



METSIMAHOLO LOCAL MUNICIPALITY

FRAUD POLICY AND RESPONSE PLAN

(Annexure A to the Anti-Fraud & Corruption Strategy)

TABLE OF CONTENTS

CONTENTS	Page
Glossary of terms	2
1. Background	5
2. Scope of the Policy	5
3. Purpose of the Policy	5
4. Protection of Whistle Blowers	5
5. Reporting procedures and resolution of reported incidents	7
6. Confidentiality	9
7. Publication of sanctions	9
8. Application of prevention controls and detection mechanisms	9
9. Creating awareness	10
10. Administration	10
11. Adoption	10

GLOSSARY OF TERMS

Throughout this document, unless otherwise stated, the words in the first column below have the meanings stated opposite them in the second column (and cognate expressions shall bear corresponding meanings):

“Cabinet”	Parliamentary Cabinet of the Republic of South Africa
“CFO”	Chief Financial Officer
“COGTA”	Department of Co-operative Governance and Traditional Affairs
“Fraud Policy”	Fraud Policy and Response Plan
“LGAS”	Local Government Anti-Corruption Strategy
“MM”	Municipal Manager
“MSA”	Municipal Structures Act, No 17 of 1998
“MFMA”	Municipal Finance Management Act, No.56 of 2003
“SALGA”	South African Local Government Association
“MLM”	Metsimaholo Local Municipality
“The Municipality”	Metsimaholo Local Municipality

Definitions and Dimension of Fraud and Corruption

In terms of the Public Service Anti-Corruption Strategy, it is important to understand the various forms in which corruption manifests itself in the Public Service and elsewhere in society. Below is the list of definitions as of the various forms of fraud and corruption:

- (i) **Fraud** is an unlawful and intentional making of a misrepresentation, which causes actual and/or potential prejudice to another.
- (ii) **Theft** is the unlawful appropriation of movable corporeal property which belongs to and is in the possession of another provided that the intention to appropriate the property includes an intention to permanently deprive the person entitled to the possession of the property.
- (iii) **Corruption**, any person who, directly or indirectly accepts or agrees or offers to accept any gratification from any other person, 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 that amounts to illegal, dishonest, unauthorized, abuse of power, breach of trust, violation of a legal duty or set rules, and designed to achieve an unjustified result.

“Gratification” includes-

- Money, whether in cash or otherwise; and
- Any donation, gift, loan, fee, reward, valuable security, property movable or immovable, or any other similar advantage.

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

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, another person or an entity.

Extortion: 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.

Abuse of power: involves a public servant using his/her vested authority to improperly benefit another public servant, person or entity (or using the vested authority to improperly discriminate against another public servant, person or entity).

Conflict of Interest: 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.

Insider trading/ Abuse of privileged information: involves the use of privileged information and knowledge that an official has, because of his/her office, to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit himself/herself.

Favouritism: involves the provision of services or resources according to personal affiliations (for example ethnic, religious, party political affiliations etc.) of a public servant.

Nepotism: involves a public servant ensuring that family members are appointed to public service position or that family members receive contracts from State resources

1. BACKGROUND

- 1.1 One of the key strategies in detecting fraud, corruption, malpractices and misconduct is through whistleblowing by public servants and members of the public. This policy is intended to reaffirm the Metsimaholo Local Municipality's commitment of a zero tolerance to fraud and corruption by creating channels through which public servants and members of the public should use to report fraud and corruption.
- 1.2 Furthermore, the purpose of this policy is to confirm that the Municipality supports and fosters a culture of whistle blowing.

2. SCOPE OF THE POLICY

- 2.1 This policy is designed to deal with all allegations, attempts and incidents of fraud and corruption impacting or having the potential to impact Metsimaholo Local Municipality.
- 2.2 All employees and management of the Municipality must comply with the spirit and content of the Policy.

3. PURPOSE OF THE POLICY

- 3.1 The purpose of the policy is to provide a means by which staff members may without fear of victimisation, report incident of fraud, corruption, malpractices and misconduct by fellow employees and/ or employer.
- 3.2 The employer and employee have the responsibility to report incidents of fraud, corruption, malpractices and misconduct witnessed in the Municipality.
- 3.3 The employer has the responsibility to take all the necessary steps to ensure that employees who report fraud, corruption, malpractices and misconduct are protected from any occupational detriment.

4. PROTECTION OF WHISTLE BLOWERS

- 4.1. The Protected Disclosures Act, Act 26 of 2000, which became effective in February 2001, provides protection to employees for disclosures made without malice and in good faith, in defined circumstances. In terms of the Protected Disclosures Act, employees can blow the whistle on fraud and corruption in the

working environment without the fear of suffering an occupational detriment as defined by the Act.

4.2. **A disclosure is a “protected disclosure” under the Protected Disclosures Act if:**

- the disclosure contains information about “impropriety” and
- the disclosure has been made to the right person, according to the scheme established by the Act.

4.3. If a disclosure is protected it means that any “occupational detriment” that the employee who made the disclosure subsequently suffers as a result of the disclosure will attract a legal remedy.

4.4. **Occupational detriment** in relation to the working environment means:

- being subjected to any disciplinary action;
- being dismissed, suspended, demoted, harassed, or intimidated;
- being transferred against your will;
- being refused transfer or promotion;
- being refused a reference, or being provided with an adverse reference by the employer; and
- being refused appointment to any employment, profession or office.

4.4. The Municipality’s Management encourages staff to raise matters of concern responsibly through the procedures laid down in this policy document.

4.5 No person will suffer any penalty or retribution for good faith reporting of any suspected or actual incident of fraud and corruption which occurred within the Municipality. All managers should discourage employees or other persons from making allegations, which are false and made with malicious intentions. Where such allegations are discovered, the person who made the allegations must be subjected to firm disciplinary, or other appropriate action.

5. REPORTING PROCEDURES AND RESOLUTION OF REPORTED INCIDENTS

What should an employee do if he/she suspects fraud and corruption?

- 5.1. Any employee of the Metsimaholo Local Municipality who has a reasonable belief that the information concerned shows that or tends to show that a criminal offence has been committed, is being committed or is likely to be committed and /or that an employee has failed, is failing or is likely to fail to comply to any legislative requirements of the public service should report the matter to the Risk Management or the Municipal Manager or the Mayor and/or the Chairperson of the Audit Committee.
- 5.2. Employees may also report allegations of fraud and corruption to the Institutions appointed in terms of chapter 9 of the Constitution of the Republic of South Africa i.e. Office of the Public Protector and the Office of the Auditor General. Should employees wish to report anonymously, they can do so by contacting National Anti-Corruption Hotline that is administered through the Office of the Public Service Commission on 0800 701 701.

What should a member of the public or service providers do if they suspect fraud and corruption?

- 5.3. Metsimaholo Local Municipality encourages members of the public or service providers who suspect fraud and corruption to report the matter to the Municipal Manager or Office of the Public Protector or the Office of the Auditor General or they may contact the National Anti-Corruption Hotline that is administered through the Office of the Public Service Commission.

How will allegations of fraud and corruption be dealt with by the Metsimaholo Local Municipality?

- 5.4. For issues raised by employees, members of the public or service providers, the action taken by the Municipality will depend on the nature of the concern. The matters raised will be screened and evaluated and may subsequently:
 - Be investigated internally;
 - Be referred to Provincial Forensic Audits; or

- Be referred to another law enforcement agency.
- 5.5 Any fraud and corruption committed by an employee or any other person will be pursued by 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;
 - b) Instituting civil action to recover losses;
 - c) Initiating criminal prosecution by reporting the matter to the SAPS or any other relevant law enforcement agency; and
 - d) Any other appropriate and legal remedy available.
- 5.6 Managers are required to ensure that losses or damages suffered by the Municipality as a result of all reported acts committed or omitted by an employee or any other person are recovered from such an employee or other person if he or she is found to be liable for such losses.
- 5.7 The Municipal Manager will, upon receiving a report of fraud from an external person, write to the person making the report:
- Acknowledging that the concern has been received;
 - Indicating how he proposes to deal with the matter and whether any initial enquiries have been made;
 - Giving an estimate of how long it will take to provide a final response; and
 - Informing them whether any further investigations will take place, and if not, why not.
- 5.8 The Municipality accepts that those people, including employees who reported the alleged fraud need to be assured that the matter has been properly addressed. Thus, subject to legal constraints, information about outcomes of any investigation will be disseminated on a "need to know" basis.
- 5.9 The Municipality will ensure that a fraud and corruption information system is developed for the following purposes:
- (a) Recording all allegations;
 - (b) Tracking progress with the management of allegations;

- (c) To facilitate the early identification of systemic weaknesses and recurring risks, and inform managers and employees of systemic weaknesses/risks;
- (d) Provide feedback to employees and other whistle blowers on the management of allegations; and
- (e) To provide minimum information on fraud and corruption to designated stakeholders.

6. CONFIDENTIALITY

- 6.1. All information relating to fraud and corruption that is received and investigated will be treated confidentially. The progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any person(s) other than those who have a legitimate right to such information. This is important in order to avoid harming the reputations of suspected persons who are subsequently found innocent of wrongful conduct.
- 6.2. No person is authorised to supply any information with regard to allegations or incidents of fraud and corruption to the media without the express permission of the Municipal Manager.

7. PUBLICATION OF SANCTIONS

- 7.1. The Municipal Manager will decide whether any information relating to corrective actions taken or sanctions imposed, regarding incidents of fraud and corruption should be brought to the direct attention of any person or made public through any other means.

8. APPLICATION OF PREVENTION CONTROLS AND DETECTION MECHANISMS

- 8.1 In respect of all reported incidents of fraud and corruption, management is required to immediately review, and where possible, improve the effectiveness of the controls, which have been breached in order to prevent similar irregularities from taking place in future.

9. CREATING AWARENESS

- 9.1 It is the responsibility of all managers to ensure that all employees are made aware of, and receive appropriate training and education with regard to this policy.

10. ADMINISTRATION

- 10.1 The custodian of this policy is the Municipal Manager and is supported in its implementation by all managers of the Municipality.
- 10.2 The Municipal Manager is responsible for the administration, revision and interpretation of this policy. This policy will be reviewed annually and appropriate changes applied should these be required.

11. ADOPTION

Municipal Manager

Metsimaholo Local Municipality