



Waterberg
District Municipality

on the Go for Growth

**Fraud Risk Management Strategy
FY 2015/16**

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1. Introduction

1.1 Definition of fraud

Fraud is a false representation or concealment of a material fact to induce someone to part with something of value. Fraud includes various irregularities and illegal acts all characterised by intentional deception.

Types of fraud

White collar crime:-wrongful act or series of acts committed by nonphysical means and by concealment or guide to obtain money or property, to avoid payment or loss of money or property, or to obtain business and personal advantage.

Embezzlement:- the unlawful conversion to personal use of property that is lawfully in the custody of the wrongdoer

1.2 Definition of corruption

Dishonest activity in which a person entrusted with authority of an entity (a corporation, government agency or any other entity engaged in business activity or transacting with other entities in a business like sitting) acts contrary to the interest of the entity and abuses his/her position of trust in order to achieve some personal gain for him or her or for another person or entity.

1.3 Deterring fraud is no longer discretionary. With corporate failures around the world occurring directly as a result of fraud and a lack of corporate governance; global policy making bodies have adopted numerous rules and regulations setting benchmarks for corporate governance. These rules are pervasive and apply to all persons involved in organisations, including public sector entities.

1.4 As a result, organisations have been implementing tighter controls and broader oversight. The auditing profession adopted more rigorous auditing standards and procedures, and software developers are adding continuous monitoring features to back-office systems. Policy making bodies also reacted strongly to the high-profile incidences of fraud and corruption by adopting policies and initiatives enforcing the deterrence of fraud, rather than responding to it. These reactions are embodied in prescripts that occasioned regulatory frameworks that have to be complied with.

- 1.5 The mentioned prescripts resulted in additional challenges for organisations, being compliance with fraud deterrence prescripts. These prescripts include:
- ☐ The Prevention and Combating of Corrupt Activities Act
 - ☐ The Prevention of Organised Crime Act
 - ☐ The Municipal Finance Management Act and regulations issued in terms thereof (including supply chain management regulations)
 - ☐ Preferential Procurement Policy Framework Act
 - ☐ Protected Disclosures Act
 - ☐ The Constitution of the Republic of South Africa
 - ☐ The Promotion of Administrative Justice Act.
- 1.6 Our approach and methodology is devised to focus on compliance with regulatory framework. To this end, the use of the word fraud in this document includes corruption, theft, conflict of interest, financial misconduct (as defined in the Municipal Finance Management Act) and unethical conduct.
- 1.7 The Fraud Risk Management Strategy has been designed to provide a consistent framework to assist the management/staff members of the Municipality in mitigating the diverse Fraud Risks facing the municipality.
- 1.8 The Fraud Risk Management outlined in this Strategy will assist the management/staff to identify the Fraud Risks and controls, evaluate the Fraud Risks, and implement appropriate Fraud Risk Management techniques and to continuously exercise the monitoring and reporting of Fraud Risks.

1.9 To render Fraud Risk Management as a dynamic tool in the management of the business of the Municipality, the following should be borne in mind:

- ☐ Ensuring that managing Fraud Risk is an integral part of planning and management processes
- ☐ Informing, training and motivating all staff to empower them for an appropriate implementation of effective Fraud Risk Management practice
- ☐ Maintaining a cost/benefit focus when developing Fraud Risk mitigating strategies
- ☐ Identifying all interested parties as part of the overall Fraud Risk Management process, consulting and communicating appropriately with them
- ☐ Applying best operating practices consistently.

1.10 It is important to note that this Fraud Risk Management Strategy is supplementary to the general Risk Management Strategy, and should be read in conjunction with the Risk Management Strategy. As such, it does not repeat what is already contained in the Risk Management Strategy, but focuses on aspects relating to specifically Fraud Risk in the municipality's environment and provides an overview of aspects in that environment of which the municipality has to take cognisance in order to manage its Fraud Risks effectively.

2. The development of a Fraud Risk Management culture in WDM

2.1 Post 1994 and to date, Government has launched a number of programmes, backed by regulatory prescripts, to promote a corruption free local government sector. Its efforts have become more systemic, with greater emphasis on instituting appropriate policy measures to prevent corruption. The success of these programmes' implementation varied, and numerous challenges were experienced in this regard. Amongst these measures and initiatives are:

- ☐ The introduction of the Code of Conduct for Councillors as part of the Local Government: Municipal Systems Act, No 32 of 2000
- ☐ The introduction of the Code of Conduct for Municipal Staff Members as part of the Local Government: Municipal Systems Act, No 32 of 2000
- ☐ Project Consolidate
- ☐ 5 Year Strategic Plan
- ☐ The National Anti-Corruption Summits held since 1999
- ☐ The establishment of the National Anti-Corruption Forum in 2001, and its National Anti-Corruption Programme
- ☐ The Local Government Anti-Corruption Strategy
- ☐ The Anti-Corruption Co-ordinating Committee
- ☐ The National Anti-Corruption Framework
- ☐ The hosting of:
 - ☐ The second Pan African National Anti-Corruption Bodies;
 - ☐ Africa Forum on Fighting Corruption and February/March 2007;
 - ☐ Global Forum on Fighting Corruption and Safeguarding Integrity in April 2007.

2.2 To date, much effort has gone into measuring the efficacy of these measures and structures, which include:

- The holding of regular meetings by the Anti-Corruption Co-ordinating Committee, inter alia to discuss the Public Service Anti-Corruption Strategy
- Case study on the National Anti-Corruption Framework (performed by representatives from the Public service Commission and the Centre for Business and Professional Ethics, University of Pretoria)
- Work performed in terms of the sub-programme on anti-corruption monitoring and evaluation of the DPSA, including:-
 - A compliance audit of the Public Service Anti-Corruption Strategy, including an audit of the implementation of the requirements for minimum anti-corruption capacity
 - A comprehensive impact assessment of the NACF during the 2006/07 financial year.
- Launching of the Business Survey against Corruption, July 2007 (in addition to the one performed during 2002)
- Work performed by the Public Service Accountability Monitor (especially in the Eastern Cape)
- Work performed by the National Anti-Corruption Cross-Sectoral Task Team.

2.3 In addition to these anti-corruption specific structures and programmes, Government has also experienced its challenges in the implementation of other programmes and policies in the public sector, such as Batho Pele. There have been a number of initiatives that various government departments at national and provincial levels have embarked on to implement Batho Pele, which include African Public Service Day, Internal Imbizos and External and Public Service Week.

3. Responsibility for Fraud Risk Management

3.1 The Municipal Finance Management Act, No 56 of 2003 ("MFMA") regulates the financial management of local government structures and contain a variety of provisions focused on the prevention of fraud, theft, corruption, financial misconduct and unethical conduct. The responsibility of Fraud Risk Management is the domain of the Accounting Officer of a local government institution.

3.2 Section 1 of the MFMA defines an "accounting officer" as:

3.2.1 The Municipal Manager of a municipality, or a person acting as Municipal Manager

3.2.2 The chief executive officer of a municipal entity, or a person acting as the Chief Executive Officer of a municipal entity.

3.3 In terms of section 60 of the MFMA the accounting officer of the municipality must:

3.3.1 Exercise the functions and powers assigned to an accounting officer in terms of the MFMA

3.3.2 Provide guidance and advice on compliance with the MFMA to:

- ☐ The political structures, political office-bearers and officials of the municipality
- ☐ Any municipal entity under the sole or shared control of the municipality.

- 3.4 In terms of section 62 of the MFMA the Accounting Officer of a municipality must inter alia take all reasonable steps to ensure:
 - 3.4.1 Effective, efficient and economic use of resources
 - 3.4.2 Keeping of full and proper records of the financial affairs of the municipality
 - 3.4.3 Maintenance of effective, efficient and transparent systems of Financial and risk management, internal control and Internal audit
 - 3.4.4 Prevention of unauthorised / irregular / fruitless and wasteful expenditure / other losses
 - 3.4.5 Disciplinary / criminal proceedings against any official who commits an act of financial misconduct.

- 3.5 The MFMA includes severe sanctions for Accounting Officers who fail to comply with the obligations prescribed by the Act. Section 173(1) stipulates that an Accounting Officer is guilty of an offence if he/she deliberately or in a grossly negligent way:
 - 3.5.1 Fails to take all reasonable steps to prevent unauthorised / irregular / fruitless and wasteful expenditure
 - 3.5.2 Fails to take all reasonable steps to prevent corruptive practices in management of assets or receipt of money and the implementation of the supply chain management policy.

3.6 Political interference in the management of local government structures is a common phenomenon and often severely hampers the efficient running of local government. The MFMA recognises this, and in order to allow Accounting Officers to freely and without fear of undue interference manage the affairs of local government, has provided sanctions to prevent such interference. To this end, section 173(4) of the MFMA provides that a councillor is guilty of an offence if he/she:

3.6.1 Deliberately influences or attempts to influence the accounting officer/ Chief Financial Officer / other official to contravene the MFMA or not comply with the MFMA

3.6.2 Interferes in the financial management responsibilities or functions of the accounting officer / Chief Financial Officer

3.6.3 Interferes in the financial management responsibilities or functions of the accounting officer of a municipal entity

3.6.4 Interferes in the management or operational activities of a municipal entity.

3.7 Section 32 of the MFMA further provides that a political office-bearer /accounting officer / other official may be held liable for unauthorised / Irregular / fruitless and wasteful expenditure deliberately or negligently incurred / committed / made / authorised by him / her.

3.8 The MFMA defines "fruitless and wasteful expenditure" as expenditure that was made in vain and would have been avoided had reasonable care been exercised.

• **The WDM Anti-Corruption Strategy**

4.1 The WDM Anti-Corruption Strategy ("WDMACS") is based on the Public Sector Anti-Corruption Strategy, adapted for local government. The WDMACS focuses on four main areas, ie the organisation, employees, other stakeholders and enforcement.

4.2 Each of the four main focus areas of the WDMACS includes specific aspects that municipalities need to address during the reassessment of fraud and corruption risks, in the final corruption/fraud response strategy and in the implementation plan. These four focus areas include the following:

4.2.1 Focus on the Organisation

- ☐ Effective implementation of the Code of Conduct for employees as prescribed in the Municipal Systems Act and the Municipal Structures Act which all municipal staff are expected to abide by
- ☐ Effective implementation of the Code of Conduct for Councillors as prescribed in the Municipal Systems Act, the Municipal Structures Act, and the Municipal Finance Management Act which all councillors are expected to abide by
- ☐ The systems, policies and procedures applicable to the local sphere of government
- ☐ Human Resources Policies and Procedures applicable to the local sphere of government
- ☐ Finance Policies and Procedures applicable to the local sphere of government
- ☐ Sound internal controls to prevent and detect unethical conduct, fraud and corruption
- ☐ Ongoing risk assessment and management, which includes systems relating to unethical conduct, fraud and corruption detection
- ☐ Internal and External Audit
- ☐ Physical and information security management.

4.2.2 Focus on Employees

- ☐ Vetting
- ☐ Employee Induction Programmes
- ☐ Obligatory Leave Periods
- ☐ Exit Procedures for Employees and Control over Assets.

4.2.3 Focus on other Stakeholders

- ☐ The councillors
- ☐ The community
- ☐ Trading partners
- ☐ Employee representative organisations
- ☐ SALGA.

4.2.4 Enforcement

- ☐ Reporting and monitoring of allegations of unethical conduct, fraud and corruption
- ☐ Whistle-blowing which is intended to provide assurance to employees that Local Government is committed to protecting employees who report unethical conduct, fraud and corruption in good faith, from victimisation or other forms of intimidation
- ☐ Feedback to be given to whistle-blowers to provide assurance to whistle-blowers that all allegations of unethical conduct, fraud and corruption will be investigated.

- 4.3 The WDMACS is specifically aimed at addressing irregularities relating to the following:
- 4.3.1 Systems issues: where a process/system exists which is prone to abuse by employees, the public or other stakeholders, e.g.:
- ☐ Procurement fraud, e.g. Collusion in the awarding of tenders or orders for goods and/or services
 - ☐ Deliberate non-compliance with delegation of authority limits
 - ☐ Collusion in contracts management
 - ☐ Disclosing confidential or proprietary information to outside parties.
- 4.3.2 Financial issues: i.e. where individuals or companies have fraudulently obtained money from Local Government, e.g.:
- ☐ Creditors fraud, e.g. diverting payments to incorrect creditors
 - ☐ Suppliers submitting invalid invoices or invoicing for work not done
 - ☐ Revenue fraud, e.g. irregular interception of payments received
 - ☐ Payroll fraud, e.g. creation of "ghost employees"
 - ☐ Theft of funds.
- 4.3.3 Equipment and resource issues: i.e. where Local Government's equipment is utilised for personal benefit or stolen, e.g.:
- ☐ Theft of assets, e.g. computers, face value forms, etc
 - ☐ Personal use of resources, e.g. telephones, internet, e-mail
 - ☐ Irregular destruction, removal, or abuse of records (including intellectual property).

4.3.4 Other issues: i.e. activities undertaken by employees of WDM, which may be against policies or fall below established ethical standards, e.g.:

- ☐ Soliciting gifts or favours from consultants or other suppliers, e.g. acceptance of "kick-backs"
- ☐ Conflicts of interest
- ☐ Nepotism
- ☐ Favouritism
- ☐ Deliberately omitting or refusing to report or act upon reports of any unethical conduct, fraud and corruption.

5. Identified Fraud Risks in the WDM

- 5.1 The supply chain management function of any organisation is as a general rule the most vulnerable area insofar as corruption is concerned. This is recognised by the MFMA and as a result, the MFMA contains specific provisions relating to supply chain management. Chapter 11, Part 1 of the MFMA deals with supply chain management in local government and applies to:
 - 5.1.1 The procurement by a municipality or municipal entity of goods and services
 - 5.1.2 The disposal by a municipality or municipal entity of goods no longer needed
 - 5.1.3 The selection of contractors to provide assistance in the provision of municipal services
 - 5.1.4 The selection of external mechanisms for the provision of municipal services in circumstances contemplated in section 83 of the MFMA.
- 5.2 Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of Part 1 of Chapter 11 of the MFMA.
- 5.3 The supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for municipal supply chain management, which must cover at least the following:
 - 5.3.1 The range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types of competitive bidding
 - 5.3.2 When a municipality or municipal entity may or must use a particular type of process
 - 5.3.3 Procedures and mechanisms for each type of process
 - 5.3.4 Procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount

- 5.3.5 Open and transparent pre-qualification processes for tenders or other bids
- 5.3.6 Competitive bidding processes in which only pre-qualified persons may participate
- 5.3.7 Bid documentation, advertising of and invitations for contracts
- 5.3.8 Procedures and mechanisms for:
 - ☐ The opening, registering and recording of bids in the presence of interested persons
 - ☐ The evaluation of bids to ensure best value for money
 - ☐ Negotiating the final terms of contracts
 - ☐ The approval of bids
- 5.3.9 Screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value
- 5.3.10 Compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids
- 5.3.11 Participation in the supply chain management system of persons who are not officials of the municipality or municipal entity
- 5.3.12 The barring of persons from participating in tendering or other bidding processes, including persons:
 - ☐ Who were convicted for fraud or corruption during the past five years
 - ☐ Who wilfully neglected, reneged on or failed to comply with a government contract during the past five years
 - ☐ Whose tax matters are not cleared by South African Revenue Service

5.3.13 Measures for:

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

5.3.14 The invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by:

- ☐ Councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act
- ☐ Municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to the Municipal Systems Act.

5.3.15 The procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state.

5.3.16 Contract management and dispute settling procedures

5.3.17 The delegation of municipal supply chain management powers and duties including to officials.

5.4 There are general indicators of fraud and corruption risks in the supply chain management process that the management of local government structures should pay attention to in order to identify and manage fraud and corruption risks. These general indicators include the absence of or deficiencies in the following:

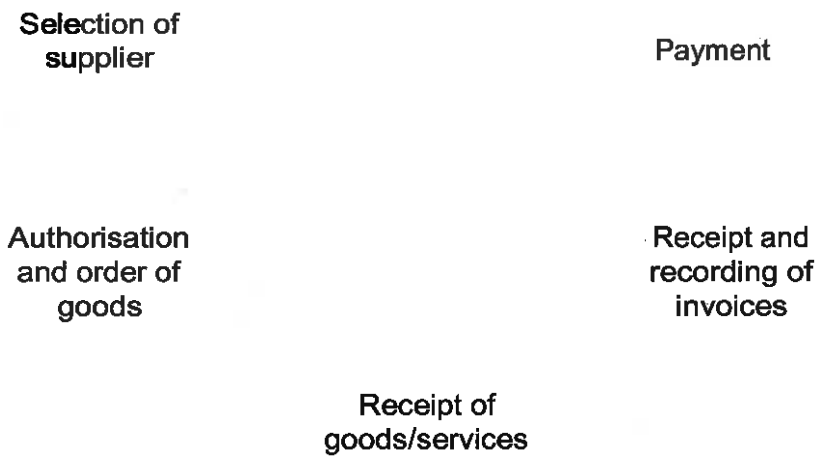
5.4.1 Proper documentation

5.4.2 Updating/interrogating of data on suppliers

5.4.3 Independence between functions

- 5.4.4 Proper approvals
- 5.4.5 Controls over goods received and inventory
- 5.4.6 Written policies on such controls
- 5.4.7 Regular price and discount checks on contracts/invoices
- 5.4.8 Competitive bidding
- 5.4.9 Creditor statement reconciliations
- 5.4.10 Payment controls.

5.5 In addition, the supply chain management process of any organisation can be divided into specific sub-processes. These sub-processes are graphically illustrated below:



5.6 In each of these processes there are specific indicators of fraud and corruption risks that the management of local government structures should pay attention to in order to identify and manage fraud and corruption risks:

5.6.1 Selection of supplier: It should be cause for further verification if:

- ☐ Competing bid prices are close together
- ☐ Small suppliers are awarded large contract
- ☐ Location of suppliers are unusual
- ☐ Services are rendered outside the normal range of business of the supplier
- ☐ Tenders were accepted after the closing date
- ☐ Changes occurred to prices after awarding of the tender
- ☐ Procurement staff are defensive about the bid
- ☐ Relationships exist between the supplier and staff
- ☐ A supplier has a poor reputation.

5.6.2 Authorisation and order of goods/services where a tender process should have been followed:
It should be verified whether:

- ☐ A tender process was followed
- ☐ Correct processes and procedures were followed
- ☐ Tender specifications allowed for competition
- ☐ Criteria indicated in the tender documents were actually applied during the evaluation
- ☐ All parties declared interest appropriately
- ☐ The right recommendations were made in terms of the process
- ☐ Justifiable reasons existed to pass over certain tenders
- ☐ Management of awarded contracts is in line with tenders issued, particularly in respect of payments to contractors.

5.6.3 Authorisation and order of goods/services where quotations should have been obtained: It should be verified whether:

- ☐ The prescribed number of written quotations were obtained
- ☐ Quotations were in fact obtained from different suppliers and that two or more quotations were not obtained from the same supplier fronting as different suppliers
- ☐ Quotations were for the same or similar goods or services, or for goods or services of similar or comparable specifications, to the extent determinable from the documentation
- ☐ Quotations not obtained from current, former or retired employees or their relatives
- ☐ The contract was awarded to the lowest bidder, and if, not the reasons therefore
- ☐ Specific requirements of the procurement policy were adhered to.

5.6.4 Orders that were placed should be reviewed to determine whether:

- ☐ Orders were placed on legitimate demand
- ☐ Orders are consistent with normal usage patterns
- ☐ Correct processes and procedures were followed during the order process
- ☐ Required documentation is on record
- ☐ Prices of goods and services are competitive
- ☐ Budgetary controls were complied with
- ☐ Segregation between ordering, receipt and payment functions are in place and were adhered to.

5.6.5 With regard to the receipt of goods and services it should be verified whether:

- ☐ Goods and services ordered were actually received
- ☐ Received goods and services were properly accounted for, distributed and utilised
- ☐ Goods and services received are in accordance with quotations, or tender or contract specifications
- ☐ Prices of goods and services are in accordance with quoted, tendered or contracted prices
- ☐ Unusual deliveries occurred (time / procedures)
- ☐ Procedures and security relating to goods received adhered to
- ☐ Stock shortages occur stock counts are done and adequate follow-up of shortages occur
- ☐ Stock movement controls are in place/adhered to
- ☐ Regular calibration of measuring equipment takes place, where applicable.

5.6.6 In respect of the receipt and recording of invoices, it should be verified whether:

- ☐ Suppliers are dealt with outside the normal system
- ☐ Few details of the service are provided
- ☐ Supplier address is a PO box or private residence
- ☐ Supplier address/phone is the same as that of another supplier
- ☐ Supplier address/phone is the same as that of a staff member
- ☐ Invoices are photocopies
- ☐ Invoices were issued over weekends/on public holidays/after hours
- ☐ Over-invoicing occurred
- ☐ Supplier does not offer usual discounts.

5.6.7 With regard to payment, it should be verified whether:

- ☐ Invoices tendered by suppliers were in accordance with the relevant quotations, purchase orders and goods received vouchers
- ☐ Invoices were approved for payment in accordance with the procurement policy
- ☐ Remittance advices were in accordance with the relevant invoices tendered by the supplier
- ☐ Remittance advices are supported by the required documentation
- ☐ Payments were made in the normal course of business - no management override of approval procedures occurred
- ☐ Account numbers differ
- ☐ Old or unidentified credits exist on the ledger
- ☐ Unresolved suspense items exist
- ☐ Excessive number of contras/adjustments on reconciliations exist
- ☐ Duplicate payments occurred
- ☐ Payments were diverted to employees/entities in which they have an interest.

6. Code of conduct for municipal councillors

- 6.1 An integral part of any Fraud Risk Management Strategy is the creation and nurturing of a zero tolerance culture towards fraud and corruption. Management must take active steps to instill a culture of fraud awareness and prevention amongst municipal councillors.

- 6.2 Schedule 1 of the Municipal Systems Act contains a Code of Conduct for Councillors, which in terms of section 54 of the Act applies to every councillor of a municipality. A copy of the Code of Conduct for Councillors is attached hereto as Annexure 1.

- 6.3 Management should ensure that all councillors sign and adhere to the Code of Conduct for Councillors.

- 6.4 The Code of Conduct for Councillors should also form part of the induction of all new councillors.

7. Code of conduct for municipal employees

- 7.1 An integral part of any Fraud Risk Management Strategy is the creation and nurturing of a zero tolerance culture towards fraud and corruption. Management must take active steps to instill a culture of fraud awareness and prevention amongst employees.
- 7.2 Schedule 2 of the Municipal Systems Act contains a Code of Conduct for Municipal Employees, which in terms of section 69 of the Act applies to every staff member of a municipality. A copy of the Code of Conduct for Municipal Employees is attached hereto as Annexure 2.
- 7.3 Management should ensure that all employees sign and adhere to the Code of Conduct for Municipal Employees.
- 7.4 The Code of Conduct for Municipal Employees should also be incorporated in all contracts of employment of new staff members.

8. Whistle-blowing policy

- 8.1 The Local Government Ant-Corruption Strategy includes a number of components focused on the prevention and combating of fraud and corruption. One of the components of the Local Government Anti-Corruption Strategy is Enforcement, which includes:
- Whistle-blowing which is intended to provide assurance to employees that Local Government is committed to protecting employees who report unethical conduct, fraud and corruption in good faith, from victimisation or other forms of intimidation
 - Feedback to be given to whistle-blowers to provide assurance to whistle-blowers that all allegations of unethical conduct, fraud and corruption will be investigated.
- 8.2 One of the integral parts of any anti-fraud strategy is that Management should be seen to be “walking the talk” of its anti-fraud strategy. This is done by demonstrating a zero tolerance attitude towards fraud and corruption.
- 8.3 This creates an obligation for Municipal Management to provide an environment that encourages employees to report suspicions of fraud or corruption. An effective Whistle-blowing Policy is an integral part of creating such an environment.

9. Fraud Response Plan

- 9.1 The MFMA creates onerous obligations for Municipal Management. In terms of section 62 of the MFMA the Accounting Officer of a municipality must inter alia take all reasonable steps to ensure disciplinary / criminal proceedings against any official who commits an act of financial misconduct.
- 9.2 The Local Government Anti-Corruption Strategy includes a number of components focused on the prevention and combating of fraud and corruption. One of the components of the Local Government Anti-Corruption Strategy is Enforcement, which includes reporting and monitoring of allegations of unethical conduct, fraud and corruption.
- 9.3 One of the integral parts of any anti-fraud strategy is that Management should be seen to be "walking the talk" of its anti-fraud strategy. This is done by demonstrating a zero tolerance attitude towards fraud and corruption.
- 9.4 This creates an obligation for Municipal Management to take appropriate steps when the occurrence of fraud or corruption is suspected.

Waterberg District Municipality
Fraud Risk Management Strategy

- 9.5 The Prevention and Combating of Corrupt Activities Act, No 12 of 2004 ("PCCA") commenced on 27 April 2004. In terms of Chapter 7 and specifically Section 34 (1) of the PCCA, a generic reporting obligation is created. It reads as follows:

"Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed certain offences of corruption under this act; or the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official."

- 9.6 Failure to comply with this section is a criminal offence punishable with up to 10 years imprisonment or a fine.
- 9.7 I attach here as Annexure 4 a draft Fraud Response Plan that we have compiled for your consideration and implementation.

Reviewed date

17 July 2015

Adopted by Council at its meeting held on the 28 August 2015

A 273/2015

Signed at Machinane on 28 August 2015


MUNICIPAL MANAGER

28/08/15
DATE

Waterberg District Municipality
Code of Conduct of 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 sustainably 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 support the achievement by the municipality of its objectives set out in section 19 of the Municipal Structures Act, the following Code of Conduct is established.

1. Definitions. In this Schedule “partner” means a person who permanently lives with another person in a manner as if married.
2. General conduct of councillors. 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.
3. Attendance at meetings. 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.

Waterberg District Municipality
Code of Conduct of Councillors

4. Sanctions for non-attendance of meetings.

- (1) A municipal council may impose a fine as determined by the standing rules and 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 purposes of this item. The uniform standing procedure must comply with the rules of natural justice.

5. Disclosure of interests.

- (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 councillor, 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.

**Waterberg District Municipality
Code of Conduct of Councillors**

- (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 councillor, or a spouse, partner, business associate or close family member, has or acquires in common with other residents of the municipality.
- 6. Personal gain.**
- (1) A councillor may not use the position or privileges of a 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.
 - (3) If more than one quarter of the councillors object to consent being given to a councillor in terms of subitem (2), such consent may only be given to the councillor with the approval of the MEC for local government in the province.

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7. Declaration of interests.

- (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) directorships;
 - (e) partnerships;
 - (f) other financial interests in any business undertaking;
 - (g) employment and remuneration;
 - (h) interest in property;
 - (i) pension; and
 - (j) subsidies, grants and sponsorships by any 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 subitem (1).
- (4) The municipal council must determine which of the financial interests referred in subitem (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

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

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9. Rewards, gifts and favours. A councillor may not request, solicit or 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 power, function or duty;
 - (c) making a representation to the council or any committee of the council; or
 - (d) disclosing privileged or confidential information.
10. Unauthorised disclosure of information.
- (1) A councillor may not without the permission of the municipal council or a committee disclose 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.

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11. Intervention in administration. 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;
 - (b) give or purport 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.
12. Council property. A councillor may not use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which that councillor has no right.
- 12A. Councillor in arrears.—A councillor may not be in arrears to the municipality for rates and service charges for a period longer than 3 months.
13. Duty of chairpersons of municipal councils.
- (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 complied with.

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- (2) A report in terms of subitem (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.

14. Breaches of Code.

- (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 -
 - (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;
 - (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.

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- (3)
 - (a) Any councillor who has been warned, reprimanded or fined in terms of paragraph (a), (b) or (d) of subitem (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 (b) make any representation pertaining to the appeal to the MEC for local government in writing.
 - (d) 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 No. 8 of 1947), or, where appropriate, applicable provincial legislation, may be applied to an investigation in terms of subitem (4).
- (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.
- (7) Any investigation in terms of this item must be in accordance with the rules of natural justice.

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15. Application of Code to traditional leaders.

- (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 apply 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.
- (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 subitem (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.

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- (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.

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Fraud Response Plan for financial year 2015/16

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1. Introduction

- 1.1 The Municipal Finance Management Act ('the MFMA') creates onerous obligations for Municipal Management. In terms of section 62 of the MFMA the Accounting Officer of a municipality must inter alia take all reasonable steps to ensure:
- ☐ Effectively, efficient and economic use of resources
 - ☐ Keeping of full and proper records of the financial affairs of the municipality
 - ☐ Maintenance of effective, efficient and transparent systems of Financial and risk management, internal control and Internal audit
 - ☐ Prevention of unauthorised / irregular / fruitless and wasteful expenditure / other losses
 - ☐ Disciplinary / criminal proceedings against any official who commits an act of financial misconduct.
- 1.2 The Local Government Anti-Corruption Strategy includes a number of components focused on the prevention and combating of fraud and corruption. One of the components of the Local Government Anti-Corruption Strategy is Enforcement, which includes reporting and monitoring of allegations of unethical conduct, fraud and corruption.
- 1.3 One of the integral parts of any anti-fraud strategy is that Management should be seen to be "walking the talk" of its anti-fraud strategy. This is done by demonstrating a zero tolerance attitude towards fraud and corruption.
- 1.4 This creates an obligation for Municipal Management to take appropriate steps when the occurrence of fraud or corruption is suspected.

2. The Prevention and Combating of Corrupt Activities Act creates a reporting obligation

2.1 Reporting Duty

- 2.1.1 The Prevention and Combating of Corrupt Activities Act, No 12 of 2004 ("PCCA") commenced on 27 April 2004. In terms of Chapter 7 and specifically Section 34 (1) of the PCCA, a generic reporting obligation is created. It reads as follows:

"Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed certain offences of corruption under this act; or the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official."

- 2.1.2 Failure to comply with this section is a criminal offence punishable with up to 10 years imprisonment or a fine.

2.2 Persons in a position of authority

- 2.2.1 In terms of Section 34(4) the following persons are inter alia regarded as persons in authority:

- Any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means
- Any other person who is responsible for the overall management and control of the business of an employer.

2.3 Having knowledge of a fact

2.3.1 Section 2 of the PCCA defines when a person would be regarded as having knowledge of a fact that has to be reported under this Act. For purposes of this Act a person is regarded as having knowledge of a fact if:

- “(a) that person has actual knowledge of the fact; or
- (b) the court is satisfied that-
 - (i) the person believes that there is a reasonable possibility of the existence of that fact; and
 - (ii) the person has failed to obtain information to confirm the existence of that fact, and 'knowing' shall be construed accordingly.”

2.3.2 In essence, the reporting duty commences when a reasonable possibility arises that corruption or one of the specified offences involving more than the stated financial threshold, may have been committed. Should such a possibility be reasonable based on the available facts and a person in a position of authority fails to obtain information to verify the existence of this fact, that person/company is regarded as having knowledge of such a fact.

2.3.3 For the purposes of this Act a person ought reasonably to have known or suspected a fact if:

- “the conclusions that he or she ought to have reached are those which would have been reached by a reasonably diligent and vigilant person having both-
 - (a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and
 - (b) the general knowledge, skill, training and experience that he or she in fact has.”

2.4 The general offence of corruption

2.4.1 The PCCA creates the following possible acts of corruption:

"Chapter 2 Part 1 Section 3 - General offence of corruption

Any person who, directly or indirectly-

- (a) Accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-
 - (i) That amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased;exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (ii) That amounts to-
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
 - (iii) Designed to achieve an unjustified result; or
 - (iv) That amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption."

2.5 Gratification

2.5.1 In Chapter 1 Section 1 of the Act, "gratification" is defined as:

- "(d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation; ...
- (i) any real or pretended aid, vote, consent, influence or abstention from voting; ..."

2.5.2 Gratification in terms of the Act specifically refers to 'employment'. Other factors that may indicate that an act of corruption may have been committed and which need to be determined is whether the actions of a person constituted:

- ☐ An unauthorised or biased exercise or performance of his duties
- ☐ The abuse of a position of authority
- ☐ A breach of trust
- ☐ The violation of a legal duty or a set of rules (this would specifically relate to the rules, policies and procedures of the Municipality)
- ☐ Designed to achieve an unjustified result.

2.5.3 A reference in this Act to 'give or agree or offer to give any gratification', includes to:

- "(i) promise, lend, grant, confer or procure;
- (ii) Agree to lend, grant, confer or procure; or
- (iii) Offer to lend, grant, confer or procure such gratification."

[Chapter 1 Section 2 (3)]

2.6 Offences relating to an employment relationship

- 2.6.1 The PCCA creates the following specific offences relating to receiving or offering of unauthorised gratification by or to a party to an employment relationship.

"Chapter 2 Part 3 Section 10 – Offences of receiving or offering of unauthorised gratification by or to a party to an employment relationship

Any person-

- (a) who is party to an employment relationship and who, directly or indirectly, accepts or agrees or offers to accept from any other person any unauthorised gratification, whether for the benefit of that person or for the benefit of another person; or
- (b) who, directly or indirectly, gives or agrees or offers to give to any person who is party to an employment relationship any unauthorised gratification, whether for the benefit of that party or for the benefit of another person, in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, is guilty of the offence of receiving or offering an unauthorised gratification."

2.7 Offences relating to procurement

- 2.7.1 The PCCA creates the following specific offences relating to procuring and withdrawal of tenders.

"Chapter 2 Part 3 Section 1 3 - Offences in respect of corrupt activities relating to procuring and withdrawal of tenders

- (1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as-
 - (a) an inducement to, personally or by influencing any other person so to act-
 - (i) award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
 - (ii) upon an invitation to tender for such contract, make a tender for that contract which has as its aim to cause the tenderer to accept a particular tender; or
 - (iii) withdraw a tender made by him or her for such contract; or
 - (b) a reward for acting as contemplated in paragraph (a) (i), (ii) or (iii), is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders.
- (2) Any person who, directly or indirectly-
 - (a) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or the benefit of another person, as-
 - (i) an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
 - (ii) a reward for acting as contemplated in subparagraph (i); or

(b) with the intent to obtain a tender in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, gives or agrees or offers to give any gratification to any person who has made a tender in relation to that contract, whether for the benefit of that tenderer or for the benefit of any other person, as-

(i) an inducement to withdraw the tender; or

(ii) a reward for withdrawing or having withdrawn the tender,

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders."

3. If an employee suspects fraud or corruption

- 3.1** Any employee who suspects or becomes aware of any irregularity is encouraged to report his/her suspicion directly to either:
- ☐ Head of Legal Services
 - ☐ Internal Audit Manager
 - ☐ Manager: Corporate Services
 - ☐ Line Management.
- 3.2** Employees are encouraged not to discuss this information with colleagues as this might prejudice the success of the investigation.
- 3.3** Employees should not approach or confront the suspected individual/s and should also not endeavour to locate or remove records and documents relevant to the suspicion.

4. If a supplier or other external party suspects fraud or corruption

4.1 Any person who suspects or becomes aware of any irregularity is encouraged to report his/her suspicion directly to either:

- ☐ Head of Legal Services
- ☐ Internal Audit Manager
- ☐ Manager: Corporate Services
- ☐ Line Management.

4.2 Persons are encouraged not to discuss this information with any other person as this may prejudice the outcome of the investigation.

4.3 Nobody should approach or confront the suspected individual/s and should also not endeavour to locate or remove records and documents relevant to the suspicion.

5. The investigation process

The following is a guideline of the procedure to be followed in conducting investigations into alleged irregularities.

5.1 Confirm the initial suspicions and information

- 5.1.1 The Head of Legal Services ("HLS") will be responsible for performing the first step of the investigation process.
- 5.1.2 The first step is to confirm the veracity of the initial suspicion or allegation. This involves considering the integrity of the source of the information, the substance of the suspicion, and whether the informant may have had a personal or malicious motive. All suspicions will be followed up as a precautionary measure and will be considered seriously. As a rule, the suspected employee will not be alerted until the issues have been properly considered and the Municipality is ready to seize evidence.
- 5.1.3 It is of the utmost importance to limit any further loss immediately. To this end, the Municipal Manager and/or the Chief Financial Officer will consider measures such as the withdrawal of signatory rights on bank accounts, cancellation of access rights to data by specific individuals, the limitation of access to archives, etc. This consideration will override the need for confidentiality if further material loss is a real possibility.
- 5.1.4 The nature of the suspicion or allegation will be dealt with on a need-to-know basis. The case will not be reported to the SA Police Service or other prosecution authority until the internal verification has been completed or sufficient progress has been made. A firm decision on the resolution of the case will only be taken once the true facts have been established.

5.2 Set investigation objectives

5.2.1 Once the initial suspicion has been confirmed as valid and requiring of further action, the HLS will set the investigation objectives. These could be one or more of the following:

- ☐ Taking disciplinary action against the perpetrator
- ☐ Taking disciplinary action against the supervisor of the perpetrator
- ☐ Laying criminal charges against the perpetrator
- ☐ Instituting civil action for recovery of losses
- ☐ Recovering losses from insurers
- ☐ Determining control weaknesses and how they were exploited
- ☐ Formulating and/or updating the internal policy and procedure to prevent future recurrence of fraud and corruption
- ☐ Tracking syndicate activity to the ultimate beneficiary
- ☐ Preventing future losses.

5.2.2 Usually, the Municipality will take the hardest line possible and ensure that there are sufficient resources to achieve this objective. It should be noted that the actual institution of the actions listed are dependent on the factual findings of the investigation.

5.3 Determine the investigation team and set a budget

5.3.1 The HLS will nominate a specific individual to lead an investigation team.

5.3.2 In order to conduct an effective investigation, the HLS will consider involving the following experts:

- ☐ An investigator
- ☐ An Internal Auditor
- ☐ A chartered accountant
- ☐ A labour lawyer
- ☐ A disputed document specialist
- ☐ An IT or data recovery specialist.

5.3.3 The investigation team will compile a list of the resources available and items required to discharge the applicable burden of proof, depending on the nature of the action considered.

5.3.4 In the case of larger investigations, a budget must be set for the investigation. This is especially the case where external consultants are contracted to perform the investigation.

.4 Plan the investigation - develop the "worst-case scenario"

5.4.1 To plan the investigation the following questions must be answered:

- ☐ How was the fraud committed? Different scenarios, which fit the available facts, must be developed.
- ☐ Where might important evidence be found?
- ☐ Who appears to be involved in the fraud or its cover-up?
- ☐ Can we identify at least one person or third party against whom the evidence is strongest or most certain?
- ☐ Were similar patterns or suspicions discovered in the past?
- ☐ Who are the people or companies that received a benefit?
- ☐ Who will be required for the investigations, whether internal or external specialists?

5.4.2 Each of the possible scenarios needs to be identified. For each possible scenario, document the elements of the crime and the requirements to prove the commission of that specific crime.

5.4.3 It is advisable to decide which of the scenarios is the "worst-case". The investigation team should then focus their efforts proving the "worst case" and by doing so should also be able to prove or disprove the other possible scenarios. For each scenario, the worst must be suspected of each individual who was involved in the transactions. Suspects will be cleared as evidence becomes available, but nobody should be disregarded prior to the investigation.

5.4.4 It is also advisable to consider aspects such as the possible adverse consequences of pursuing the investigation, as well as not pursuing the investigation.

5.4.5 The golden rule of the planning activity is not to "rush in", unless immediate action is required to prevent further losses or to stop vital evidence being destroyed.

5.5 Prepare to strike - get background information without alerting the suspect(s)

5.5.1 The investigation team should compile a file on each of the suspects or entities involved, and as much background information as possible that is obtainable without alerting the suspects. The files will include detailed background enquiries and may include items such as:

- ☐ Asset searches
- ☐ Credit enquiries
- ☐ Company searches
- ☐ Criminal record checks
- ☐ Contact and address details.

5.5.2 Depending on the extent of the irregularity or investigation, the investigation team may elect to set up a "war room". The war room will be used to co-ordinate all efforts and as a central depository of all documents and evidence. A war plan indicating activities, responsibilities and timelines will also be established in the war room to enable the project leader to co-ordinate efforts and activities.

5.5.3 The investigation team also needs to consider the timing of activities, especially where the police or prosecuting authorities are conducting parallel investigations. The team will determine how, when and by whom the case should be reported to the police. Aspects to be borne in mind include the sensitivity of the matter, the completeness of evidence, and whether powers to subpoena documents or records are required. Assistance of the prosecution authorities may also be required to conduct searches of premises and vehicles.

5.5.4 Simultaneously, the team will have to decide and explore the possibility of appropriate financial actions regarding the suspect, customers and suppliers who may be involved. This may include the suspension of legal agreements, the stopping of payments on outgoing cheques or obtaining special clearance on incoming cheques.

- 5.5.5 The final step in the preparation process is to present the plan, timing and budget allocation to the assigned person for approval in terms of the prescribed procurement procedure.

5.6 Preparing for suspension and other HR actions before the strike

5.6.1 The HLS and the investigation team will decide on the necessity to remove a suspected employee from the premises on commencement of the investigation. Factors to be taken into consideration are:

- ☐ The seriousness of the allegation
- ☐ The likelihood of the destruction of evidence or records
- ☐ The general awareness of the suspicions by other members of staff
- ☐ The seniority of the suspected employee
- ☐ Precedents set in similar instances.

5.6.2 As a general rule, employees will be suspended with full benefits. Depending on the specific circumstances, the following benefits will normally not be withdrawn during the period of suspension:

- ☐ The use of an official cell phone
- ☐ The use of a company vehicle
- ☐ Normal salary and fringe benefits.

5.6.3 The following privileges of employment will as a standard procedure be suspended pending the outcome of the investigation and/or any possible disciplinary proceedings:

- ☐ The use of a corporate credit card
- ☐ Access to the corporate computer system
- ☐ The use of a company PC or laptop
- ☐ Attendance of internal training courses
- ☐ The authority to sign cheques or any legal agreements on behalf of the Municipality
- ☐ Access to his/her office.

- 5.6.4 The HLS, in collaboration with the Manager: Human Resources, will be responsible for communicating these arrangements to both the suspended employee as well as the relevant external parties, e.g. the bank, the human resources department and the payroll department.

5.7 The strike action - get all the evidence at once

5.7.1 The strike action may include any of the following activities:

- ☐ Simultaneous visits to and interviews with witnesses and/or suspects
- ☐ Catching the criminals in the act
- ☐ Obtaining authority to conduct a trap and the execution thereof
- ☐ Obtaining documentary and other evidence required
- ☐ The recovery of property available for seizure
- ☐ The completion of all other items scheduled on the investigation plan
- ☐ Re-planning as new evidence is obtained.

5.7.2 One member of the investigation team will be responsible for co-ordinating and logging each document obtained and keeping track of its source, who obtained it and its relevance in terms of evidence. The three important aspects with regard to documentary evidence are:

- ☐ Preservation of evidence and continuity of possession
- ☐ The examination of documents
- ☐ The preparation of schedules.

5.7.3 It is vital that the investigation team does not draw any conclusions on the guilt or innocence of any party during the investigation.

5.7.4 One member of the investigation team will be made responsible for liaising with the SA Police. This liaison will include the sharing of evidence and leads as well as the communication of additional evidence required.

5.7.5 At this stage of the investigation it might be necessary to revisit each of the scenarios and re-evaluate the likelihood of each. It might also be necessary to conduct follow-up interviews with individuals previously consulted.

5.8 Internal reporting

- 5.8.1 Each stage of the investigation should be documented and interim reports will be prepared on a weekly basis. The interim reports will be submitted to the HLS and will include an indication of the status of the investigation, findings to date as well as proposed action for the next week.
- 5.8.2 Internal reporting will only occur after the strike action has taken place.
- 5.8.3 The HLS will report on all current and completed investigations at each Council meeting. Where the cases are pending, the HLS will have discretion as to whether or not to report on a limited basis i.e. not disclosing names, but informing the Council as to the nature of the suspected irregularities.
- 5.8.4 The HLS, where appropriate, will share information on new reports and the progress made with current investigations with the audit committee. Where investigations are of such a sensitive nature that the HLS deems it inappropriate to share the information with the audit committee, he/she will report the issue and progress only to the chair of the audit committee.
- 5.8.5 The project leader will be responsible for drafting the final report. In doing so, only factual findings are to be included. In the process of drafting the report, the project leader will consider the likely defences to be raised by the suspect/s and will simultaneously consider ways to rebut those.
- 5.8.6 Section 102 of the Municipal Finance Management Act stipulates that, on discovery of irregular / fruitless and wasteful expenditure, the board of directors of a municipal entity must promptly report, in writing, to the mayor, municipal manager and the Auditor-General particulars of the expenditure and any steps that have been taken to recover the expenditure and prevent a recurrence of the expenditure.

.9 Laying of criminal charges

- 5.9.1 The Municipality hereby subscribes to the policy of laying criminal charges in all cases where employees have been investigated for alleged dishonesty.
- 5.9.2 Where an employee is acquitted in a disciplinary enquiry and the relevant senior manager feels that the outcome may be different in a criminal court, a decision in this regard will be made in consultation with the Human Resources Department.
- 5.9.3 The provisions of the PCCA, as discussed in paragraph 2, relating to the reporting of criminal matters, should be kept in mind.

5.10 Instituting civil proceedings

- 5.10.1 The HLS will obtain legal advice regarding the viability of instituting civil action against the perpetrators to recover losses suffered by the Municipality as a result of crimes of dishonesty.
- 5.10.2 The HLS will investigate the possibility of seizing an employee's pension benefits in accordance with the Pensions Act and all necessary steps will be taken to ensure that pension monies will be frozen pending the outcome of civil proceedings.
- 5.10.3 The HLS will monitor legal proceedings instituted to ensure that same is finalised in a speedy and cost effective way.

5.11 Disclosure of the findings of investigations and press releases

5.11.1 It is the policy of the Municipality to disseminate the findings of investigations, especially where proof of irregularities has been found. For this purpose, and at the discretion of the Human Resources Department, summaries of findings may be published in the Municipality's newsletter or other official correspondence. Depending on possible legal action and other sensitivities, the Human Resources Department will decide on the appropriateness of doing this on a case-by-case basis.

5.11.2 Only the Municipal Manager may authorise a press release on any issue relating to the investigation of commercial crime within the Municipality. Although the Municipal Manager may delegate the authority in this regard, all press releases will be carefully considered and reviewed by the Municipal Manager prior to issue.

5.12 Lodging of an insurance claim

5.12.1 In the event of the Municipality having or obtaining fidelity insurance, the HLS will be responsible for lodging a complete insurance claim and for conducting the following activities:

- ☐ To give preliminary notification to the insurance company on confirmation of the suspicion
- ☐ To advise the finance department that a claim has been submitted
- ☐ To obtain the insurance company's support for civil actions
- ☐ To monitor deadlines and prescription periods carefully
- ☐ To finalise the proof of loss
- ☐ To negotiate with the insurance company / loss adjuster.

5.13 Finalising the investigation

5.13.1 The investigation team will ensure that all suspicions are cleared up, one way or the other. Other activities in the finalisation of the process may include:

- ☐ The sending of letters expressing gratitude to employees and third parties who assisted in the investigation
- ☐ A review of weaknesses that caused the problem, and implementing appropriate controls
- ☐ The secure retention of documents until all litigation has been completed (for a period of at least seven years)
- ☐ The performance of a quality review on the investigation process
- ☐ Ensuring the proper filing and indexing of all records.

5.14 Updating of the crime database

- 5.14.1** The HLS will be responsible for adding the relevant information about the incident to the Crime Database, including the nature of each allegation or finding, the amount involved, the identity of the suspect/s, the findings of the investigation and the sanctions applied.

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Whistle-blowing Policy for financial year 2015/16

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1. Purpose of this policy

- 1.1 The purpose of this policy is to provide a means by which staff are able to raise concerns with the appropriate line management, or specific appointed persons in the Municipality, where they have reasonable grounds for believing that there is fraud and corruption within the Municipality.
- 1.2 The Protected Disclosures Act, Act 26 of 2000, which became effective in February 2001, provides protection to employees for disclosures made without malice and in good faith, in defined circumstances.
- 1.3 Good faith means a reasonable, subjective belief in the truth of the suspicion. It does not mean that you as a potential whistle-blower must be able to prove the guilt of the object of the suspicion. When in doubt as to whether a suspicion is reasonable or not, it is advisable to rather report it.
- 1.4 Any disclosure made in good faith and substantially in accordance with any reporting procedure prescribed by the Municipality is considered to be a protected disclosure. An employee making such a protected disclosure is protected from being subjected to any occupationally detrimental victimisation of any kind as a result of the protected disclosure.
- 1.5 Any employee or other stakeholder who suspects or reports suspected dishonest activity or such activity that he/she witnessed will be afforded the opportunity to remain anonymous should this be his/her wish.

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- 1.6 In terms of the Protected Disclosures Act employees can blow the whistle on fraud and corruption in the working environment without the fear of suffering occupational detriment as defined by the Act. This includes:
- ☐ being subjected to any disciplinary action
 - ☐ being dismissed, suspended, demoted, harassed or intimidated
 - ☐ being transferred against your will
 - ☐ being refused transfer or promotion
 - ☐ being subjected to a term or condition of employment or retirement which is altered or kept altered to your disadvantage
 - ☐ being refused a reference, or being provided with an adverse reference, from your employer
 - ☐ being denied appointment to any employment, profession or office
 - ☐ being threatened with any of the actions referred to above
 - ☐ being otherwise adversely affected in respect of your employment, profession or office, including employment opportunities and work security.
- 1.7 Management encourages staff to raise matters of concern responsibly through the procedures laid down in this policy document.

2. Scope of the policy

- 2.1 The policy is designed to deal with concerns raised in relation issues relating to fraud, corruption, misconduct and malpractice within the Municipality. The policy will not apply to personal grievances, which will be dealt with under existing procedures on grievance, discipline and misconduct. Details of these procedures are obtainable from the Human Resources Department.

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- 2.2** The policy covers all genuine concerns raised including:
- ☐ Financial misconduct
 - ☐ Health and safety risks
 - ☐ Environmental damage
 - ☐ Unfair discrimination
 - ☐ Corruption and misconduct
 - ☐ Attempts to suppress or conceal any information relating to any of the above.
- 2.3** If in the course of investigation any concern raised in relation to the above matters appears to the investigator to relate more appropriately to grievance or discipline, those procedures will be evoked.
- 2.4** As the employer - employee relationship includes the requirement of trust, every employee has a common law duty to report to the employer knowledge of any fact that might have a negative impact on the employer's business. The Municipality expects employees, stakeholders, service providers and customers to report any reasonable suspicions, of whatever value, to the Municipality. The ultimate decision to pursue an investigation is the responsibility of the Municipality. The Municipality will weigh the evidence and decide on the appropriate action to be taken. Failure of an employee to comply with this requirement may result in disciplinary action.
- 2.5** It is the responsibility of every employee of the Municipality to report all incidents of fraud, corruption, theft and maladministration or any other dishonest activities of a similar nature to his/her manager.

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- 2.6 It is important to understand that an employee does not have to be involved in the commission of a crime for the reporting duty to apply. Knowledge or suspicion of criminal conduct triggers a reporting duty. Furthermore, these triggers are not confined to a subjective belief - when somebody "ought to have known or suspected" a criminal action, the reporting duties also apply. Thus, wilful blindness and negligence in failing to detect or report an obvious irregularity will also be punishable.

3. Who can raise a concern?

- 3.1 Any member of staff who has a reasonable belief that there is corruption or misconduct relating to any of the protected matters specified above may raise a concern under the procedure detailed.
- 3.2 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.
- 3.3 The issues raised may relate to a manager, another member of staff, a group of staff, your own section or a different section / division of the Municipality. The perpetrator can be an outsider, an employee, a manager, a customer or an ex-employee. You may even be aware of a system or procedure in use, which may cause the Municipality to transgress legal obligations.

4. Culture of openness

4.1 The Municipality commits itself to encouraging a culture that promotes openness. This will be done by:

- ☐ Involving employees, listening to their concerns and encouraging the appropriate use of this policy/process on whistle-blowing promoted by Senior Management. This policy will be issued to all existing employees and to each new employee
- ☐ Educating/training/informing/explaining to employees what constitutes fraud, corruption and malpractice and its effect on the Municipality
- ☐ Promoting awareness of standards of appropriate and accepted employee conduct and establishing a common understanding of what is acceptable and what is unacceptable behaviour
- ☐ Encouraging unions to endorse and support this approach
- ☐ Having a policy to combat fraud.

5. Our assurances to you

- 5.1 All information received via a protected disclosure 'tip-off' relating to irregularities will be treated as highly confidential. The investigation will be handled in a confidential manner and no information will be disclosed or discussed with any person other than those who have a legitimate right to such information. This is to avoid damage to the reputation of a suspect who is, subsequent to an investigation, found innocent of wrongful conduct.
- 5.2 No information with regard to the issues covered within this policy may be shared with any external parties or the media without the express permission of the Municipal Manager.
- 5.3 Management is committed to this policy and will ensure that any member of staff who makes a disclosure in the above mentioned circumstances will not be penalised or suffer any occupational detriment for doing so.

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- 5.4 If you raise a concern in good faith in terms of this policy, you will not be at risk of losing your job or suffering any form of retribution as a result.
- 5.5 This assurance is not extended to employees who maliciously raise matters they know to be untrue. A member of staff who does not act in good faith or who makes an allegation without having reasonable grounds for believing it to be substantially true, or who makes it maliciously or vexatiously, may be subject to disciplinary proceedings.
- 5.6 In view of the protection offered to a member of staff raising a bona fide concern, it is preferable that the individual puts his/her name to the disclosure. XXX will not tolerate the harassment or victimisation of anyone raising a genuine concern.
- 5.7 However, we recognise that you may nonetheless wish to raise a concern in confidence under this policy. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent. However, we do expect the same confidentiality regarding the matter from you.
- 5.8 If the situation arises where we are not able to resolve the concern without revealing your identity (for example where your evidence is needed in court), we will discuss with you whether and how we can proceed. Accordingly, while we will consider anonymous reports, this policy is not appropriate for concerns raised anonymously.
- 5.9 Once you have told us of your concern, we will look into it to assess initially what action should be taken. This may involve an internal inquiry or a more formal investigation.
- 5.10 The issue you raise will be acknowledged within 7 working days. If it is requested, an indication of how the organisation proposes to deal with the matter and a likely time scale could be provided. If the decision is made not to investigate the matter reasons will be given.

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- 5.11 We will tell you who would be handling the matter, how you can contact him / her and whether your further assistance may or will be needed. When you raise a concern, you may be asked how you think the matter might best be resolved.
- 5.12 If you do have any personal interest in the matter, we do ask that you tell us at the outset. If your concern falls more properly within the Grievance Procedure we will tell you.
- 5.13 While the purpose of this policy is to enable us to investigate possible malpractice and take appropriate steps to deal with it, we will give you as much feedback as we properly can. If requested, we will confirm our response to you in writing. Please note, however, that we may not be able to tell you the precise action we take where this could infringe a duty of confidence owed by us to someone else.

6. How to raise a concern internally

- 6.1 Step one: If you have a concern about malpractice, we hope you will feel able to raise it first with your manager/ supervisor. This may be done verbally or in writing.
- 6.2 Step two: If you feel unable to raise the matter with your manager, for whatever reason, please raise the matter either with:
- ☐ Human Resources: Contact details
 - ☐ Internal Audit: Contact details
- Please say if you wish to raise the matter in confidence so that they can make appropriate arrangements.
- 6.3 Step three: If these 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:
- ☐ The Municipal Manager: Contact details.

- 6.4 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 this province:

☐ Name: Contact details.

7. Independent advice

- 7.1 If you are unsure whether to use this procedure or you want independent advice at any stage, you may contact your personal legal adviser, or your labour organisation, or the independent legal advice centre ODAC on its toll free helpline on 0800 525 352. Their legally trained staff can give you free confidential advice at any stage about how to raise a concern about serious malpractice at work.

8. External contacts

- 8.1 Option 1: While we hope this policy gives you the reassurance you need to raise such matters internally, we recognise that there may be circumstances where you can properly report matters to outside bodies, such as regulators or the police. ODAC will be able to advise you on such an option and on the circumstances in which you may be able to contact an outside body safely.
- 8.2 Option 2: While we hope this policy gives you the reassurance you need to raise such matters internally, we would rather you raised a matter with the appropriate regulator than not at all. Provided you are acting in good faith, you can also contact:
- ☐ The Public Protector: (012 366 7000).
 - ☐ The Auditor-General: (012 426 8000).

9. If you are dissatisfied

- 9.1 If you are unhappy with our response, remember you can go to the other levels and bodies detailed in this policy. While we cannot guarantee that we will respond to all matters in the way that you might wish, we commit ourselves to handle the matter fairly and properly.
- 9.2 By using this policy, you will help us to achieve this.
- 9.2 The municipality will use National Anti-fraud Hotline toll free Number