MUSINA LOCAL MUNICIPALITY

ANTI- FRAUD AND CORRUPTION POLICY

2021/22

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MUSINA LOCAL MUNICIPALITY

1. PURPOSE

The Anti - Fraud and Corruption Policy outlines Musina Local Municipality's (MLM) focus and commitment to the reduction and possible eradication of incidences of fraud and misconduct. The policy is established to facilitate the development of controls which will assist in the prevention and detection of fraud and corruption, as well as provide guidelines as to how to respond should instances of fraud and corruption be identified

2. DEFINITION OF FRAUD AND CORRUPTION

2.1 FRAUD

Fraud is defined ***as "the unlawful and intentional making of misrepresentation which causes actual and or potential prejudice to another"*** in terms of the common law offence of South Africa. In other words, Fraud can be described as any conduct or behaviour of which a dishonest representation and/or appropriation forms an element.

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

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

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

2.2 CORRUPTION

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

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

3. LEGAL MANDATES

This policy has been compiled in accordance with:-

- Local Government anti-corruption strategy 2016
- 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.
- Code of Conduct for Councillors Schedule 1 of the Municipal Systems Act 2000
- Code of Conduct for Municipal Staff Schedule 2 of the Municipal Systems Act 2000

4. OBJECTIVES OF THE POLICY

- This policy also sets out the stance of the MLM with regard to fraud and corruption, 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.
- 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.
- The 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.
- 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. SCOPE OF THE POLICY

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This policy applies to all councillors, Section 57 managers, employees, stakeholders, contractors, vendors / suppliers and any other party doing business with the municipality.

6. POLICY STATEMENTS

It is the policy of MLM that fraud, corruption, maladministration or any other dishonest activities of a similar nature will not be tolerated. Such activities will be investigated and actions instituted against those found responsible. The features of this process are outlined in the anti-fraud and corruption strategy. Such actions may include disciplinary procedures, the laying of criminal charges and civil recovery where applicable. **Refer to MLM Anti- Fraud and Corruption Strategy 2021/22**

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

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

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

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

7. INVESTIGATIONS

7.1 INVESTIGATIVE PROCEDURES

MLM has developed investigation procedures to ensure uniformity in the reporting and investigation of incidents of fraud and corruption.

- Reporting of suspicious acts;
- Preliminary investigation of incidents reported;
- Investigation procedure;
- Involvement of other law enforcements agencies;
- Procedure in taking resolutions; and
- Recovery of loss.

7.2 RESPONSIBILITY TO CONDUCT INVESTIGATIONS

The responsibility to conduct investigations relating to the actions listed in this policy resides with Council, the Accounting Officer and management within the municipality who have the advisory and supporting assistance from departments and external state agencies which may include any of the following:

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

8. ANTI-FRAUD PROGRAMMES

MLM has developed the following programmes to address the threat of fraud and corruption:

- Recruitment policy;
- Accounting and operational policies;
- Fraud awareness training (indicators of fraud);
- Dysfunctional environment assessment;
- Fraud awareness audit;
- Fraud risk assessment;
- Code of ethics and conduct;
- Investigation procedure.

9. PROTECTED DISCLOSURE

9.1 PROTECTION OF WHISTLE BLOWERS

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

- Any disclosure made in good faith and in accordance with the procedures outlined in section 11 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.

- 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.

- 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.

- MLM 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).

- A detailed whistleblowing policy, has been developed to state the municipality commitment and outline the process to be followed in blowing the whistle on fraudulent and corrupt activities. **Refer to the MLM Whistle Blowing Policy 2021/22 for detailed information.**

9.2 HARASSMENT

- MLM 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.

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

- 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

- Information relating to fraudulent, corrupt or dishonest acts that is received and reported to any supervisor, manager or a Director and/ or the Accounting Officer shall be treated with the utmost confidentiality.

- 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

- 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

- Should members of the public wish to report allegations of fraud anonymously, they can contact the Mayor, any councillor, the Accounting Officer, any member of senior management, or even the anti-fraud and corruption hotline at, **0800 66 85 38**. The complaints can also be addressed to: -

(Accounting Officer, Private Bag X611, 0900) or phone 015 534 6100.

9.5 FALSE ALLEGATIONS

- Concerns must be raised without malice, in good faith and not for personal gain and the individual must reasonably believe that the information disclosed, and any allegations contained in it deserves investigation.

- 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.

- 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

In all instances where incidents of fraud, corruption, theft, maladministration and other similar irregularities of this nature take place, managers are required to immediately review the controls which have been breached in order to prevent similar irregularities from taking place in future. The Internal Audit Manager should be consulted when necessary for assistance in this regard.

11. CONFLICT OF INTEREST

- 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.

- 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.

- 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 (No.27636 of 2005) prohibits the awards of tenders to any person(s) who is in the service of the state.

- Employees and councillors must comply with section 45 and other applicable sections of the Supply Chain Management 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.

- 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.

12. TRAINING, EDUCATION AND AWARENESS

- It is the responsibility of the Accounting Officer to ensure that all employees and councillors receive training and education with regard to this policy.

- The Accounting Officer will ensure that this policy is widely publicised to all relevant stakeholders (internal and external), and is made available on the municipality's website. The Accounting Officer will also ensure that the contents of this policy are communicated to relevant stakeholders, and displayed in municipal libraries, so that it is accessible to members of the public.

13. ROLE PLAYERS

The municipality has taken a stance that management of fraud and corruption threat like any other risks is the responsibility of everyone in the organisation.
The Accounting Officer has delegated the ownership and communication of fraud risk management to senior management, managers and employees in specific areas of the municipality.

14. POLICY ADMINISTRATION

This policy shall be reviewed annually to reflect the current stance on Fraud and Corruption.
The amendments will be sent to the RMC for recommendation and to Accounting Officer for approval.

OPIBUS LOCA FETA
MUSINA
LOCAL MUNICIPALITY

MLM

REVIEW DATE: **MAY 2021**

COMPILED BY:

..... 31/05/2021

MR. KE RAMUTHIVHELI **DATE**
MANAGER
RISK MANAGEMENT AND SECURITY SERVICES

ENDORSED AND SIGNED FOR & ON BEHALF OF THE COMMITTEE BY:

..... 31/05/2021

MR. FO NDOU **DATE**
CHAIRPERSON: RISK MANAGEMENT COMMITTEE

THE ACCOUNTING OFFICER HAS REVIEWED AND APPROVED THIS POLICY:

..... 31/05/2021

MR. TN TSHIWANAMMBI **DATE**
ACCOUNTING OFFICER

COUNCIL'S APPROVAL

....

COUNCIL RESOLUTION NUMBER **DATE**
MUSINA LOCAL MUNICIPALITY
(RESOLUTION ATTACHED)

OPIBUS LOCA FETA
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