

Msinga Municipality



FRAUD AND CORRUPTION PREVENTION POLICY

## INDEX PAGE

1. INTRODUCTION 3
2. OBJECTIVES 3
3. LEGISLATIVE FRAMEWORK 3
4. SCOPE 4
5. ENVIRONMENT AND CULTURE 4
6. ROLES AND RESPONSIBILITIES 5
7. AWARENESS, TRAINING AND DEVELOPMENT 7
8. WHISTLE BLOWING 7
9. REPORTING PROCEDURES ON FRAUD AND CORRUPTION 8
10. CONFIDENTIALITY AND DISCRETION 8
11. CONFLICT OF INTERESTS 8
12. PREVENTION CONTROLS, DETECTION MECHANISMS AND INVESTIGATION 10
13. FORMS OF FRAUD AND CORRUPTION 11
14. REVIEW AND APPROVAL OF THE POLICY 12

## **1. Introduction**

This policy has been developed as a result of the expressed commitment of the Msinga Municipality to fight fraud and corruption. The Council is therefore committed to the prevention, detection and investigation of all forms of fraud and corruption whether these are attempted from within or external to the municipality. Fraud and Corruption undermine the basic values and principles governing public administration as set out in Chapter 10 of the Constitution. This policy provides guidance to all Staff Members, Councillors of the Municipality, and all external stakeholders to prevent and combat fraud and/or corruption and other acts of theft and maladministration.

## **2. Objectives**

- 2.1 The primary objective of the policy is to assist the Accounting Officer, Council and Oversight Committees, to create an environment in the Msinga Municipality and its area, that are based on the prevention of fraud and corruption.
- 2.2 To develop and maintain a fraud and corruption prevention hotline that is free to all internal and external stakeholders within Msinga Municipality.
- 2.3 To ensure that Msinga Municipality's Council, Management and staff members are aware of its responsibilities for identifying exposures to fraudulent and corrupt activities or any other dishonest activities of a similar nature.
- 2.4 To ensure that Msinga Municipality's Council, Management and staff members are aware of its responsibilities for establishing controls and procedures for preventing such fraudulent and or corrupt activity and/or detecting such fraudulent and corrupt activity when it occurs.
- 2.5 To provide a suitable environment for employees to report matters that they suspect may concern corrupt conduct, criminal conduct, criminal involvement or serious improper conduct  
  
and to provide a commitment from management within council that they will ensure adequate protection to employees in circumstances where they are victimized as a consequence of reporting, or being a witness to, fraudulent and/or corrupt activities.

### 3. Legislative Framework

- This policy has been compiled in accordance with:-
- The Constitution of the Republic of South Africa, No.108 of 1996;
- Corruption Act, No. 92 of 1994;
- Public Protector Act, No. 23 of 1994;
- Prevention of Organised Crime Act, No. 121 of 1998 (POCA);
- Protected Disclosures Act, No. 26 of 2000;
- Financial Intelligence Centre Act, No. 38 of 2001 (FICA);
- Local Government: Municipal Finance Management Act, No. 56 of 2003 ("MFMA");
- Local Government: Municipal Supply Chain Management Regulations, No. 27636 of 2005.
- National Treasury Regulations.
- Local Government: Municipal Systems Act, No. 32 of 2000 ("MSA");
- Local Government: Municipal Structures Act, No. 117 of 1998 ("MSA");
- Prevention and Combating of Corrupt Activities Act, No. 12 of 2004;
- Protection of Constitutional Democracy against Terrorist and Related Activities Act, No. 33 of 2004 ("POCDATARA").
- Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, GG 37699, 2014.
- The Public Service Commission Rules.

### 4. Scope of this Policy

This Policy applies to all forms of fraud and corruption, maladministration or suspected irregularities but not limited to, the following persons or entities:

- Municipal Councillors;
- All Staff Members of the Municipality;
- Service Providers, suppliers, contractors and other providers of goods and services to the Municipality; and
- Any person or entity who stands to benefit from a contract concluded with the municipality;
- Members of the Public.

It prohibits all acts of fraud and corruption or any other dishonest activities of a similar nature impacting or having a potential prejudice to the Municipality or members of the public.

Any investigation required will be conducted without regard to the suspected wrongdoer's length of service, position/title, seniority or relationship to the Msinga Municipality.

## **5. Environment and Culture**

The Msinga Municipal Council and Management must create an environment and culture that promotes an efficient, effective and transparent local public administration that conforms to constitutional principles. The municipality must be managed responsibly in which employees believe that dishonest acts will be detected and investigated.

### **5.1 To create this environment and culture, they must:**

- 5.1.1 Participate in in-house training programmes covering fraud and corruption prevention policy, whistle blowing policy, code of conduct – MSA 32 of 2000 and the municipal code of ethics;
  - 5.1.2 Ensure that staff understands that the internal controls are designed and intended to prevent and detect fraud and corruption or any other dishonest activities of a similar nature;
  - 5.1.3 Ensure that fraud, corruption, theft and maladministration or any other form of fraud and corruption will not be tolerated;
  - 5.1.4 Encourage staff to report suspected fraud and corruption directly as outlined in the whistle blowing policy to those responsible for investigation without fear of disclosure or retribution;
  - 5.1.5 Require vendors and contractors to agree in writing as a part of the contract process, to abide by the Municipality policies and procedures, and thereby avoid any conflict of interest;
- 5.2 It is the responsibility of all Staff Members and Councillors of the Municipality to report incidents on any form of fraud and corruption, maladministration or any other dishonest activity. If an employee is not comfortable reporting such matter to his/her immediate Supervisor or Manager, he/she must report the matter to the next level of management, the whistle blowing hotline process or the Municipal Manager.

- 5.3 The Municipal Manager or his delegated officer shall report all instances of prima facie criminal conduct to the appropriate authorities. Due cognizance shall be observed with regard to section 34 (1) (b) of the Prevention and Combatting of Corrupt Activities Act, No. 12 of 2004 on miscellaneous matters, which imposed an obligation to report all acts of corruption, fraud, theft, extortion, forgery, or uttering a forged document. Such acts of dishonesty must be reported to the SAPS, failing which management who are aware of the matter, will be committing a criminal offence. The Municipality shall, however, not only report matters in terms of the above obligation, but shall report all criminal conduct irrespective of the value involved.
- 5.4 The efficient application of National Treasury Regulations, issued in terms of the MFMA, the application of policy resolutions of the Municipality with regard to Unauthorized, Irregular, Fruitless and Wasteful Expenditure, and other acts of financial dishonesty is an important duty of any recipient of a complaint.

## **6. Roles and Responsibilities**

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

### **6.1 Councillors**

As elected representatives, all members of the Msinga Municipal Council have a duty to the residents of the Msinga Municipality and its staff members to ensure that the Council uses its resources prudently and in accordance with the laws and regulations. As such they are required to operate and adhere to the Council's constitution incorporating the Code of Conduct for Councillors. The Code includes rules regarding relationships, personal interests, gifts and hospitality and confidentiality.

Councillors as the political component should however be cautious not to embark on investigations into these types of allegations themselves. They should promote and ensure that all activities are reported in terms of the channels suggested in this policy and should allow administrative investigations to be finalised within legal prescripts.

## **6.2 Municipal Manager**

The Municipal Manager bears the ultimate responsibility for fraud and corruption prevention through risk management within the Municipality. This includes not only the coordination of risk assessments, overseeing the investigation of suspected fraud and corruption, reporting of such instances, but should actively promote the culture of sound administration through training and development of all staff.

## **6.3 Senior Management**

Senior Management must 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 Municipal Manager, 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 prevention strategy is reviewed and updated regularly. Furthermore, senior management will ensure that all employees and stakeholders are made aware of its fraud and corruption prevention policy and strategies, also of the whistle blowing policy through various initiatives of awareness and training.

## **6.4 Chief Financial Officer**

The Chief Financial Officer has key role in providing advice to Council, Municipal Manager, Staff Members and the public about maladministration, financial impropriety, probity, policy framework and budget issues. The Chief Financial Officer undertakes the statutory responsibility under the Municipal Finance Management Act, No. 56 of 2003, to ensure the proper arrangements for the administration of the Council's financial affairs.

## **6.5 CFO: Integrated Risk Management**

The role of the CFO is to oversee and implement the Municipality's approach to fraud and corruption prevention, detection strategies and response to fraud and corruption incidents reported by employees or other external parties.

## **6.6 Internal Auditor**

The role of the Internal Auditor is to independently review and evaluate the adequacy, efficiency and effectiveness of the internal controls (systems and procedures) within the Msinga Municipality on the fraud and corruption prevention, detection strategies and response to fraud and corruption incidents reported by employees or other external parties.

## **6.7 Public**

The public is required to conduct itself in an ethical and moral way. They should ensure that the accountability of councillors and the administration is promoted by becoming involved in the affairs of council, through not only public and community participation mechanisms, but as a stakeholder ensure that they become the eyes and ears of the Municipal Manager, in this very daunting fight against corruption.

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.

## **7. Awareness, Training and Development**

- 7.1 The Accounting Officer and Council recognize that the continuous success of the fraud and corruption prevention policy, and its credibility, will depend largely on the effectiveness of staff throughout the organisation. Continuous awareness campaigns must be rolled out throughout the Msinga Municipality.
- 7.2 Management therefore will be responsible for ensuring that all staff are properly trained in the procedures that they should follow when undertaking their duties.
- 7.3 This policy must be included in the Municipal Batho Pele Booklet and published on the Municipal Website.

## **8. Whistle Blowing**

The Protected Disclosures Act, No. 26 of 2000 came into effect on 16 February 2001. This Act makes provisions for procedures in terms of which employees and/or community members may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers without fear of victimization.



In order to remain in compliance with the Act, the Municipality has created a whistle blowing policy with the following objectives:

- To promote the zero tolerance on criminal and other irregular conduct within the Msinga Municipality;
- To encourage the reporting of matters that may cause financial or non-financial loss and/or damage to the Municipality's reputation;
- To provide for the appropriate systems and mechanisms for reporting.
- To ensure that council provides the necessary protection to whistle blowers, by concluding agreements to ensure the latter's protection.

### **9. Reporting Procedures on Fraud and Corruption**

Consistent with the Auditor General South Africa's guidelines, line managers are responsible for daily operations and for the internal control systems within their organizational responsibility. Where managers do not have the expertise to evaluate internal controls, they should call upon the support from Risk Management and Internal Audit.

It is the responsibility of members of the public and employees (including line managers) to report all incidents of fraud, corruption or any other dishonest activities of a similar nature to the Office of CFO at:

- Fax : 033 4930 757/766 or
- Tel: , 033 4930 760/1/2/3/4
- Completed complaint forms to be posted:
- P/ Bag x 530
- Tugela Ferry
- 3010

All complaints implicating the CFO and Internal Audit Units should be reported to the Accounting Officer.

### **10. Confidentiality and Discretion**

It is the responsibility of all employees, management, councillors and community members of the Municipality to report all incidents of fraud or corruption, or any other dishonest activities of a similar nature. Any fraudulent or corrupt behaviour must be reported immediately through the mechanisms set out in the Whistle Blowing Policy. All reported incidents received will be acted upon, 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.

## 11. Conflict of Interests

- 11.1 Employees and Councillors are compelled to declare and avoid any conflict of interest that might arise which include any financial or other private interest or undertaking that could directly or indirectly compromise the performance of the employees and councillor duties or the reputation of the municipality in its relationship with its stakeholders and community.
- 11.2 Employees and Councillors are compelled to declare their business interests in terms of the disclosure of business interests. For the sake of clarity in respect of the anti-fraud obligations, this requirements goes further in that all employees and councillors are required to declare their business interests whether such business interests are registered or not. The declaration is required regardless of the status of such an entity; whether active or dormant.
- 11.3 All staff members must apply to the Municipal Manager for the approval on work outside of the Municipality, whether it is of financial or non-financial interests.
- 11.4 The value of gifts received from a single source in any calendar year may not exceed R 350.00 for Staff members and R1000.00 for Councillors. Should the value of the gift, reward or favour be uncertain or disputed, the value will be determined by the relevant Manager /Director.
- 11.5 Any gift as defined in terms of section 9 of Schedule 1 of the Systems Act, No. 32 of 2000 may not be accepted by any Councillor.
- 11.6 Any gift as defined in terms of section 8 of Schedule 2 of the Systems Act, No. 32 of 2000 may not be accepted by any staff member.
- 11.7 Items received which could be clearly defined as marketing material does not constitute a gift.
- 11.8 Receipt of gifts in any of the following scenarios would prima facie be viewed, to evaluate whether it is in breach of section 9 of Schedule 1 and section 8 of Schedule 2 of the Systems Act and section 47 of the Municipal Supply Chain Management regulations:
- a) Tenders;
  - b) Contracts;
  - c) Provider and prospective providers as well as receivers and prospective receivers of

goods in terms of actions that are clearly enacted to avoid and prevent corruption practices.

- 11.9 The responsibility of granting authority to staff members to accept rewards, gifts or favours above R350.00 rests with the Directors of each directorate and the Municipal Manager (or his nominee) to the Directors.
- 11.10 The responsibility of granting authority to the Municipal Manager to accept rewards, gifts or favours above R350.00 rests with the Mayor.
- 11.11 The responsibility of granting authority to councillors to accept rewards, gifts or favours above R1000.00 rests with the Speaker.
- 11.12 Councillors must report gifts received by completing and submitting the “Declaration of Rewards, Gifts and Favour Form” to the Office of the Speaker (Speaker).
- 11.13 Staff members must report rewards; gifts and favour received by completing and submitting the “Declaration of Rewards, Gifts and Favour Form” to his/her Director.
- 11.14 The Directors must report rewards, gifts and favours received by Staff members to the Office of the Municipal Manager .
- 11.15 The office of the Municipal Manager shall provide details of all rewards, gifts and favours received by Councillors and Staff members and authorized by the Mayor, Speaker or Municipal Manager to the Risk and Ethics Management Committee (who is responsible for ethics management), Audit Committee (Oversight) on a quarterly basis and the Office of the Speaker (Council).
- 11.16 A register will be kept and maintained in the office of the Municipal Manager .

## **12. Prevention Controls, Detection Mechanisms and Investigation**

All Managers are responsible for the detection, prevention and investigation of fraud and corruption or any dishonest activities of a similar nature, within their areas of responsibility.

The responsibility to conduct investigations relating to the actions listed in this policy resides with Council, the Municipal Manager and the Directors within the Municipality who have the advisory and supporting assistance from departments and external state agencies which may

include any of the following:

- a) Internal and external audit services;
- b) State Attorney;
- c) External investigating agencies, for example the SAPS, where matters fall within their mandate;
- d) External consultants, for example Forensic Accounting Consultants;
- e) Office of the National Director of Public Prosecutions;
- f) Special Investigating Units established under any law;
- g) The Public Protector;
- h) Any other authority as may be determined by Council.

The Accounting Officer must provide adequately qualified prosecutors (initiators) and presiding officers to deal with disciplinary enquiries relating to serious misconduct.

For the purpose of this policy “serious misconduct” means

- Theft, unauthorized possession of or malicious damage to the employer’s property.
- Any act of gross dishonesty.
- Gross negligence.
- Wrongful disclosure of privileged information.
- Any act of fraud, corruption or bribery.
- Any other act of misconduct that would constitute just cause for dismissal for a first offence.

### **13. Forms of fraud and corruption**

The following are examples of different types of corruption:

#### **Bribery**

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

#### **Embezzlement**

This involves theft of resources by persons entrusted with the authority and control of such resources.

#### **Fraud**

This involves any conduct or behaviour of which a dishonest representation and/or

appropriation forms an element.

### **Abuse of power**

This involves a public servant using 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).

### **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.

### **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.

### **Favouritism**

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

### **Nepotism**

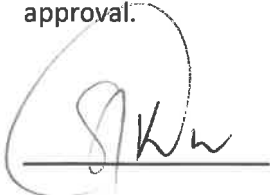
A public servant ensuring that family members are appointed to public service positions or that family members receive contracts from the state is regarded as nepotism.

These manifestations are by no means exhaustive as corruption appears in many forms and it is virtually impossible to list all of these. It is the responsibility of Management to report some form of serious misconducts to the South African Police Services.

The SA Police Service is empowered by s205 of the 1996 Constitution to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic of South Africa and their property, and to uphold and enforce the law.

**14. Review and Approval of the Policy**

The Risk and Ethics Committee must every three (3) year review this Policy and determine its adequacy and effectiveness for current circumstances and recommend to Council for approval.



**SL SOKHELA**

**MUNCIPAL MANAGER**

29/05/2018

**APPROVED**

**DATE**



**GLLR TL KUNENE**

**SPEAKER**

**APPROVED BY COUNCIL**

