

uMFOLOZI LOCAL MUNICIPALITY



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ANTI-FRAUD AND PREVENTION POLICY

February 2018

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1. PREAMBLE

- 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 administration.

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2. DEFINITIONS

For the purpose of this policy, the following words will be defined as follows:

CFO means the Chief Financial Officer of the uMfolozi Local Municipality;

Constitution means the Constitution of the Republic of South Africa, 1996 (Act. No 108 of 96).

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 uMfolozi Local Municipality.

Councilor means a member of Council of the uMfolozi 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 uMfolozi Local Municipality;

Municipal Manager means the Municipal Manager of the uMfolozi 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; uMfolozi Local Municipality Fraud Prevention and Anti-Corruption Policy
- (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 councilors 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 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 administration 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, Mayor, the Speaker and/or the Chairperson of the Audit Committee.

SAPS mean the South African Police Force of the Republic of South Africa;

Speaker means the speaker of the uMfolozi Local 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 (No. 27636 of 2005).

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3. OBJECTIVES

- 3.1 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 administration, where these dishonest acts subsist.
- 3.2 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 administration by means of the application of the full spectrum of both pro-active and re-active measures at their disposal.
- 3.3 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.
- 3.4 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.

4. APPLICATION

This Policy shall apply to:

- The Mayor
- The Speaker
- Executive Committee members
- Councillors
- Municipal Manager
- Directors
- Any other official and or representative

Specifically authorised to represent the Municipality and on official business of the Municipality.

5. SCOPE OF POLICY

5.1 This policy applies to all corruption, fraud, theft and administration 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.

5.2 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 Mayor as well as between the Council and the Municipal Manager.

6. LEGAL MANADATE

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.

7. POLICY STANCE

The policy stance of uMfolozi Local Municipality is zero tolerance to fraud and corruption. In addition, cases of fraud and corruption will be investigated and followed up by the application of all remedies available within the full extent of the law and the implementation of appropriate prevention and detection controls. These prevention controls include the existing financial and other controls and checking mechanisms as prescribed in the systems, policies and procedures of uMfolozi Local Municipality.

The efficient application of instructions contained in the policies and procedures of uMfolozi Local Municipality, is one of the most important duties to be applied by every employee in the execution of their daily tasks.

8. FRAUD, CORRUPTION, THEFT AND MALADMINISTRATION

8.1 FORMS OF FRAUD AND CORRUPTION

- (a) **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.
- (b) **Embezzlement** this involves theft of resources by persons entrusted with the authority and control of such resources.
- (c) **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 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.
- (d) **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.
- (e) **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.
- (f) **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.
- (g) **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.

8.2 ACTIONS CONSTITUTING FRAUD, CORRUPTION, THEFT AND ADMINISTRATION:

8.2.1 The term fraud, corruption, theft and administration refer to, but is not limited to:

- (a) Any dishonest, fraudulent or corrupt act.
- (b) Theft of funds, supplies, or other assets.
- (c) Administration 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. 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.

9. RESPONSIBILITY TO CONDUCT INVESTIGATIONS

9.1 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.

10. REPORTING OF FRAUD AND CORRUPTION

10.1 Reporting by employees

10.1.1 It is the responsibility of all employees to immediately report all allegations or suspected incidents of fraud and corruption to their immediate managers. Should an employee be concerned that the manager is involved; the report can be made to any other member of management, the Municipal Manager and / or any member of the Ethics Committee.

10.1.2 All managers are responsible for the detection, prevention and investigation of fraud and corruption and must report all incidents and allegations of fraud and corruption to the Municipal Manager and /or to any member of the Ethics Committee, in consultation with the Ethics Committee, the Municipal Manager will initiate an investigation into the matter.

10.2 Reporting by service provider and other stakeholder

10.2.1 uMfolozi Local Municipality encourages members of the public or providers of goods and services who suspect fraud and corruption to contact any member of management, any member of the Ethics Committee, the Municipal Manager and/ or the Mayor.

10.2.2 Should they wish to remain anonymous, anonymous procedure is also available to them.

10.3 Anonymous Allegations

- 10.3.1 Anonymous whistle-blowers call centre will be managed by an independent qualified agent on behalf of the municipality. This call centre will be located at an undisclosed location to ensure independence and confidentiality.
- 10.3.2 Should employees wish to report allegations of fraud and corruption anonymously, the following options will be available via this whistle-blower call centre:
- (a) Employees can call a toll free number on any Telkom phone
 - (b) Fax the document detailing the alleged
 - (c) Post the document detailing the alleged corruption
 - (d) Send the allegations via email
 - (e) Report the alleged corruption directly on the website

11. DEALING WITH ALLEGATIONS WITH FRAUD AND CORRUPTION

11.1 Allegation reported directly to management

- 11.1.1 For issues raised by employees, ratepayers, members of the public or providers of goods /and services, the action taken will depend on the nature of concern. The matters raised will be screened and evaluated and subsequently:
- (a) The managers must report any allegations reported to them by the employees to the Municipal Manager immediately telephonically.
 - (b) The managers can also report the reported allegations to any member of the designed Committees.
 - (c) Managers must report in writing to the Municipal Manager within 24 hours from the time of receiving the allegations.
 - (d) The Municipal Manager, in consultation with the designed Committees must evaluate the allegations for the substances and decide on appropriate cause of action.
 - (e) The Committee should decide whether to investigate internally or source the services of an outside service provider, depending on the seriousness of the allegation.
- 11.1.2 Any fraud and corruption committed by an employee or any other person will be pursuing thorough investigation and to the full extent of the law, including (where appropriate) consideration of:

- (a) In case of employees, taking disciplinary action within a reasonable period of time after the incident as stipulated in disciplinary action procedures;
- (b) Instituting civil action to recover losses
- (c) Initiating criminal prosecution by reporting the matter to the SAPS or any other relevant enforcement agency ; and
- (d) Any other appropriate and legal remedy available.

11.2 Allegation reported via the whistle-blower hotline

- 11.2.1 The centre will receive, screen and evaluate all the allegations received via the centre. The following process will be followed:
- (a) A report of all the allegations will be sent to the Municipality Manager or the chairperson of the Ethics Committee.
 - (b) The committee will further evaluate the allegations and decide on appropriate action.
 - (c) The committee will decide whether to investigate or not based on the nature and substance of the allegation.

12. PROTECTED DISCLOSURE

12.1 PROTECTION OF WHISTLE BLOWERS

- 12.1.1 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.
- 12.1.2 Any disclosure made in good faith and in accordance with the procedures outlined in section 10 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.
- 12.1.3 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.
- 12.1.4 Allegations made by employees who 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.
- 12.1.5 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).

12.2 HARRASSMENT

- 12.2.1 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.
- 12.2.2 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.
- 12.2.3 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.

12.3 CONFIDENTIALITY

- 12.3.1 Information relating to fraudulent, corrupt or dishonest acts that is received and reported to any supervisor, manager or a Director and / or the Municipal Manager shall be treated with the utmost confidentiality.
- 12.3.2 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.

12.4 ANONYMOUS ALLEGATIONS

- 12.4.1 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
- 12.4.2 Should members of the public wish to report allegations of fraud anonymously, they can contact the Mayor, any member of the council, the Municipal Manager, any member of senior management.

12.5 FALSE ALLEGATIONS

- 12.5.1 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.
- 12.5.2 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.

13. APPLICATION OF PREVENTION CONTROLS AND DETECTION MECHANISMS

- 13.1 In all instances where incidents of fraud, corruption, theft, administration 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 Internal Audit Manager should be consulted when necessary for assistance in this regard.

14. CONFLICT OF INTEREST

- 14.1 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.
- 14.2 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.
- 14.3 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 (No.27636 of 2005) prohibits the awards of tenders to any person(s) who is in the service of the state.

- 14.4 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.
- 14.5 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 14.3 of this policy, such interest(s) shall be declared in writing to Council.

15. TRAINING, EDUCATION AND AWARENESS

- 15.1 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.
- 15.2 The Municipal Manager 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 Municipal Manager will also ensure that the contents of this policy are communicated to Ward Councillors, Ward Committee members, and displayed in Municipal Libraries, so that it is accessible to members of the public.

16. ADOPTION AND IMPLEMENTATION

This policy was adopted by the Municipal Council on per Resolution Number:

MAYOR

MUNICIPAL MANAGER