) A staff of a municipality may not request, solicit or accept any reward, gift or favour for-

- a) Persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;
- b) Making a representation to the council, or any structure or functionary of the council;
- c) Disclosing any privileged or confidential information; or
- d) Doing or not doing anything within that staff member's powers or duties.

(2) A staff member must without delay report to a superior official or to the speaker of council any offer which, if accepted by the staff member, would constitute a breach of sub item (1).

9. Council property

A staff member of a municipality may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that staff member has no right.

10. Payment of arrears

A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from a staff member's salary after this period.

11. Participation in elections

A staff member of a municipality may not participate in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right.

12. Sexual harassment

A staff member of a municipality may not embark on any action amounting to sexual harassment.

13. Reporting duty of staff members

Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff member must without delay report the matter to a superior officer or to the speaker of the council.

14. Breaches of Code

Breaches of this Code must be dealt with in terms of the disciplinary procedures of the Municipality envisaged in section 67 (1) (h) of this Act.

APPENDIX C

WHISTLE BLOWING POLICY

1.1 Introduction

The Protected Disclosures Act came into effect on 16 February 2001. This Act is commonly referred to the Whistle Blowing Act. In order to remain in compliance with the Act, the Municipality has created a whistle blowing program with the following objectives.

- a) To encourage the reporting of matters that may cause financial or non-financial loss to the Municipality, or damage to the Municipality's reputation;
- b) To enable the Municipality to effectively deal with reports from whistleblowers by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure;
- c) To provide for the appropriate infrastructure including an alternative mechanism for reporting;

1.2 Scope of the Policy

The Whistle Blowing Policy is not a replacement of the existing Grievance Procedure and therefore grievances should not be reported in terms of this policy. Any grievances should be lodged in accordance with the provisions of the Grievance Procedure. In terms of the Protected Disclosures Act, the following concerns may be raised:

- 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 the Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000; or
- g) That any matter referred to in paragraphs (a) to (f) had been, is being or is likely to be deliberately concealed.

1.3 Purpose of the policy

This policy has been developed to give effect to the objects of the Protected Disclosures Act, namely:

- a) To protect an employee from being subjected to 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 procedure in terms of which an employee can, in a responsible manner, disclose information regarding improprieties by his or her colleagues, other stakeholders and employer.

This policy is intended to encourage employees to report the matters as set out under paragraph 1.2 (a) to (f) by providing procedures and mechanisms for such reporting as well as ensuring that employees who make such reports in good faith are not victimised, harassed and do not suffer any occupational detriment.

1.4 Who can raise a concern?

Any staff member who has a reasonable belief that there is fraud/corruption or misconduct relating to any of the protected matters specified under paragraph 1.2 may raise a concern under the procedure detailed below. Concerns must be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it, are substantially true. The issues raised may relate to a manager, another member of staff, or a group of staff.

1.5 Confidential reporting procedure

This procedure encourages you to report issues of fraud, corruption or unethical behaviour to your manager, however, should you wish to raise your concern anonymously, such anonymity will be respected.

Step 1

If you have an issue to report, please raise the issue with your Manager or Head of Department unless he/she is the subject of your complaint. If this is the case, proceed to one level higher to the person to whom the Manager/Head of Department reports. Provide as much information about the concern you wish to raise, providing names, dates and places, where possible, should be set out and the reason why you are particularly concerned about the issue you wish to report. Should the complaint be found by the manager to be substantiated, he/she will decide on whether the matter should be referred to a higher authority, investigated internally or referred to the appropriate external body for investigation.

ALTERNATIVELY

You may contact the Provincial Fraud Hotline to make such a report. You remain anonymous when making such a report. An operator will answer your call and record the details of the concern you

wish to report. The Fraud Hotline will thereafter submit a report to the designated officials within the Municipality responsible for receiving and acting on such reports.

Step 2

If these reporting channels have been followed and you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of the above, please contact (preferably the chairperson of the anti-corruption and fraud prevention)

Should you have exhausted these internal mechanisms or where you have substantial reason to believe that there would be a cover-up or that evidence will be destroyed or that the matter might not be handled properly, you may raise the matter in good faith with a member of the Cabinet or Executive Council in the Province.

1.6 How the Municipality will respond

The action taken by the Municipality will depend on the nature of the concern reported. The possible actions open to the Municipality are to:

- a) Investigate internally; and/or
- b) Refer the matter to the South African Police Services or other relevant law enforcement agency, if applicable.

Initial enquiries will be made to decide whether an investigation is appropriate and, if so, what form the investigation should take. Concerns raised may not necessarily require an investigation to resolve them.

The amount of contact between the body investigating the issues and the persons raising the concern (if not anonymous) will depend on the nature of the concern raised and the investigations which may require to be performed. If required, further information may be sought from the person who made the report.

All investigation will be handled confidentially and will not be discussed with persons other than those who legitimately have the right to such information.

1.7 False or malicious allegations

Those wishing to make reports must guard against making allegations which are false and made with malicious intent. Persons making such reports will not enjoy the protection offered by the Protected Disclosures Act. Furthermore, there are resource and cost implications in respect of initiating investigations, which need to be considered in the event of a false or malicious accusation.

DESIGNATION	SIGNATURE	DATE
Recommended by: Accounting Officer		

Elias Motsoaledi Local Municipality
Anti- Fraud and Corruption Strategy 2017/18

Reviewed by:		
Risk Management committee		
Council Resolution Number		