

INTRODUCTION

Why a policy on anti-corruption?

The Constitution enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom.

The Constitution places a duty on the municipality to respect, protect, promote and fulfill all the rights as enshrined in the Bill of Rights;

The Constitution requires that the public administration must be governed by the democratic values and principles enshrined in the constitution, including the following principles:

- (a) promoting and maintaining a high standard of professional ethics;
- (b) accountability.
- (c) transparency

Corruption and related corrupt activities in the municipal environment undermine these rights, endanger the stability and security of our society, undermine the institutions and values of democracy, jeopardise sustainable development and the credibility of the municipality.

Corruption furthermore-

- adversely affects all sectors in society and impacts most directly on the poor;
- corrodes the ethos of democracy and good governance in local government;
- depletes both the municipality and civil society of scarce resources that are needed to ensure economic prosperity, equality and a better life for all; and
- is an obstacle to development.

The council of the municipality is therefore dedicated to honour its constitutional duties and openly denounces in this policy all forms of criminal and other irregular conduct in the municipality and commits itself to the eradication of such conduct with all the powers at its disposal.

Purpose

The purpose of this policy is to provide employees, councillors and other stakeholders (such as the public, service providers and non-government organisations) with some essential information regarding the municipality's anti-corruption strategy and the rights and responsibilities of the various role players in combating not only corruption but all forms of criminal and other irregular conduct in the municipality.

Contents

The policy first of all explores the law relative to corruption and thereafter provides in practical terms a look at corruption in the municipal environment before offering guidelines on and measures for combatting the crime. Lastly, the council openly commits itself to the fight against corruption and declares its intentions on how to achieve this goal.

THE LEGAL CONTEXT**1. LEGAL FRAMEWORK**

The following legislation, deals with corruption in the municipal environment and appropriate provisions thereof inform this policy :

- Local Government: Municipal Systems Act, No. 32 of 2000 (the 'MSA')
- Local Government: Municipal Finance Management Act, No. 56 of 2003 (the 'MFMA')
- Prevention And Combating of Corrupt Activities Act, No. 12 of 2004 (the 'PACCA')
- Protected Disclosures Act, No. 26 of 2000 (the 'PDA')
- Electronic Communications and Transactions Act, No. 25 of 2002 (the 'Electronic Communications Act')

1.1 The MSA

Section 106 requires the MEC who has reason to believe that maladministration, fraud, corruption or any other serious malpractice has occurred or is occurring in a municipality to, request the council or municipal manager to provide the MEC with information in relation thereto or to investigate the matter.

The MSA also introduces a number of codes of conduct that contain important provisions relative to corruption and related corrupt activities, viz-

- Section 54: Code of Conduct for councillors
- Section 69: Code of Conduct for municipal staff members
- Section 93L: Code of Conduct for directors and members of staff of municipal entity.

1.2 The MFMA

Section 32 places an obligation on the accounting officer to report to the South African Police Service all cases of alleged—

- (a) irregular expenditure that constitute a criminal offence; and
- (b) theft and fraud that occurred in the municipality.

Section 67 places an obligation on the accounting officer to ensure that organisations and bodies outside government, to whom funds¹ are transferred, implements effective, efficient and transparent financial management and internal control systems to guard against fraud, theft and financial mismanagement;

Section 112 requires that the municipality's supply chain management policy must be fair, equitable, transparent, competitive and cost-effective and include at least the following:

- 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;
- 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;
- measures for -
 - combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and
 - promoting ethics of officials and other role players involved in municipal supply chain management;
- 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 councillors² or officials³.

¹ otherwise than in compliance with a commercial or other business transaction, e.g. donations and allocations

² In contravention of item 5 or 6 of the Code of Conduct (Councillors)

³ In contravention of item 4 or 5 of the Code of Conduct (Staff)

Section 115 places an obligation on the accounting officer to take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.

1.3 The PACCA

The act provides for a host of matters connected with the prevention and combating of corrupt activities. Most important for local government are those provisions that-

- provide for the strengthening of measures to prevent and combat corruption and corrupt activities;
- provide for the offence of corruption and offences relating to corrupt activities; and
- place a duty on certain persons holding a position of authority to report certain corrupt transactions

The act introduces a general offence of corruption and specific offences in regard to certain persons or activities; of importance to local government are-

- Offences in respect of corrupt activities relating to public officers (s. 4);
- Offences in respect of corrupt activities relating to members of legislative authority (s.7);
- Offences of receiving or offering of unauthorised gratification by or to party to an employment relationship (s.10);
- Offences in respect of corrupt activities relating to contracts (s.12);

- Offences in respect of corrupt activities relating to procuring and withdrawal of tenders (s.13); and
- Offence relating to acquisition of private interest in contract, agreement or investment of public body (s.17); and
- Intentional interference with, hindering or obstruction of investigation of offence (s.19).

Other offences created by the act which are also of importance to local government are-

- Accessory to or after offence (s.20); and
- Attempt, conspiracy and inducing another person to commit offence (s.21)

The act also places a duty on certain persons to report corrupt transactions.

1.4 The PDA

The main aim of the act is to make provision for-

- procedures in terms of which employees may disclose information regarding unlawful or irregular conduct by the council or other employees in the employ of the municipality; and
- to provide for the protection of employees who make a disclosure regarding such unlawful or irregular conduct.

Later in the policy guidance is provided on how to give effect to these goals in the workplace.

1.5 The Electronic Communications Act

The object of the Act is generally to enable and facilitate electronic communications and transactions in the public interest. The act contains an important chapter dealing with cyber crime. In sections 86, 87 and 88 it creates a number of offences, namely-

- unauthorised access⁴ to or interception of data;
- unauthorised interference with data in a way which causes such data to be modified, destroyed or otherwise rendered ineffective;
- unlawful production, sale, use, distribution or possession of any device or component, which is designed to overcome security measures for the protection of data, or the performance of any such act with regard to a password, access code or any other similar kind of data with the intention to unlawfully utilise such item;
- utilisation of any device or computer program to unlawfully overcome security measures designed to protect data of access thereto;
- interference with access to an information system so as to constitute a denial, including a partial denial, of service to legitimate users;
- any of the acts described above, for the purpose of obtaining any unlawful proprietary advantage by undertaking to cease or desist from such action, or by undertaking to restore any damage caused as a result of those actions;
- any of the acts described above, for the purpose of obtaining any unlawful advantage by causing fake data to be produced with the intent that it be considered or acted upon as if it were authentic; and
- aiding and abetting someone to commit any of the offences referred to above.

2. DEFINITIONS

⁴ “access” includes the actions of a person who, after taking note of any data, becomes aware of the fact that he or she is not authorised to access that data and still continues to access that data; see section 85

Terms often used in the policy have the following meaning-

“council” means the municipal council of the municipality;

“municipality” when referred to as—

- (a) a corporate body, means a municipality as described in section 2 of the Municipal Systems Act; and
- (b) a geographic area, means the municipal area of Beaufort West, determined in terms of the Local Government: Municipal Demarcation Act, 1998 (No. 27 of 1998);

“Code of Conduct” in relation to -

- (a) a councillor, means the Code of Conduct set out in Schedule 1; and
- (b) a staff member, means the Code of Conduct set out in Schedule 2;
- (c) a director of a municipal entity, means the Code of Conduct set out in Schedule 3;
- (d) a member of staff of a municipal entity, means the Code of Conduct set out in Schedule 4.

3. DEFINITION OF CORRUPTION

The PACCA does not provide us with a textbook definition of the term ‘corruption’. However in section 3 it describes the circumstances generally under which an action will constitute the 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; or
 - (bb) misuse or selling of information or material acquired in the course of the, 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.

The elements are analysed hereunder.

3.1 The author

The author of the conduct, i.e. to accept or give a gratification, can be any person. The specific persons identified in the act and translated into the municipal environment are-

- the 'public officer', being an official of the municipality⁵;
- a 'member of legislative authority', being a councillor⁶;

The author need not even personally (direct) accept or give the gratification. The offence is committed even if it was done indirectly.

3.2 The act

⁵ According to the PACCA it means any person who is a member, an officer, an employee or a servant of a public body and public body" means any municipality in the local sphere of government.

⁶ According to the PACCA it means the legislative authority referred to in section 43 of the Constitution, i.e. the municipal council.

The act can be twofold in nature-

- *Acceptance*

To accept any gratification; to agree to accept any gratification; or to offer to accept any gratification, includes⁷ to -

- (i) demand, ask for, seek, request, solicit, receive or obtain;
- (ii) agree to demand, ask for, seek, request, solicit, receive or obtain; or
- (iii) offer to demand, ask for, seek, request, solicit, receive or obtain,

any gratification.

- *Giving*

To give to any other person any gratification; or to agree to give to any other person any gratification; or to offer to give to any other person any gratification includes⁸ 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.

3.3 The object of the act: a gratification

⁷ Section (3)(a) of the PACCA

⁸ Section (3)(b) of the PACCA

A gratification must be *accepted* or *given*. A gratification according to the PACCA definition includes-

- (a) money, whether in cash or otherwise;
- (b) any donation, gift, loan, fee, reward, valuable security⁹, property¹⁰ or interest in property of any description, whether movable or immovable, or any other similar advantage;
- (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;
- (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;
- (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (f) any forbearance to demand any money or money's worth or valuable thing;
- (g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;
- (h) any right or privilege;
- (i) any real or pretended aid, vote, consent, influence or abstention from voting; or
- (j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage;

The above list is not exhaustive.

⁹ According to PACCA "valuable security" means any document-

- (a) creating, transferring, surrendering or releasing any right to, in or over property;
- (b) authorising the payment of money or delivery of any property; or
- (c) evidencing the creation, transfer, surrender or release of any such right, the payment of money or delivery of any property or the satisfaction of any obligation.

¹⁰ According to the PACCA "property" means money or any other movable, immovable, corporeal or incorporeal thing, whether situated in the Republic or elsewhere and includes any rights, privileges, claims, securities and any interest therein and all proceeds thereof

3.4 The benefit of the gratification

The acceptance of a gratification need not be for the benefit of the receiver only. The offence is committed even if some other person receives or part of the benefit.

3.5 The reciprocal act

The reciprocal act must be committed by-

- the author himself or herself; or
- another as a result of the influence by the author

The nature of the reciprocal act may differ from author to author, depending on whether the author is an official or councillor or depending on the type of function performed, e.g. concluding an agreement, procuring goods, etc.

3.6 The author of the reciprocal act

3.6.1 The public officer¹¹ (Official)

The reciprocal actions of an official includes -

- (a) voting at any meeting of the municipality, i.e. council and committee meetings;
- (b) performing or not adequately performing any official functions;
- (c) expediting, delaying, hindering or preventing the performance of an official act;
- (d) aiding, assisting or favouring any particular person in the transaction of any business with the municipality;

¹¹ In terms of PACCA (see the definition) it is an employee of the municipality, but not a councillor

- (e) aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with the municipality;
- (f) showing any favour or disfavour to any person in performing a function as an official;
- (g) diverting, for purposes unrelated to those for which they were intended, any property belonging to the municipality which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or
- (h) exerting any improper influence over the decision making of any person performing functions in the municipality.

The PACCA also stipulates that any such act, also includes an omission; e.g. a refusal to vote or to consider a matter over which such employee has discretionary power.

3.6.2 Member of the legislative authority¹²/ Councillor

The reciprocal actions of a councillor includes –

- (a) absenting himself or herself from;
- (b) voting at any meeting of;
- (c) aiding or assisting in procuring or preventing the passing of any vote in;
- (d) exerting any improper influence over the decision making of any person performing his or her functions as a member of; or

¹²

In terms of PACCA (see the definition) it is a councillor of the municipality.

- (e) influencing in any way, the election, designation or appointment of any functionary to be elected, designated or appointed by,

the council or of any committee of the council.

The PACCA also stipulates that any such act, also includes an omission; e.g. a refusal to vote.

3.6.3 Official and Councillor

A councillor or official commits the offence of receiving or offering an unauthorised gratification if such councillor or official -

- (a) is party to an employment relationship¹³ 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) 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

Note that the acceptance or giving of an authorised gratification is not unlawful. Examples of such lawful gratification are 'remuneration' and 'labour/services'

3.7 The reciprocal act relating to specific matters

3.7.1 Contracts

¹³ According to PACCA "person who is party to an employment relationship", includes any person who in any manner assists in carrying on or conducting the business of an employer;

In terms of section 12 (1) of the PACCA any person is guilty of the offence of corrupt activities relating to contracts, if such person 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 that other person or 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,
 - (i) in order to improperly influence, in any way-
 - (aa) the promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or
 - (bb) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or
 - (ii) as a reward for acting as contemplated in paragraph (a),

In terms of section 12 (2) of PACCA any person who, in order to obtain or retain a contract with a public body or as a term of such contract, directly or indirectly, gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person-

- (a) for the purpose of promoting, in any way, the election of a candidate or a category or party of candidates to the municipal council; or
- (b) with the intent to influence or affect, in any way, the result of an election conducted for the purpose of electing persons to serve as members of the municipal council,

is guilty of an offence.

3.7.2 Procuring and withdrawal of tenders

In terms of section 13 (1) of PACCA 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 tender for that contract which has as its aim to cause the tenderee 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.

In terms of section 13 (2) of PACCA 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.

3.8 The act and reciprocal act must relate to corrupt activities

The act and reciprocal act must –

- amount to 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;
- amount to misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
- amount to -
 - the abuse of a position of authority;
 - a breach of trust; or

- the violation of a legal duty or a set of rules;
- be designed to achieve an unjustified result; or
- amount to any other unauthorised or improper inducement to do or not to do anything,

4. AIDING AND ABETTING IN CORRUPTION

In terms of section 21 of the PACCA any person who -

- (a) attempts;
- (b) conspires with any other person; or
- (c) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person,

to commit an offence in terms of that act, also commits an offence.

Section 88 of the Electronic Communications Act also makes it an offence to aid and abett someone to commit any of the offences in the act.

5. DUTY TO REPORT CORRUPT TRANSACTIONS.

In terms of section 34 of the PACCA, 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 an offence of corruption 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. Failure to comply constitutes an offence.

The Code of Conduct (Staff)¹⁴ also places an obligation on officials, viz

13. Reporting duty of staff members.

Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff

¹⁴ Item 13

member must without delay report the matter to a superior officer or to the speaker of the council.

6. MANIFESTATIONS OF CORRUPTION

What follows is an illustration of the manifestations of corruption that can occur in the municipal environment and it is by no means complete or exhaustive. Corruption appears in various permutations and degrees of intensity, e.g. -

- Bribery
- Embezzlement
- Fraud
- Extortion
- Abuse of power
- Conflict of interest
- Abuse of privileged information
- Favouritism
- Nepotism

6.1 Bribery

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of a public servant. This benefit may accrue to the public servant or other person or entity.

Examples: A councillor is offered, promised or given a benefit for voting on a matter before council in a particular manner; A traffic officer accepts a cash payment in order not to issue a speed fine.

6.2 Embezzlement

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

Example: A staff member steals medicine and in turn sells this to private pharmacists.

6.3 Fraud

This involves actions or behaviour by a public servant or other person or entity that fools others into providing a benefit that would not normally accrue to the public servant, or other persons or entity.

Example: An official registers a fictitious employee in order to collect the salary of that fictitious employee.

6.4 Extortion

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

Example: A health inspector threatens to close a restaurant on the basis of fabricated health transgressions unless the owner provides the inspector with regular meals.

6.5 Abuse of power

This involves a public servant using his or her vested authority to improperly benefit or to improperly discriminate against another public servant, person or entity.

Example: During a tendering process but before actual selection of a successful contractor, the head of department expresses his or her wish to see the contract awarded to a specific person.

6.6 Conflict of interest

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

Example: A public servant considers tenders for a contract and awards the tender to a company of which his or her partner is a director.

The PACCA deals specifically with the offence relating to the acquisition by officials of private interest in contact, agreement or investment of the municipality. It provides¹⁵ –

¹⁵ Section 17

(1) Any public officer who, subject to subsection (2), acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that public body, is guilty of an offence.

(2) Subsection (1) does not apply to—

- (a) a public officer who acquires or holds such interest as a shareholder of a listed company;
- (b) a public officer, whose conditions of employment do not prohibit him or her from acquiring or holding such interest; or
- (c) in the case of a tender process, a public officer who acquires a contract, agreement or investment through a tender process and whose conditions of employment do not prohibit him or her from acquiring or holding such interest and who acquires or holds such interest through an independent tender process.

As regards subsection (2)(c), regard must be had to the provisions of the Code of Conduct (Staff). It requires¹⁶ that, except with the prior consent of the council, an official may not -

- (a) be a party to a contract for—
 - (i) the provision of goods or services to the municipality; or
 - (ii) the performance of any work for the municipality otherwise than as an official;
- (b) obtain a financial interest in any business of the municipality.

6.7 Abuse of privileged information

¹⁶ Item 4(2)

This involves the use of privileged information and knowledge that a public servant 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 him or herself.

Example: An official has, as a result of his or her office, knowledge of residential areas that are to be rezoned as business areas, and then informs friends and family to acquire the residential properties with a view to sell these as business properties at a premium.

6.8 Favouritism

This involves the provision of services or resources according to personal affiliation (for example ethnic or religious) of a public servant.

Example: A regional manager in a particular province ensures that only persons from the same ethnic group are successful in tendering for the supply of food.

6.9 Nepotism

This involves a public servant ensuring that family members are appointed to public service positions or that family members receive contracts from the municipality.

Example: An official with the required power appoints his or her sister's child to a position when a more suitable candidate has applied for the position.

7. INDICATORS OF FRAUD AND CORRUPTION

The following are indicators (red flags) that could be an indication of the potential existence of corruption:

Indicators that individuals may be susceptible to committing fraud

- Unusually high personal debts
- Living beyond one's means
- Excessive gambling habits
- Alcohol / drug problems
- Undue family or peer pressure to succeed
- Feeling of being underpaid

- Feeling of insufficient recognition for job performance
- Close association with suppliers
- Wheeler-dealer attitude
- Desire to “beat the system”
- Criminal record
- Not taking vacations
- Not allowing someone access to area of responsibility
- Undisclosed conflict of interest and
- Rationalisation for conflicting behavioural patterns.

Indicators that a department of the municipality may be a target for fraudsters

- A department that lacks competent personnel
- A department that does not enforce clear lines of authority and responsibility
- A department that does not enforce proper procedures for authorization of transactions
- A department that lacks adequate documents and records
- No separation of responsibilities between the various duties within a business cycle
- Inadequate disclosure of personal investment and other income;
- Operating on a crisis basis
- Too much trust placed on key employees
- Failure to discipline violators of municipal policy; and
- Inadequate background and reference checking before engaging new employees.

Indicators of opportunities to commit fraud

- Rapid turnover of key employees through resignation or dismissal
- Dishonest and dominant management
- Inadequate training programmes
- Complex business structures
- No effective internal audit function
- Continuous problems with regulatory agencies and
- Large year-end and unusual accounting transactions.

MEASURES TO COMBAT CORRUPTION

8. INVESTIGATIONS

Any indication of corruption, theft, maladministration or any other dishonest activities of a similar nature will be investigated and followed up by the application of all remedies available within the full extent of the law.

An investigation may result in the search of the accused person or residence, subject however thereto that such searches are conducted in strict accordance with any legislation applicable thereto (e.g. the Criminal Procedure Act), with due regard to fundamental human rights as enshrined in the constitution, for reasons that will suit the public interest and in terms of a court order.

An investigation may require the search of an official's office furniture, computer, drawers, files or locker in the workplace. A search of this kind may only be permitted-

- when there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of corruption, theft, maladministration or any other dishonest activities of a similar nature;
- when the search is necessary for a non-investigatory work-related purpose (for example, when an employee is unexpectedly unavailable and information is required off the employees computer);
- where the measures adopted are reasonable in relation to the objectives of the search and are not excessively intrusive in light of the nature of the misconduct. In other words, searches should be tailor work-related to the alleged misconduct.;
- if due care has been taken not to breach the Constitutional right to privacy and dignity.

An investigation must also determine the extent of the damage or pecuniary loss to the municipality and establish whether disciplinary, criminal or civil charges could be instituted against the person accused of corruption, theft, maladministration or any other dishonest activities of a similar nature.

Where appropriate one or more of the following measures will be introduced-

- Disciplinary action

- Criminal Proceedings
- Civil Proceedings

9. CONTROL MEASURES

Appropriate prevention and detection controls will be applied. These include the controls and checking mechanisms as prescribed in existing policies, procedures and other relevant prescripts and systems of internal control.

The municipal manager must as soon as possible introduce a **response plan** for the purpose of preventing and detecting incidents of corruption, theft, maladministration or any other dishonest activities of a similar nature.

10. DUTY TO REPORT INCIDENTS OF CORRUPTION, THEFT, MALADMINISTRATION ETC

It is the responsibility of all councillors and officials of the municipality to report all incidents of corruption, theft, maladministration or any other dishonest activities of a similar nature to the municipal manager or his or her manager. If the councillor is not comfortable reporting such matters to the municipal manager, he or she should report the matter to the mayor. If the official is not comfortable reporting such matters to his or her manager, he or she should report the matter to his or her manager's superior, with final recourse to the Head of Internal Audit or municipal manager. Councillors or officials may also report incidents by using the **municipal hotline reporting facility**, if they wish to remain anonymous or for any other reason.

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

11. RECOVERY OF LOSSES AND DAMAGES

The municipal manager will take appropriate legal recourse to recover losses or damages arising from corruption, theft or maladministration.

The municipal manager will lay criminal charges by reporting incidents of corruption, theft or maladministration to the South African Police Services.

Where an official is alleged to have committed an act of corruption, theft or maladministration, the manager must institute disciplinary proceedings within a reasonable period, in terms of the disciplinary code.

12. PROTECTION OF WHISTLE BLOWERS

12.1 What is whistle blowing?

Whistle blowing in the municipal environment is the process by which councillors, officials or other persons can raise a concern about serious malpractice within the municipality. It allows for early detection in order that investigations can be conducted and corrective action taken before too much damage has been caused.

Prior to February 2000, South Africa had no whistle blowing legislation. The PDA aims to reassure workers with genuine concerns about malpractice that there is a safe alternative to silence, by providing protection against victimization to those responsible employees who speak up when they see something going wrong. Employees who are victimized and subjected to an occupational detriment for blowing the whistle on improprieties now have a legal remedy against their employer.

12.2 The PDA

The PDA makes provision for the protection of employees who make a disclosure that is protected in terms of this Act.

A disclosure in the municipal environment and in relation to corruption is regarded as¹⁷ any disclosure of information regarding any conduct of the council or councillor, or an employee, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of the following:

- that a criminal offence has been committed, is being committed or is likely to be committed;

¹⁷ see definition in the act

- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- that a miscarriage of justice has occurred, is occurring or is likely to occur; or
- that any matter referred to above has been, is being or is likely to be deliberately concealed.

Any disclosure made in good faith and substantially in accordance with any procedure prescribed by the employee's employer for reporting is considered a protected disclosure under this Act. An employee making a protected disclosure is protected from victimisation on the basis of the disclosure. Section 3 provides as follows-

No employee may be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure.

The term 'occupational detriment' means¹⁸-

- (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 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.

An employee may make a disclosure to a legal adviser, the council, the national or provincial minister responsible for local government, the Public Protector or the Auditor-General¹⁹.

¹⁸ see definition in the act

¹⁹ see sections 5, 6, 7 and 8 of the act.

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

Managers should discourage employees and officials from making allegations which are false and made with malicious intentions. Where such malicious or false allegations are discovered, the person who made the allegations must be subjected to firm disciplinary action. The Protected Disclosures Act does not protect false disclosures.

COMMITMENT TO FIGHT CORRUPTION AND DECLARATION OF INTENT

The council of the municipality call on all councillors, staff members and the community to unite in the fight against corruption in the municipality and declare its commitment-

- To promote leadership in all sectors of society that is committed to the creation of a culture of integrity and to restore confidence in the fight against corruption.
- To foster a greater culture of transparency and accountability in the municipality.
- To encourage whistle blowing and reporting, and strengthen measures to protect all persons from victimisation where they expose corrupt and unethical practises.
- To actively support and engage in ethics training and awareness programme in the municipality.
- To uphold the values and principles of the various codes of conduct and to enforce it diligently.
- To promote, support and strengthen co-operation and co-ordination with the different agencies responsible for combating corruption.
- To support the establishment of a database for blacklisting, and the development of a mechanism for information sharing across all sectors, public and private.
- To strengthen capacity for the implementation of anti-corruption measures in the municipality
- To assist law enforcement agencies to identify and recover assets obtained through illicit or corrupt means.
- To strengthened all oversight structures in the municipality.
- To encourage business and civil society to expose corrupt and unethical practices in the municipality

Schedule 1

CODE OF CONDUCT FOR COUNCILLORS**Preamble.**

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

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.
- (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.

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.

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.

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.
- (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.
- (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.

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.
- (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.

Schedule 2

CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS

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

2. General conduct.

A staff member of a municipality must at all times—

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

3. Commitment to serving the public interest.

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

- (a) implement the provisions of section 50 (2);
- (b) foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
- (c) promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;
- (d) obtain copies of or information about the municipality’s integrated development plan, and as far as possible within the ambit of the staff member’s job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;
- (e) participate in the overall performance management system for the municipality, as well as the staff member’s individual performance appraisal and reward system, if such exists, in order to maximise the

ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.

4. Personal gain.

- (1) A staff member of a municipality may not—
 - (a) use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person; or
 - (b) take a decision on behalf of the municipality concerning a matter in which that staff member, or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.
- (2) Except with the prior consent of the council of a municipality a staff member of the municipality may not—
 - (a) be a party to a contract for—
 - (i) the provision of goods or services to the municipality; or
 - (ii) the performance of any work for the municipality otherwise than as a staff member;
 - (b) obtain a financial interest in any business of the municipality; or
 - (c) be engaged in any business, trade or profession other than the work of the municipality.

5. Disclosure of benefits.

- (1) A staff member of a municipality who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the council.
- (2) This item does not apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.

6. Unauthorised disclosure of information.

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

- (2) For the purpose of this item “privileged or confidential information” includes any information—
 - (a) determined by the municipal council or any structure or functionary of the municipality to be privileged or confidential;
 - (b) discussed in closed session by the council or a committee of the council;
 - (c) disclosure of which would violate a person’s right to privacy; or
 - (d) declared to be privileged, confidential or secret in terms of any law.
- (3) This item does not derogate from a person’s right of access to information in terms of national legislation.

7. Undue influence.

A staff member of a municipality may not—

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

8. Rewards, gifts and favours.

- (1) A staff member of a municipality may not request, solicit or accept any reward, gift or favour for —
 - (a) persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;
 - (b) making a representation to the council, or any structure or functionary of the council;
 - (c) disclosing any privileged or confidential information; or
 - (d) doing or not doing anything within that staff member’s powers or duties.
- (2) A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member, would constitute a breach of subitem (1).

9. Council property.

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

10. Payment of arrears.

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

11. Participation in elections.

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

12. Sexual harassment.

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

13. Reporting duty of staff members.

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

14. Breaches of Code.

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

14A. Disciplinary steps.

(1) A breach of this Code is a ground for dismissal or other disciplinary steps against a staff member who has been found guilty of such a breach.

(2) Such other disciplinary steps may include—

- (a) suspension without pay for no longer than three months;
- (b) demotion;

- (c) transfer to another post;
- (d) reduction in salary, allowances or other benefits; or
- (e) an appropriate fine.

Schedule 3

CODE OF CONDUCT FOR DIRECTORS OF A MUNICIPAL ENTITY

In terms of section 93L(1) of the MSA the Code of Conduct for councillors contained in Schedule 1 applies, with the necessary changes, to directors of a municipal entity.

In the application of item 14 of Schedule 1 to directors of a municipal entity, that item must be regarded as providing as follows:

14. Breaches of Code.

- (1) The board of directors of a municipal entity may—
 - (a) investigate and make a finding on any alleged breach of a provision of this Code by a director; or
 - (b) establish a special committee—
 - (i) to investigate and make a finding on any alleged breach of a provision of this Code by a director; or
 - (ii) to make appropriate recommendations to the board of directors.
- (2) If the board of directors or special committee finds that a director has breached a provision of this Code, the board of directors may—
 - (a) issue a formal warning to the director;
 - (b) reprimand the director;
 - (c) fine the director; or
 - (d) recommend to the parent municipality that the director be removed or recalled in terms of section 93G.
- (3) The board of directors of a municipal entity must inform a parent municipality of that entity of any action taken against a director in terms of subsection (2)

Any reference in Schedule 1 to a “councillor”, “MEC for local government in the province”, “municipal council”, “municipality” and “rules and orders” must, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a director of a municipal entity, parent municipality, board of directors, municipal entity and procedural rules, respectively.

Schedule 4

CODE OF CONDUCT FOR MEMBERS OF STAFF OF A MUNICIPAL ENTITY

In terms of section 93L(2) of the MSA the Code of Conduct for municipal staff members contained in Schedule 2 applies, with the necessary changes, to members of staff of a municipal entity.

Any reference in Schedule 2 to a “councillor”, “MEC for local government in the province”, “municipal council”, “municipality” and “rules and orders” must, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a director of a municipal entity, parent municipality, board of directors, municipal entity and procedural rules, respectively.