



VICTOR KHANYE

LOCAL MUNICIPALITY – PLAASLIKE MUNISIPALITEIT

FRAUD PREVENTION AND ANTI-CORRUPTION POLICY

Policy Number: FP&A-C -01	Approved by Council: 31 October 2012
Resolution No: A 27/09/2012	Review Date:

Rationale

This policy also provides guidelines for all employees and councillors of the Municipality, including external stakeholders, to prevent and combat fraud and/or corruption and other acts of theft and maladministration.

A. DEFINITIONS:

“CFO” means the Chief Financial Officer of the Victor Khanye Local Municipality;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act. No 108 of 1996).

“Corruption” means any conduct or behaviour where a person accepts or agrees or offers any gratification for him/her or for another person where the purpose is to act dishonestly and illegally. Such behaviour also includes the misuse of material or information, abusing a position of authority or a breach of trust or violation of duty;

“Corrupt Activities Act” means the Prevention and Combating of Corrupt Activities Act 2004 (Act No. 12 of 2004).

“Council” means the Council of the Victor Khanye Local Municipality.

“Councillor” means a member of Council of the Victor Khanye Local Municipality;

“Disclosure” in terms of the Protected Disclosure Act, 2000 (Act No. 26 of 2000) means – any disclosure of information regarding any conduct of an employer or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of the following:

- a) That a criminal offence has been committed, is being committed or is likely to be committed;
- b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- c) That a miscarriage of justice has occurred, is occurring or is likely to occur;
- d) That the health or safety of an individual has been, is being or likely to be endangered;
- e) That the environment has been, is being or is likely to be damaged;
- f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, (No. 4 of 2000) or
- g) That any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed;

“Disciplinary Procedure” means the Disciplinary Procedure of the Municipality in terms of the collective agreement of the South African Local Government Bargaining Council and/or the Disciplinary Code and Procedures for Senior Managers;

“Employee” means any employee of the Municipality, contractual or permanent;

“Fraud” means the unlawful and intentional making of a misrepresentation which causes actual or potential prejudice to another. The use of the term is in its widest possible meaning and is intended to include all aspects of economic crime and acts of dishonesty;

“MFMA” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“Municipality” means the Victor Khanye Local Municipality;

“Municipal Manager” means the Municipal Manager of the Victor Khanye Local Municipality;

“NPA” means the National Prosecuting Authority of the Republic of South Africa;

“Occupational detriment” in relation to the working environment of an employee in terms of the Protected Disclosure Act (Act No. 26 of 2000) means –

- a) being subjected to any disciplinary action;
- b) being dismissed, suspended, demoted, harassed or intimidated;
- c) being transferred against his or her will;
- d) being refused transfer or promotion;
- e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- f) being refused a reference, or being provided with an adverse reference, from his or her employer;
- g) being denied appointment to any employment, profession or office;
- h) being threatened with any of the actions referred to in paragraphs (a) to (g) above; or

- i) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security;

“Political Office Bearers” means councillors appointed to hold political offices in the Municipality i.e the Mayor and the Speaker;

“Protected Disclosure” in terms of the Protected Disclosure Act (Act No. 26 of 2000), means a disclosure made to:-

- a) a legal adviser in accordance with section 5;
- b) an employer in accordance with section 6;
- c) a member of Cabinet or of the Executive Council of a province in accordance with section 7;
- d) a person or body in accordance with section 8;
- e) any other person or body in accordance with section 9; but does not include a disclosure:-
 - i. in respect of which the employee concerned commits an offence by making a disclosure; or
 - ii. made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5.

“Protected Disclosure Act” means the Protected Disclosure Act, 2000 (Act No. 26 of 2000);

“Recipient of a complaint” means any employee or councilor of the Municipality to whom a complaint of fraud, corruption and maladministration is laid; this may involve but is not limited to a Supervisor, Line Manager, Director, Municipal Manager or an employee acting in any such capacity, Executive Mayor, the Speaker and/or the Chairperson of the Audit Committee.

“SAPS” means the South African Police Services;

“Speaker” means the speaker of the Victor Khanye Municipal Council;

“Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“SCM Regulations” means the Supply Chain Management Regulations, 2005 (Act No. 7636 of 2005).

1. INTRODUCTION:

- 1.1. Fraudulent and corrupt practices undermine the basic values and principles governing public administration as set out in chapter 10 of the Constitution.
- 1.2. Criminal and other irregular conduct is detrimental to good, effective, accountable and transparent governance and can hamper the service delivery capacity of the Municipality.
- 1.3. Procedures are provided in terms of which employees and councillors may without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct.
- 1.4. This policy also provides guidelines for all employees and councillors of the Municipality, including external stakeholders, to prevent and combat fraud and/or corruption and other acts of theft and maladministration.

2. LEGAL FRAMEWORK

This policy has been compiled in accordance with:-

- The Constitution of the Republic of South Africa, (Act No. 108 of 1996 (hereafter referred to as the Constitution);
- Protected Disclosure Act, (Act No. 26 of 2000);
- Prevention and Combating of Corrupt Activities (Act, No 12 of 2004);
- The Municipal Finance Management Act, (Act No. 56 of 2003);
- Local Government: Municipal Systems Act, (No. 32 of 2000);
- Local Government: Municipal Structures Act, (No. 117 of 1998);
- Local Government: Municipal Supply Chain Management Regulations, (Act No 27636 of 2005);
- National Treasury Regulations.

3. SCOPE

3.1. This policy applies to all corruption, fraud, theft and maladministration or suspected irregularities of this nature involving, but not limited to, the following persons or entities:

- a) Employees of the Municipality;
- b) Political Office Bearers;
- c) Councillors;
- d) Consultants, suppliers, contractors and other providers of goods and services to the Municipality.

3.2. This policy shall be applied with due observance of the Municipality's policy with regard to delegated powers. Such delegations refer to delegations between the Municipal Manager and other responsible officials; the Council and the Executive Mayor as well as between the Council and the Municipal Manager.

4. OBJECTIVES

4.1. This policy also sets out the stance of the Municipality with regard to corruption and fraud, as well as reinforcing existing legislation aimed at preventing, reacting to, and reducing the impact of fraud, corruption, theft and maladministration, where these dishonest acts subsist.

4.2. It also aims to develop and foster an environment, where all employees and councillors shall strive for the ultimate eradication of fraud, corruption, theft and maladministration by means of the application of the full spectrum of both pro-active and re-active measures at their disposal.

- 4.3. Furthermore, this policy prescribes appropriate prevention and detection controls, including, but not limited to, the disclosure of unlawful or irregular acts or conduct as prescribed by the Protected Disclosures Act.
- 4.4. Consistent with such an Act, the Municipality has the responsibility to take reasonable steps to ensure that “whistle-blowers”, who disclose such information, are protected from any reprisals as a result of such disclosure.

5. POLICY

- 5.1. It is the policy of the Municipality that fraud, corruption, theft and maladministration or any other dishonest activities of a similar nature will not be tolerated. In addition, these acts will be investigated and followed up by the application of all remedies available within the full extent of the law.
- 5.2. Appropriate prevention and detection controls will be applied. These include the existing controls and checking mechanisms as prescribed by existing policies and procedures, and systems of internal control.
- 5.3. It is the responsibility of all employees and councillors of the Municipality to report incidents of fraud, corruption, theft, maladministration or any other dishonest activity. If an employee is not comfortable reporting such matters to his immediate supervisor or manager, he/she should report the matter to the next level of management, with final recourse being to the Municipal Manager. Appropriate lines of authority should be utilized in line with the Municipality’s policy on delegated authority.
- 5.4. Directors are responsible for the detection, prevention and investigation of fraud, corruption, theft, maladministration, or other dishonest activities within their directorates. All managers (and other employees who hold positions of authority) shall also bear responsibility for reporting such acts, as stipulated.

- 5.5. The Municipality 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 Corrupt Activities Act, which imposes 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.
- 5.6. 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.
- 5.7. The Municipality shall take appropriate legal recourse to recover losses or damages arising from fraud, corruption, theft or maladministration.
- 5.8. The efficient application of National Treasury regulations, issued in terms of the MFMA, relevant circulars and the application of policy resolutions of the Municipality with regard to unauthorised, irregular, fruitless and wasteful expenditure, and other acts of financial dishonesty is an important duty of any recipient of a complaint.

6. FRAUD, CORRUPTION, THEFT AND MALADMINISTRATION

6.1 FORMS OF FRAUD AND CORRUPTION

6.1.1 Bribery

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of an employee. This benefit may accrue to the employee or councillor, another person or an entity.

6.1.2 Embezzlement

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

6.1.3 *Fraud*

This involves actions or behaviour by an employee, councillor or other person or entity that provides a benefit that would not normally accrue to the person(s) or or entity. Such fraud is frequently committed by persons who enjoy positions of trust or authority within the Municipality; and may involve acts such as issuing falsified financial statements or performance reports with the object of misleading council. External fraud occurs when persons outside the organization perpetrate fraud against the Municipality:

- Such as the inadequate supply of deliveries at delivery points exploiting loopholes in the Municipality's security system;
- False statements or reports regarding work done on construction sites, or
- Repair and service contracts where there is inadequate control over these contracts.

6.1.4 *Extortion*

This involves coercing a person or entity to provide a benefit to an employee, councillor or another person or an entity in exchange for acting (or failing to act) in a particular manner.

6.1.5 *Abuse of power*

This involves an employee or councillor using his or her vested authority to improperly benefit another employee or councillors, person or entity or using vested authority to improperly discriminate against an employee or councillor, another person or entity.

6.1.6 *Conflict of interest*

This involves an employee or councillor acting or failing to act on a matter where the employee or councillor has an interest or another person or entity that stands in a relationship with the employee or councillor has an interest.

6.1.7 *Abuse of privileged information*

This involves the use of privileged information and knowledge that an employee or councillor possesses as a result of his or her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit to him or herself. This may also involve the misuse of confidential information of the Municipality by

people in positions of trust, for example through the misuse of computer access controls.

6.2 ACTIONS CONSTITUTING FRAUD, CORRUPTION, THEFT AND MALADMINISTRATION:

The term fraud, corruption, theft and maladministration refer to, but not limited to:

- a) Any dishonest, fraudulent or corrupt act;
- b) Theft of funds, supplies, or other assets;
- c) Maladministration or financial misconduct in handling or reporting of money or financial transactions;
- d) Making a profit from insider knowledge;
- e) Disclosing confidential or proprietary information to outside parties;
- f) Deliberately and dishonestly altering documents, records or vouchers for financial gain; creating false invoices or credit notes; creating fictitious supplier accounts; creating false purchase invoices or destroying supplier credit notes; purchasing items for private use on the municipality's accounts; submitting false claims for remuneration of expenses; or buying goods on credit with the full knowledge that council does not have the means to pay for them; approving unauthorised deliveries and/or creating fictitious employees on the Municipality's payroll.
- g) Irregularly accepting or requesting anything of a material value from contractors, suppliers, or other persons providing services/goods to the Municipality;
- h) Irregularly offering or giving anything of a material value to contractors, suppliers, or other persons providing services/goods to the Municipality; and/or special favours or concessions to clients/suppliers or contractors or other parties in exchange for remuneration in the form of cash or other benefits.
- i) Destruction, removal, or abuse of records, furniture, and equipment;

- j) Deliberately omitting to report or act upon reports of any such irregular or dishonest conduct;
- k) Acts of financial misconduct contemplated in terms of sections 171 to 173 of the MFMA;
- l) Incidents of unauthorized, irregular or fruitless and wasteful expenditure as defined in section 32 of the MFMA; and
- m) Any similar or related irregularity as prescribed by the Prevention and Combating of Corrupt Activities Act, the MFMA and other applicable legislation.

7. RESPONSIBILITY TO CONDUCT INVESTIGATIONS

7.1. 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 SAPSs, 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.

8. REPORTING PROCEDURES AND RESOLUTION OF REPORTED INCIDENTS

8.1 It is the responsibility of every employee of the Municipality to report incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to his/her Manager. If the employee is not comfortable reporting such matters to his/her immediate supervisor or manager, he/she should report the

matter to any other member of management, the Municipal Manager and/or the Chairperson of the Audit Committee.

8.2 Should an employee wish to make a report anonymously, such a report may be made to any member of management, the Municipal Manager, the Chairperson of the Audit Committee and/or the Speaker or the Mayor.

8.3 It is the responsibility of any recipient of a complaint to promptly report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to the Municipal Manager.

8.4 Where an employee is alleged to have committed an act of fraud, corruption, theft, or maladministration the Municipal Manager must institute disciplinary proceedings in terms of the applicable disciplinary procedure of the Municipality.

8.5 Where a councillor is alleged to have committed an act of corruption or fraud, the Speaker or Council must institute an investigation in terms of section 13 and 14 respectively, of the Code of Conduct for Councillors as contained in the Municipal Systems Act.

8.6 As soon as disciplinary hearings concerning charges of fraud, corruption, theft, maladministration and other suspected irregularities of this nature are completed, the outcome must be reported promptly to the Municipal Manager.

8.7 The Municipal Manager must also report to SAPS all cases of alleged –

- a) irregular expenditure that constitute a criminal offence; and
- b) theft, fraud, corruption, theft and maladministration including other suspected irregularities of this nature.

8.8 Consistent with section 32 of the MFMA and in terms of this Policy, the Municipal Manager must inform the Executive Mayor, Council, the MEC for Local Government in the Mpumalanga and the Auditor-General, in writing of:-

- a) any unauthorized, irregular, fruitless and wasteful expenditure incurred by the Municipality; and in terms of this policy, shall also include serious incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature ;

- b) whether any person is responsible or under investigation for such unauthorized, irregular, wasteful or fraudulent expenditure; and
- c) the steps that have been taken to:-
 - (i) recover or rectify such expenditure; and
 - (ii) to prevent a recurrence of such expenditure.

8.9 The writing off of any unauthorized, irregular, fruitless and wasteful expenditure or any other expenditure incurred as a result of fraud, corruption, theft, maladministration and any other suspected irregularity as irrecoverable, does not prevent criminal or disciplinary proceedings being instituted against a person charged with an offence relating to such expenditure.

8.10 The Municipality may, in terms of this policy and section 176 (2) of the MFMA, recover such losses or damages incurred by the Municipality. Therefore an employee or councillor who due to deliberate or negligent unlawful actions shall be held liable for the recovery of such financial losses.

8.11 In pursuance of section 8.9 of this policy, the Municipal Manager may utilize the amendments to the Pension Funds Act, which allows an employer, on registration of a criminal docket with the SAPS, to request the pension fund to freeze the employee's or the councillor's benefit payments who has been allegedly involved in financial misconduct, pending finalization of the criminal prosecution. Thereafter, if the employee or councillor is convicted, any losses caused by the employee or councillor shall be deducted from the benefits due to the employee or councillor concerned or shall be recovered from the assets owned by the person concerned.

8.12 Council, must take all reasonable steps to ensure that cases that are referred to in section 8.6 are reported to the SAPS if –

- (a) the charge is against the Municipal Manager
- (b) the Municipal Manager fails to comply with that section.

8.13 Consistent with section 171(4) of the MFMA, the Municipality shall institute an investigation regarding allegations of financial misconduct against the Municipal

Manager, the CFO, any senior manager or other official of the Municipality, unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and

8.14 If the investigation warrants such a step, Council shall institute disciplinary proceedings against the Municipal Manager, the CFO or any other senior manager in accordance with the Disciplinary Code and Procedures for Senior Managers (Notice 1568 of 2009).

8.15 The Municipality shall also investigate allegations of financial misconduct involving any councillor, such allegations shall be dealt with in terms of the breaches of the Code of Conduct for Councillors as stipulated in schedule 1 of the Systems Act and the Municipality's Rules of Conduct for Councillors.

8.16 The failure of a recipient of a complaint to take prompt and reasonable steps to ensure that allegations of fraud, corruption and/or any other similar irregular or dishonest activity are appropriately dealt with, may result in disciplinary measures being instituted against such a recipient.

9. PROTECTED DISCLOSURE

9.1. PROTECTION OF WHISTLE BLOWERS

9.1.1. The Protected Disclosures Act makes provision for the protection of employees or councillors who make a disclosure in terms of the provision of this Act;

9.1.2. Any disclosure made in good faith and in accordance with the procedures outlined in clause 8 of this policy, is considered a protected disclosure. An employee or councillor making such a disclosure is protected from being subjected to an occupational detriment.

9.1.3. An employee who suspects or reports suspected dishonest activity which he/she has witnessed should be afforded the opportunity to remain anonymous should he/she so require.

9.1.4. Allegations made by employees which are false and made with malicious intentions should be discouraged by managers. Where such malicious or

false allegations are discovered, the person who made the allegations must be subjected to firm disciplinary action. Such disclosures are not protected by the Protected Disclosures Act.

9.1.5. The Municipality recognizes that employees or councillors will be concerned about potential victimization, recrimination and even threats to their personal safety as a consequence of disclosing such fraudulent and/or corrupt activities. The Municipality shall provide measures to protect the information and the identity of the person (when such protection is required).

9.2. HARRASSMENT

9.2.1. The Municipality acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for any fraudulent or corrupt conduct or irregularity.

9.2.2. The Municipality shall not tolerate harassment or victimization and shall take action to protect employees or councillors when they report an irregularity in good faith.

9.2.3. Any act of harassment or victimization should be reported, in line with the reporting protocol of the Municipality. This does not mean that if an employee is already the subject of a disciplinary process, that action will be halted as a result of making a 'protected disclosure' in terms of the Protected Disclosure Act.

9.3. CONFIDENTIALITY

9.3.1. Information relating to fraudulent, corrupt or dishonest acts that is received and reported to any supervisor, manager or an executive director and/ or the municipal manager shall be treated with the utmost confidentiality.

9.3.2. The progression of the investigation will be handled in a confidential manner and will not be disclosed or discussed with any other person(s) other than those who have a legitimate right to such information. This is important in order to avoid harming the reputations of the suspected person(s) who may be subsequently found innocent of any wrongful conduct.

9.4. ANONYMOUS ALLEGATIONS

9.4.1. The Municipality encourages employees or councillors to put their names to allegations of acts of corruption and/or fraud. Nevertheless they will be followed up at the discretion of the Municipality. This discretion will be applied by taking into account the following:

- (a) the seriousness of the issue raised;
- (b) the credibility of the concern; and
- (c) the likelihood of confirming such an allegation

9.5. FALSE ALLEGATIONS

9.5.1. Employees or councillors must understand the implications (resources and costs) of undertaking investigations and should therefore guard against making allegations, which are false and made with malicious intent.

9.5.2. If in the course of the investigation it should be found that the allegations were made with malicious intent, such allegations shall be treated in a very serious light. The employee concerned must be subjected to a disciplinary enquiry. Should a councillor be involved, the Code of Conduct for Councillors shall be applied.

10. APPLICATION OF PREVENTION CONTROLS AND DETECTION MECHANISMS

10.1. In all instances where incidents of fraud, corruption, theft, maladministration and other similar irregularities of this nature take place,

Directors are required to immediately review the controls which have been breached in order to prevent similar irregularities from taking place in future. The head of Internal Audit should be consulted when necessary for assistance in this regard.

11. CONFLICT OF INTEREST

- 11.1. 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 requirement 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.
- 11.2. Notwithstanding what appears in Schedule 1 of item 6(2)(a)(i) and Schedule 2 item 4(2)(a)(i) of the Systems Act, any person who is “in the service of the state” as defined in the MFMA Supply Chain Management Regulations is prohibited from 1 July 2005, under regulation 44 of the said regulations, from conducting business with or being awarded tenders by the Municipality or any other organ of state.
- 11.3. Furthermore, it should be noted that the disclosure of business interests as originally contemplated in items 6(2)(a)(i) of Schedule 1 and 4(2)(a)(i) of Schedule 2 of the Systems Act, shall no longer enable councillors and/or officials to conduct business with the Municipality or any other organ of state. Section 44 of the SCM Regulations (Act No. 27636 of 2005) prohibits the awards of tenders to any person(s) who is in the service of the state.
- 11.4. Employees and councillors must comply with section 45 and other applicable sections of the SCM Regulations. Such regulations stipulate requirements for disclosure with regard to awards in excess of R2000.00 to close family members such as a spouse, child or parent of a person who is in the

service of the state or has been in the service of the state for the past twelve months.

- 11.5. Furthermore, the Supply Chain Management Policy provides directives for appropriate ethical behaviour with regard to gifts, awards, and/or special favours made to councillors or officials of the Municipality. Such directives shall be read in conjunction with the code of conduct for councillors and employees as contained in schedule 1 and 2 of the Systems Act. Should any conflict of interest arise, except with regard to section 11.3 of this policy, such interest(s) shall be declared in writing to Council.

12. TRAINING, EDUCATION AND AWARENESS

- 12.1. It is the responsibility of the Municipal Manager to ensure that all employees and councillors receive appropriate training and education with regard to this policy.

13. ADMINISTRATION

- 13.1. The custodian for the implementation of this policy is the Municipal Manager.

14. ADOPTION AND IMPLEMENTATION

- 14.1. This policy shall take effect on the date of Council resolution. It shall be reviewed as and when required.

15. POLICY REVIEW

This policy will be reviewed and amended on an annual basis or each time any Act or Conditions of Service or other agreements deem it necessary. All proposed amendments will serve before the Local Labour Forum for recommendations and the Council for approval.