



**ANTI –FRAUD AND ANTI-CORRUPTION
STRATEGY AND RELATED POLICIES
VERSION 2**

Policy History Page

TITLE OF POLICY		Anti-fraud and Anti-Corruption Strategy and Related Policies Version 2					
POLICY OWNER		Office of the City Manager					
POLICY CHAMPION		Internal Audit Directorate Name: Mr S Gwija Tel: 041 506 1076 Fax: 041 506 1229 E-mail: sgwija@mandelametro.gov.za					
DOCUMENT HISTORY:							
Policy Title	Status <small>(current, draft no change, rescinded)</small>	Approving Authority	Decision date	Resolution No.	Ref No.	Doc No.	Pending date for next revision
Anti-fraud and Anti-Corruption Strategy and Related Policies Version 2	Current	Council	31 March 2021	Item 22	5/20/P		3 Years
Anti-fraud and Anti-Corruption Strategy and Related Policies	Rescinded	Council	31 March 2011		5/20/P		

TABLE OF CONTENTS

DEFINITIONS	1
1. INTRODUCTION	5
2. PURPOSE	7
3. REGULATORY FRAMEWORK.....	8
4. OBJECTIVES.....	9
5. POLICY SCOPE AND APPLICATION	9
6. ROLES AND RESPONSIBILITIES	10
7. PREVENTION	15
8. DETECTION.....	16
9. INVESTIGATION.....	17
10. REPORTING PROCEDURES FOR ALLEGATIONS OF FINANCIAL MISCONDUCTS (REGULATION 3).....	18
11. ESTABLISHMENT OF DISCIPLINARY BOARD AND IT'S FUNCTIONING (REGULATION 4)	19
12. PRELIMINARY INVESTIGATION OF ALLEGATIONS OF FINANCIAL MISCONDUCT (REGULATION 5).....	20
13. INVESTIGATION OF ALLEGATION OF FINANCIAL MISCONDUCT AND SUBMISSION OF REPORTS (REGULATION 6)	22
14. PURPOSE OF INVESTIGATIONS (REGULATION 7).....	24
15. REPORTING OF ALLEGATIONS OF FINANCIAL OFFENCES (REGULATION 9)	24
16. REPORTING OF ALLEGED FINANCIAL OFFENCE TO SOUTH AFRICAN POLICE SERVICES (REGULATION 10).....	24
17. ALLEGATIONS OF FINANCIAL OFFENCES NOT AMOUNTING TO BREACHES OF CODE OF CONDUCT FOR COUNCILLORS (REGULATION 11).....	25
18. PREPARATION OF INFORMATION DOCUMENT ON ALLEGED FINANCIAL MISCONDUCT AND FINANCIAL OFFENCES (REGULATION 14) ...	26
19. TABLING OF INFORMATION DOCUMENT IN MUNICIPAL COUNCIL OR BOARD OF DIRECTORS OF MUNICIPAL ENTITIES (REGULATION 15)	27
20. REPORTS ON DISCIPLINARY PROCEEDINGS AND CRIMINAL CHARGES (REGULATION 16)	27
21. WHISTLE BLOWING – PROCEDURES FOR CONFIDENTIAL REPORTING FINANCIAL MISCONDUCT AND FINANCIAL OFFENCE (REGULATION 17).....	28

22.	NELSON MANDELA BAY MUNICIPALITY ETHICS LINE.....	28
23.	HARASSMENT OR VICTIMISATION	29
24.	CONFIDENTIALITY	30
25.	CODE OF CONDUCT	30
26.	DUTY TO REPORT CORRUPT TRANSACTIONS (SECTION 34 OF PRECCA NO 12 OF 2004).....	34
27.	POLICY IMPLEMENTATION AND REVIEW	35

DEFINITIONS

In *the Policy*, unless the context indicates otherwise:

“Accounting Officer” as defined in the Local Government: Finance Management Act 56 of 2003, in relation to the Municipality means the Municipal Official referred to in section 60 of the Act; or in relation to Municipal Entity, means the official of the entity referred to in section 93, and includes a person acting as the Accounting Officer;

“Collusion” means conspiring with others especially in planning fraud or conniving and entering into secret agreement for wrongful and improper purposes;

“Conflict of interest” means a situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person’s self-interest and professional interest or public interest;

“Corruption” means all statutory provisions regarding corruption and/or alleged and/or suspected corruption as referenced in the Prevention and Combating of Corrupt Activities Act, Act 12 of 2004.

“Council” means a municipal council as referred to in section 157 (1) of the Constitution;

“Councillor” means a member of the Council of the Nelson Mandela Bay Municipality;

“Designated Official” means the official identified in the Municipality or Municipal Entity to receive reports of allegations of financial offences against *Councillors* or members of the board of directors of municipal entities;

“Disciplinary Board” means a disciplinary board established in terms of regulation 4(1) or a disciplinary board of a Municipality or provincial structure referred to in regulation 4(8);

“Embezzlement” means the appropriation of someone else’s property that is already in your possession or control. It is sometimes referred to as theft by conversion in that someone else’s property is converted into your own private use;

“Executive Mayor” means the Mayor of the Nelson Mandela Bay Municipality elected in terms of section 55 of the Local Government: Municipal Structures Act 117 of 1998

“Extortion” means the act of unlawfully and intentionally obtaining some advantage which is not due to the recipient from another by subjecting the latter to pressure which induces him to hand over the advantage;

“Financial Misconduct” means any act of financial misconduct referred to in:

- a) Section 171 of the Act committed by an official of the Municipality; or
- b) Section 172 of the Act committed by an official of the Municipal Entity.

“Financial Offence” means any offence referred to in Section 173 of the MFMA committed by:

- a) An official of the *Municipality* or a Municipal Entity;
- b) A *Councillor* of the *Municipality*;
- c) A member of the board of directors or a Municipal Entity; or
- d) Any other person

“Fraud” means the unlawful and intentional making of a misrepresentation resulting in actual or potential prejudice to another;

“Favouritism” means the practice of giving special treatment to a person or a group of people. This involves the provision of services or resources according to personal affiliation (for example ethics or religious);

“Forgery” means the unlawful and intentional making of a false document with intent to defraud and to the actually or potentially prejudice another;

“Fruitless and Wasteful Expenditure” means expenditure which was made in vain and would have been avoided had reasonable care been exercised;

“Internal Audit and Risk Assurance” means a unit that prepares risk-based audit plans and Internal Audit programs for each financial year. The unit executes the aforementioned audit plan and investigates fraud and corruption. It also advises the Accounting Officer and reports to the Audit Committee;

“Investigator” means the board, treasury, person or team conducting a full investigation in terms of Regulation 5(4);

“Maladministration” means the *Municipality* can only look at complaints about the way a decision was made by Council, but cannot re-consider the decision itself just because the person complaining does not agree with it. It also means that the person complaining must have suffered an injustice as a result of the faulty decision-making process;

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

“Municipality” means the Nelson Mandela Bay Metropolitan Municipality a, Category A Municipality established in terms of Part 2 of Schedule 1 of Notice 85 in the Eastern Cape Provincial Gazette No. 654 on 27 September 2000, promulgated in terms of Section 12(1) of the Local Government: Municipal Structures Act 117 of 1998;

“Municipal Official” as defined in the Local Government: Municipal Finance Management Act 56 of 2003 means:

- a) an employee of the Municipality or its Municipal Entity;
- b) a person seconded to the Municipality or its Municipal Entity to work as a member of the staff of the Municipality or a Municipal Entity; or
- c) a person contracted by the Municipality or its Municipal Entity to work as a member of the staff of the Municipality or a Municipal Entity otherwise than as an employee;

“Organs of State” means any department of state or administration in the national, provincial or local sphere of government;

“Regulations” means the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings. The Minister of Finance has in terms of sections 168 and 175, of the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003), and acting with the concurrence of the Minister of Cooperative Governance and Traditional Affairs, made the Regulations as set out and further referenced in this policy (Ordinary (National) Government Gazette No. 37682, of 30 May 2014, No. R. 430);

“the Policy” means the Anti-fraud and Anti-Corruption Strategy and Related Policies;

“theft” means the unlawful and intentional misappropriation of another’s property or property which is in his/her lawful possession, with the intention to deprive the owner of its rights permanently;

“uttering” means the unlawful and intentional offering, passing off or communication of a forged document with the intent to actually or potentially defraud or prejudice another;

“zero tolerance” means that the unethical behaviour or activity will not be tolerated at all.

1. INTRODUCTION

- 1.1 The South African Government's commitment to fighting *corruption* is demonstrated by National Cabinet's identification of the following eight priorities in respect of anti-corruption:
- a) The promulgation of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) ("Prevention and Combating of Corrupt Activities Act");
 - b) The establishment of a *corruption* management information system;
 - c) Strengthening anti-corruption capacity;
 - d) Establishment of a national hotline system;
 - e) Strengthening partnerships;
 - f) Continued implementation of the Public Service Anti-Corruption Strategy;
 - g) Roll-out of the Public Service Anti-Corruption Strategy to local government and;
 - h) Increased public communication and awareness.
- 1.2 Its commitment is further illustrated by the requirement to establish a minimum anti-corruption capacity in all departments and organisational components of the Public Service and the promulgation of legislation such as the:
- a) Public Finance Management Act, 1999 (Act 1 of 1999) (PFMA);
 - b) the Municipal Finance Management Act No 56 of 2003 (MFMA); and
 - c) the Protected Disclosures Act, 2000 (Act 26 of 2000) ("Protected Disclosures Act").
- 1.3 This also provides evidence of the Government's commitment to the principles of good corporate governance, the improvement of financial management and management policies and practices within the public sector, and improved access to mechanisms for reporting wrong doing and the protection of whistle-blowers *inter alia*.
- 1.4 In keeping with the Public Service Anti-Corruption Strategy and that of the former DPLG Anti-Corruption Strategy (COGTA), which emphasises fighting *corruption* in a holistic manner and promotes preventative action, the Minimum

Anti-Corruption Capacity Requirements specify the main elements of *corruption* prevention within departments/directorates and entities as the following:

- a) Preventing and managing risks;
- b) Solid management systems and practices;
- c) Ability to report wrongdoing and protecting the integrity of the whistle-blowing system;
- d) Ongoing focused training of employees.

1.5 The Minister of Finance has, in terms of sections 168 and 175, of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), and acting with the concurrence of the Minister of Cooperative Governance and Traditional Affairs, made the *Regulations* prescribing:

- a) The manner, form and circumstances in which allegations and disciplinary and criminal charges of *financial misconduct* must be reported to the National Treasury, the MEC for local government in the province and the Auditor-General, including;
 - i. Particulars of the alleged *financial misconduct*; and
 - ii. Steps taken in connection with such *financial misconduct*;
- b) Matters relating to internal investigations by municipalities and municipal entities of allegations of *financial misconduct*;
- c) The circumstances in which the National Treasury or the MEC for local government in the province may direct that disciplinary steps be taken or criminal charges be laid against a person for *financial misconduct*;
- d) Criteria for the composition and functioning of a *Disciplinary Board* which hears a charge of *financial misconduct*;
- e) The circumstances in which the findings of a *Disciplinary Board* and any sanctions imposed by the board must be reported to the National Treasury, the MEC for local government in the province and the Auditor-General; and
- f) Any other matters to the extent necessary to enforce the provisions of this Act.

1.6 This document outlines the Anti-Fraud and Anti-Corruption Policy of the *Municipality*, which underpins and promotes the highest legislative authority, namely the Constitution of the Republic of South Africa, Act 108 of 1996 and other legislative provisions in respect of all three spheres of government, statutory provisions in respect of the prevention and combating of corrupt activities and common law.

2. PURPOSE

2.1 The *Municipality* is committed to protecting its revenue and assets from any attempt, either by members of the public, contractors, subcontractors, agents, intermediaries or its own employees, to gain financial or other benefit in an unlawful, dishonest or unethical manner.

2.2 The focus of the *Municipality* is concentrated on two elements in particular:

- a) A commitment to a procedure of detection, investigation and prosecution of individual cases of *fraud* and other economic offences as well as non-compliance with financial prescripts and procedures to reduce risk, and;
- b) The reduction of losses through *fraud* and other economic offences by the rigorous implementation of *fraud* prevention procedures and an environment of *Zero Tolerance*.

2.3 The purpose of *the Policy* is:

- a) To ensure that the *Municipality* is in compliance with the Municipal Systems Act, Act No. 32 of 2000 which requires the *Municipality* to amongst others develop and adopt appropriate systems and procedures that contribute to effective and efficient management of the *Municipality* and its resources;
- b) To ensure compliance with section 112 (m) of the Municipal Finance Management Act No. 56 of 2003 which requires the *Municipality* to implement measures for combating *fraud, corruption, favouritism* and unfair and irregular practices and promoting ethics of officials and other role players involved in the supply chain management and other matters of the *Municipality*;

- c) To ensure compliance with the *Regulations*;
- d) To commit the *Municipality* to implement a *Zero Tolerance* policy that results in the detection, investigation and sanctioning, including prosecution, of individuals who are alleged to be involved in acts of *fraud, corruption* and *theft* within the *Municipality*;
- e) To promote sound governance and management practices that prevent, minimise and defend the *Municipality* against acts of *fraud* and *corruption*;
- f) To promote a proactive, *fraud* intolerant culture within the *Municipality* through increased awareness and vigilance among *Councillors* and *Municipal Officials*;
- g) To act as a deterrent against the losses that the *Municipality* may incur due to the occurrence of *fraud, corruption* and *theft*;
- h) To encourage *Councillors* and *Municipal Officials* to report suspicions of *fraud* and *corruption* to the appropriate structures charged with the responsibility investigating and resolving *fraud* and *corruption* within the *Municipality*;
- i) To encourage the community to report suspicions of *fraud* and *corruption* to the appropriate structures charged with the responsibility investigating and resolving *fraud* and *corruption* within the *Municipality*.

3. REGULATORY FRAMEWORK

3.1 *The Policy* must be read together with, and be interpreted consistently with, the other relevant legislation, policies and procedures, including but not restricted to:

- a) The Constitution of the Republic of South Africa, Act 108 of 1996;
- b) The Municipal Finance Management Act (MFMA) (No. 56 of 2003);
- c) The Public Finance Management Act (PFMA) (No. 1 of 1999);
- d) The Municipal Systems Act (No. 32 of 2000);
- e) The Preferential Procurement Policy Framework Act (No. 5 of 2000);
- f) The Prevention and Combating of Corrupt Activities Act (No. 12 of 2004);
- g) The Promotion of Access to Information Act (No. 2 of 2000);
- h) The Promotion of Administrative Justice Act (No. 3 of 2000);
- i) The Protected Disclosures Act (PDA) (No. 26 of 2000);

- j) The Financial Intelligence Centre Act (FICA) (no. 38 of 2001);
- k) Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (Ordinary (National Government Gazette No. 37682 dated 30 May 2014);
- l) Common Law.

3.2 *The Policy* requires all *Councillors* and *Municipal Officials* at all times to act honestly, with integrity and to safeguard the Municipal resources for which they are responsible. *Fraud, corruption* and other financial related impropriety / misconduct / offences are ever-present threats to these resources and hence must be a concern to all.

4. OBJECTIVES

4.1 The objectives of *the Policy* are:

- a) To provide guidance on what should be done to prevent *fraud* and *corruption* within the *Municipality*;
- b) To provide guidance on how to report suspicions or acts of *fraud* and *corruption* once they occur;
- c) To establish procedures to direct and guide the actions of the *Municipality* where *fraud* has been detected;
- d) To define procedures for the efficient and effective resolution of *fraud* and *corruption* in accordance with the law and in a manner that restores or minimises the damage suffered by the *Municipality*;
- e) To provide a clear definition of the roles and responsibilities of the various stakeholders and role-players within the *Municipality* in respect of the prevention, detection, investigation and resolution of *fraud*;
- f) To create an enabling environment for good governance and management practice.

5. POLICY SCOPE AND APPLICATION

5.1 Except where specifically indicated otherwise, the provisions contained in *the Policy* apply to *Councillors* and *Municipal Officials*.

- 5.2 *The Policy* covers all matters relating to the prevention, detection, investigation and resolution of *fraud* and *corruption* in the *Municipality* and its reporting obligations to other *Organs of State* as provided for in the *Regulations*.
- 5.3 *The Policy* read with all referenced legislative prescripts except where specifically expressed otherwise applies to all *Councillors, Municipal Officials, agents, service providers, partners to public partnerships* and members of the community.

6. ROLES AND RESPONSIBILITIES

- 6.1 *Council* or a Section 80 Committee on Corporate Governance is responsible for the following:
- a) Consider and adopt an Anti-Fraud and Anti-Corruption Policy and strategy for the *Municipality*;
 - b) Annually, review and amend, where necessary, *the Policy*;
 - c) Oversee the implementation of *the Policy*;
 - d) Consider reports from the *Accounting Officer*, the Audit Committee and the *Disciplinary Board* in respect of all alleged financial misconduct inclusive of financial impropriety inclusive of *inter alia*: fraud, *corruption* and related matters.
- 6.2 The *Accounting Officer* is responsible for ensuring that *the Policy* is implemented within the *Municipality*. These include the following:
- a) Ensure that the *Municipality* develops and implements an anti-corruption and fraud strategy or Anti-Fraud and Anti-Corruption Implementation Plan;
 - b) Establish a *Disciplinary Board* comprising of an independent panel as referred to in this policy and which is responsible for the evaluation, provisional assessment of matters, investigative progress and advice to *Council* on the implementation of recommendations in compliance with this policy;

- c) Ensure that *Councillors* and *Municipal Officials* are educated and aware of *the Policy*;
- d) Ensure that training sessions for *Councillors* and *Municipal Officials* on *the Policy* in particular, and *fraud* and *corruption* in general is conducted and enshrine/develop a general non- corruptive and compliance culture;
- e) Oversee the implementation of prevention, detection, investigation and resolution measures in respect of *fraud*, *corruption* and all *financial misconduct* within the *Municipality*;
- f) Comply with all reporting obligations as referenced in the *Regulations*;
- g) Ensure that employees abide by the Code of Conduct of the *Municipality*.

6.3 *Internal Audit and Risk Assurance* is responsible for implementing activities related to the deterrence, detection and investigation of *fraud*. These include the following:

- a) Conduct *fraud* and *corruption* investigations, risk assessments and susceptibility assessments to identify and address high fraud risk areas;
- b) Perform *fraud* and *corruption* detection reviews on high *fraud* and *corruption* risk areas;
- c) Ensure that an anti-fraud hotline is operating and maintained and investigate and co-ordinate allegations reported via the hotline;
- d) Investigate and co-ordinate all alleged/suspected *fraud* and *corruption*;
- e) Advise the *Accounting Officer* and the *Disciplinary Board*, and report to the last mentioned Board on the investigation of alleged / suspected fraud, *corruption* and related *financial misconduct*;
- f) Advise on suitable information systems to identify and detect *fraud* and *corruption* threats with the purpose to address internal and external fraud and *corruption* threats;
- g) Investigate high-risk business areas and processes, and advise on the implementation of appropriate internal and external fraud and *corruption* threats;
- h) Facilitate presentations and working sessions relating to *fraud* and *corruption* risks to promote the ethics and integrity standards required by the *Municipality*;

- i) *Internal Audit and Risk Assurance*, with emphasis to its forensic capacity may not become involved in operational functions of heads of departments/directorates. It may furthermore not be used as a tool to carry out any responsibility of *Accounting Officers* provided for in the *MFMA*;
- j) *Internal Audit and Risk Assurance*, with emphasis to the forensic capacity may not divulge any sensitive information related to a department/directorate obtained during an investigation to another department/directorate or to any other third party, except furnishing information to other *Organs of State* as referenced in the *Regulations*, the South African Police Service and the National Prosecuting Authority;
- k) *Internal Audit and Risk Assurance*, with emphasis to its forensic capacity is mandated to investigate matters involving the following alleged conduct, irregularities and offences;
 - i. *Financial misconduct*;
 - ii. Irregularities of a financial nature;
 - iii. Irregularities causing or which can possibly cause financial loss or potential financial loss (including acts of dishonesty) and/or affecting the *Municipality* to such an extent that, if allowed to continue unchecked, will/could have an extremely adverse effect on the effective and efficient operation of the *Municipality*.
 - iv. The commission of economic offences such as *theft, fraud, corruption* and/or any other economic common law offence or economic offences in contravention of any statutory provision, which involves patrimonial prejudice or potential patrimonial prejudice to the State.
- l) Where possible criminal offences have been committed, the *Internal Audit and Risk Assurance*, with emphasis to its forensic capacity will report the matter to the South African Police Service;
- m) The *Internal Audit and Risk Assurance*, and with emphasis to its forensic capacity must investigate any other matter concerning statutory non-compliance or *maladministration*, within the administration of the *Municipality*;
- n) In the event that reasonable grounds for a search and seizure exist, the following prerequisites are adopted;

- i. The search and seizure must be authorised by the *Accounting Officer* of the *Municipality* and/or its delegated official;
 - ii. The *Accounting Officer* of the *Municipality* and/or delegated official must be satisfied that, based on the available evidence, there is reason to believe that information will be recovered in the search and seizure to prove that an offence has been committed;
 - iii. To prove the aforesaid, the request for the search and seizure must be in the form of an affidavit and must be supported by the Director: Internal Audit and Risk Assurance and/or delegated official vested in the forensic investigative capacity;
 - iv. The *Accounting Officer* of the *Municipality* and/or delegated official must take the decision to authorise the search and seizure after consultation with the relevant head of the respective department/directorate. In the event that the specific Executive Director and/or acting Executive Director of a department/directorate is under investigation, the *Accounting Officer* of the *Municipality* and/or the delegated official must take the decision regarding the requested search and seizure.
- o) The *Internal Audit and Risk Assurance*, with emphasis to its forensic capacity must create ethical awareness among all employees and provide them with proper and continuous training in an attempt to aligning individual behaviour with the objectives of the *Municipality*.

- 6.4 The Audit Committee must be appointed by *Council* as prescribed in section 166 of the *MFMA*. The Audit Committee will be responsible for the following:
- a) Advising the *Council*, political office bearers, the *Accounting Officer* and management staff of the *Municipality* on matters relating to good governance, *fraud* and *corruption*;
 - b) Support the implementation of *the Policy*;
 - c) Perform oversight functions by requiring reports and recommend disciplinary and corrective measures.

- 6.5 All *Councillors* of the *Municipality* are responsible for the following:
- a) Share the municipality's policies and strategies in respect of *fraud* and *corruption* with Ward Committees and other broad-based citizen forums;
 - b) Abide by the Code of Conduct of the *Municipality*;
 - c) Perform oversight functions that support the implementation of *the Policy* of the *Municipality*;
 - d) Provide support to the *Accounting Officer* and the efforts of the management team to implement *the Policy*.
- 6.6 The Management of the *Municipality* is responsible for the following:
- a) Share the *Municipality's* policies and strategies in respect of *fraud* and *corruption* with all *Municipal Officials*;
 - b) Ensure that appropriate systems, processes and control measures are in place to prevent *fraud* and *corruption*;
 - c) Report incidences or suspicions of *fraud* and *corruption* to *Internal Audit and Risk Assurance* and / or the *Accounting Officer*;
 - d) Investigate minor cases of *fraud* and *corruption* departmentally;
 - e) Participate in initiatives to prevent, minimise, detect and investigate *fraud*.
- 6.7 All *Municipal Officials* (permanent, contract and temporary) of the *Municipality* are responsible for the following:
- a) Abide by the Code of Conduct of the *Municipality*;
 - b) Report incidences or suspicions of *fraud* and *corruption*;
 - c) Participate in initiatives to prevent, minimise, detect and investigate *fraud*.
- 6.8 The community of the Nelson Mandela Bay Municipality is responsible for reporting alleged or suspected *fraud* and *corruption* to the *Municipality*. In this regard they can report matters to their Ward *Councillor* or utilise the reporting mechanisms that the *Municipality* has established which includes the NMBM Ethics Line.

7. PREVENTION

7.1 The *Municipality* will implement *fraud* prevention measures to prevent and minimise the risk of *fraud* in a proactive manner. This will include but not be restricted to the following:

- a) Ensure adequate internal controls in terms of systems, processes, supervision and separation of duties;
- b) Active management that demonstrates sound management practice and control;
- c) Encourage a culture of reporting incidences and suspicion of *fraud* and *corruption*;
- d) Conduct regular anti-fraud and *corruption* training and awareness programmes;
- e) Encourage the use of the NMBM Ethics Line facility and provide whistle blowers with support;
- f) Undertake staff vetting when selecting staff;
- g) Promote and apply a Code of Conduct and ethics;
- h) Undertake regular *fraud* risk assessments in critical areas;
- i) Visibly apply disciplinary measures and sanction against offenders;
- j) Entrench a culture of *Zero Tolerance to fraud and corruption* and a culture of compliance with legislative provisions, policies and procedures;
- k) The *Municipality* should make provisions for all *Municipal Officials* to declare any interests they may have in respect of;
 - i. any interests in companies, close corporations, trusts and other business ventures;
 - ii. any direct benefits that might be gained from the *Municipal Officials* spouse, partner, business associate or close family member acquired from a contract concluded with the *Municipality*;
 - iii. any gifts whether in the form of cash, donation, gift, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any similar advantage that might influence the judgement in respect of duties to be performed and decisions to be taken;

- iv. 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;
- v. Any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage;
- l) Ensure employee motivation by expending adequate resources to employ a competent workforce and managerial staff at a living wage to minimise the temptation toward corrupt activities;
- m) Ensure that procedural complexity and discretion are decreased through procedural reengineering in service delivery areas. The rationalization of procedures would be based on the introduction of quality control standards aimed at finding the shortest and most effective path to reach the objective;
- n) Enhance accountability through a management style based on results, i.e. on outcomes and impacts.

8. DETECTION

- 8.1 The *Municipality* will implement detection measures to ensure that high-risk areas and reported suspicions are thoroughly assessed and audited. This will include but not be restricted to the following:
- a) Conduct forensic investigations into alleged acts of *fraud* and *corruption*;
 - b) Undertake regular *fraud* risk assessments in critical areas;
 - c) That a *Disciplinary Board* be established to review reports on incidences and suspicions reported and make presentations to the *Executive Mayor, Council, Accounting Officer* and Audit Committee;
 - d) Implement the right of the *Municipality* to check on its *Municipal Officials* and those who do not disclose their interests whether it may be;
 - i. Directorships or Partnerships in any business entity;
 - ii. Share and securities in any company;
 - iii. Membership of any close corporation;
 - iv. Other financial interest in any business undertaking whether he/she is a silent partner or a non-executive director;

- v. Interest in any trust or property;
- vi. Gifts, sponsorship and grants from other organisations no matter how trifling the gifts, sponsorship and grant may be.

9. INVESTIGATION

- 9.1 The *Municipality* will refer alleged *fraud* and *corruption* of a criminal nature for prosecution by the appropriate authorities. Any decision by the responsible and/or accountable manager to refer or not to refer an incident can only be undertaken after consultation with the *Disciplinary Board*.
- 9.2 Any alleged / suspected acts of *fraud* and *corruption* as defined in this policy must be reported to the *Disciplinary Board* and/or to *Internal Audit and Risk Assurance* without delay for consideration and preliminary assessment.
- 9.3 *Investigators* vested in *Internal Audit and Risk Assurance* will obtain, assemble and research information on alleged/suspected acts of *fraud* and *corruption* and other unlawful and / or irregular conduct and practices in order to identify causes, advise and consult on interventions and action plans.
- 9.4 *Council* and the management of the *Municipality* will, within the bounds of their authority, render appropriate support and assistance to investigation undertaken by *Internal Audit and Risk Assurance* and will arrange/take the necessary steps to facilitate free access to municipal controlled building, equipment, staff and information sources needed.
- 9.5 All practices and procedures utilised during investigations will comply with the requirements of South African law and will be performed in compliance with best practices prescribed by the Association for Certified Fraud Examiners (ACFE).
- 9.6 It is the mandate of the *Municipality* to pursue all allegations of *corruption* however trivial they might seem with vigour.

10. REPORTING PROCEDURES FOR ALLEGATIONS OF FINANCIAL MISCONDUCTS (REGULATION 3)

- 10.1 Any person must report an allegation of *financial misconduct* against:
- a) The *Accounting Officer*, Senior Manager or the Chief Financial Officer of the *Municipality*, to the *Council* of the *Municipality*, the Provincial Treasury and the National Treasury;
 - b) An official of the *Municipality* other than its *Accounting Officer*, to that *Accounting Officer*;
 - c) The *Accounting Officer* of a Municipal Entity, to the chairperson of the board of directors, the *Executive Mayor* and the *Accounting Officer* of the *Municipality*;
 - d) An official of a Municipal Entity other than its *Accounting Officer*, to that *Accounting Officer*.
- 10.2 The *Executive Mayor*, the *Accounting Officer* or chairperson of the board of directors, as the case may be, must table an allegation before the *Council* or, board of directors in the case of municipal entities, not later than seven days after receipt thereof or at the next sitting of the *Council* or the board of directors.
- 10.3 The person to whom an allegation of *financial misconduct* has been reported must ensure that the report is treated in a confidential manner.
- 10.4 The *Regulations* must not be read as preventing a person from laying a criminal charge with the South African Police Service against any *Councillor*, member of the board of directors of a Municipal Entity, or official of the *Municipality* or a Municipal Entity in relation to any conduct that may constitute an offence in terms of Part 2 of Chapter 15 of the *MFMA*.
- 10.5 An official against whom an allegation of *financial misconduct* is made must be given an opportunity to make written representation to the *Municipality* or a Municipal Entity as to why he or she should not be suspended, within seven days of being notified of the allegation.

11. ESTABLISHMENT OF DISCIPLINARY BOARD AND IT'S FUNCTIONING (REGULATION 4)

- 11.1 The *Council* or board of directors of a Municipal Entity must establish a *Disciplinary Board* to investigate allegations of *financial misconduct* in the *Municipality* or a Municipal Entity, and to monitor the institution of disciplinary proceedings against an alleged transgressor.
- 11.2 The *Disciplinary Board* is an independent advisory body that assists the *Council* with the investigation of allegations of *financial misconduct*, and provide recommendations on further steps to be taken regarding disciplinary proceedings, or any other relevant steps to be taken.
- 11.3 The *Disciplinary Board* must consist of maximum five members appointed on a part-time basis by the *Council* or board of directors for a period not exceeding three years, in accordance with a process determined by the *Council* or board of directors.
- 11.4 A member of a *Disciplinary Board* must:
- a) Be a natural person;
 - b) Be a citizen or permanent resident of the Republic of South Africa and resident in the province where the *Municipality* is situated; and
 - c) Not be disqualified as referenced in paragraph 12.5.
- 11.5 The following persons are disqualified from membership of a *Disciplinary Board*:
- a) A person who has been convicted of an offence in terms of the aforementioned Regulation or any other legislation;
 - b) A person who, whether in the Republic of South Africa or elsewhere, has been convicted of *theft, fraud, forgery*, the *uttering* of a forged document or any offence of which dishonesty is an element;
 - c) A person who has at any time been removed from any office of trust on account of misconduct or dishonesty;
 - d) An *Accounting Officer* of the *Municipality* or a Municipal Entity;

- e) A political office-bearer or a member of a board of directors; and
- f) A person who is an office-bearer in a political party.

11.6 The *Disciplinary Board* may exist of:

- a) The Head of *Internal Audit and Risk Assurance* within the *Municipality* or a Municipal Entity or representative of an organisation performing internal audit functions for the *Municipality* or a Municipal Entity if the internal audit function is outsourced;
- b) One member of the Audit Committee of the *Municipality* or a Municipal Entity;
- c) A senior manager from the legal division in the *Municipality* or a Municipal Entity;
- d) A representative of the National Treasury or the Provincial Treasury; and
- e) Any other person as may be determined by the *Council* or board of directors of a Municipal Entity.

11.7 If an official referred to in paragraph 12.6 is implicated in *financial misconduct*, the *Municipality* or a Municipal Entity may co-opt a Senior Manager in another directorate, who does not have a *conflict of interest*.

11.8 Where the *Municipality* or a Municipal Entity does not have sufficient capacity to establish a *Disciplinary Board*, a *Disciplinary Board* established by a district municipality or an equivalent provincial or national structure established for a similar purpose may, with approval of the district municipality or provincial or national structure, be used as a *Disciplinary Board* for the *Municipality* or a Municipal Entity.

12. PRELIMINARY INVESTIGATION OF ALLEGATIONS OF FINANCIAL MISCONDUCT (REGULATION 5)

12.1 On receiving a report of allegations of *financial misconduct*, if the *Council*, board of directors or *Accounting Officer* of the *Municipality* or a Municipal Entity, is satisfied that there is reasonable cause to believe that an act of *financial misconduct* has been committed, it must within seven days refer the

matter to the *Disciplinary Board* to conduct a preliminary investigation into the allegation as envisaged in terms of section 171(4)(a) or 172(3)(a) of the *MFMA*.

- 12.2 The *Disciplinary Board* must conduct a preliminary investigation to determine whether or not the allegation is founded and make a recommendation to the *Council* or board of directors as to whether sufficient grounds exist to warrant a full investigation into the allegation.
- 12.3 If, during a preliminary investigation, the *Disciplinary Board* determines the allegation is frivolous, vexatious, speculative or obviously unfounded, the investigation must be terminated.
- 12.4 If the *Disciplinary Board* determines that the allegation is founded, a full investigation must be conducted by:
- a) The *Disciplinary Board*;
 - b) The provincial treasury or the National Treasury, but only if the conditions in Regulation 19 apply;
 - c) Where the cost, the seniority of the alleged transgressor and the seriousness or sensitivity of investigating the alleged misconduct, warrants such a step;
 - i. A person appointed by the *Council* or board of directors who has appropriate specialised expertise and who is not an official of the *Municipality* or a Municipal Entity; or/and
 - ii. Independent team of *investigators* appointed by the *Council* or the board of directors in accordance with the applicable supply chain management prescripts.
- 12.5 A team of *investigators* appointed in terms of Regulation (4) may include:
- a) A person, other than an official of the *Municipality* or a Municipal Entity, with appropriate specialist expertise, designated by the *Council* or the board of directors; or
 - b) An official of the department responsible for local government in the relevant province, designated by the department; or/and

- c) official of the provincial treasury of the National Treasury, designated by the relevant treasury.

12.6 The *investigator* or investigating team appointed in terms of Regulation 4 must, within a period of 30 days of the appointment, submit a report with recommendations to the *Executive Mayor* or *Accounting Officer* as may be appropriate.

13. INVESTIGATION OF ALLEGATION OF FINANCIAL MISCONDUCT AND SUBMISSION OF REPORTS (REGULATION 6)

13.1 The *Municipality* or a Municipal Entity must develop terms of reference for an investigation, in terms of Regulation 5, within seven days of receipt of a referral from the *Disciplinary Board* for approval by the *Council* or the board of directors.

13.2 If the *Council* or the board of directors has not acted on the recommendation by the *Disciplinary Board* that the *financial misconduct* is founded and sufficient grounds exist to warrant a full investigation into the allegation, the *Disciplinary Board* may request the provincial treasury or the National Treasury for assistance and a possible intervention in terms of Regulation 19.

13.3 After completion of a full investigation, the *investigator* must:

- a) Compile a report on the investigation;
- b) Submit its report to the *Executive Mayor* or the chairperson of the board of directors and the *Accounting Officer* together with its findings and recommendations, if applicable, regarding disciplinary steps that should be taken against the alleged transgressor; and
- c) Immediately inform the Speaker of Council of the submission of the report, and also submit a copy of the report to the provincial treasury and the National Treasury.

- 13.4 The *Executive Mayor*, the Speaker of Council and the *Accounting Officer* must table the report of the investigation referred to in Regulation 3 to the *Council* at the first sitting after the report is finalised.
- 13.5 If the report that is tabled in the *Council* is amended, the person tabling the report must provide written reasons for the amendments to the *Council* or the board.
- 13.6 If the findings or recommendations of the report referred to in Regulation 3 are rejected by the *Council* or the board, reasons for the rejection must be provided to the *investigator* within five days of the rejection.
- 13.7 Where the recommendations of the report referred to in Regulation 3 regarding disciplinary steps against the alleged transgressor are not implemented, the *investigator* must notify the provincial treasury and the National Treasury for a possible intervention in terms of Regulation 19.
- 13.8 If the *investigator* recommends that disciplinary proceedings be instituted against the alleged transgressor the *Council* or board of directors must by way of resolution institute the disciplinary proceedings;
- a) In the case of a Senior Manager, in accordance with the Local Government: Disciplinary Codes and Procedures for Senior Managers Regulations made in terms of the Municipal Systems Act; or
 - b) In the case of an official who is not a Senior Manager, in accordance with the applicable collective bargaining agreement concluded in the bargaining council established for municipalities and municipal entities.
- 13.9 Where the alleged transgressor is found guilty of *financial misconduct* after the disciplinary proceedings, he or she may not be re-employed in any *Municipality* for a period of ten years as provided in section 57A (3) of the Municipal Systems Act.

14. PURPOSE OF INVESTIGATIONS (REGULATION 7)

- 14.1 An investigation in terms of Regulation 5 and 6 must establish;
- a) Whether the allegation of *financial misconduct* has any substance; and
 - b) If it has substance, whether sufficient grounds exist for instituting disciplinary proceedings against the alleged transgressor.

15. REPORTING OF ALLEGATIONS OF FINANCIAL OFFENCES (REGULATION 9)

- 15.1 Any person may report an allegation of a *financial offence* against:
- a) A *Councillor* of the *Municipality*, to the *designated official*, the Minister of Finance and the MEC for finance;
 - b) The Speaker of Council of the *Municipality*, to the *Executive Mayor* of the *Municipality*;
 - c) A member of the board of directors of a Municipal Entity, to the *designated official* or, if the *designated official* is implicated, to the *Executive Mayor* and the *Accounting Officer* of the *Municipality*.
- 15.2 An allegation referred to in paragraph 15.1 must be dealt with in terms of the Code of Conduct for Councillors in Schedule 1 to the Municipal Systems Act.
- 15.3 An allegation referred to in paragraph 15.1 must be dealt with in terms 93L. “Code of Conduct for directors and members of staff of municipal entity” of the Municipal Systems Act.

16. REPORTING OF ALLEGED FINANCIAL OFFENCE TO SOUTH AFRICAN POLICE SERVICES (REGULATION 10)

- 16.1 Where a *financial offence* has been committed by any person referred to in section 173 of the *MFMA*, the *Accounting Officer* or, if the *Accounting Officer* is involved, the *Council* or board of directors of a Municipal Entity, as the case may be, must report the alleged *financial offence* to the South African Police Service.

16.2 If there is a likelihood of further financial loss for the *Municipality* or a Municipal Entity as a result of a *financial offence*, the *Accounting Officer, Council* or board of directors must report the matter without delay to the South African Police Service and not await the completion of any investigation referred to in Regulation 5 and 6 related to the *financial offence*.

16.3 Where a *financial offence* is successfully prosecuted, the judgment must be reported to the National Treasury, together with full details of the convicted person, the name of the *Municipality* where the offence was committed and the sanction that was imposed.

17. ALLEGATIONS OF FINANCIAL OFFENCES NOT AMOUNTING TO BREACHES OF CODE OF CONDUCT FOR COUNCILLORS (REGULATION 11)

17.1 The *designated official* must, on receipt of a report of alleged *financial offence* referred to in section 173(4) or (5) of the *MFMA* by a *Councillor*,

- a) Authorise an investigation of the facts and circumstances of the alleged *financial offence*; and
- b) Give that *Councillor* an opportunity to make, within five days, a written submission with regard to the alleged *financial offence*.

17.2 As soon as the *designated official* has complied with paragraph 17.1, the *designated official* must submit a report, within five days of completing the investigation, on the outcome of the investigation to the *Council*.

17.3 The *designated official* must ensure that the public has access to the report referred to in paragraph 17.2.

17.4 The *designated official* must, within five days of submitting the report to *Council*, submit the report on the outcome of the investigation to:

- a) The MEC for finance in the province;
- b) The MEC for local government in the province;
- c) Minister of Finance;

d) Minister responsible for local government.

18. PREPARATION OF INFORMATION DOCUMENT ON ALLEGED FINANCIAL MISCONDUCT AND FINANCIAL OFFENCES (REGULATION 14)

18.1 The *Municipality* or a Municipal Entity must prepare an information document on any alleged *financial misconduct* or *financial offence* stating:

- a) The name and position of the person against whom the allegation was made;
- b) A summary of the facts and circumstances of the alleged *financial misconduct* or *financial offence*, including the monetary value involved;
- c) Any disciplinary steps taken or to be taken against the person concerned, or if no disciplinary steps have been or are to be taken, the reasons for that decision;
- d) In the case of a *financial offence*, the case number issued by the South African Police Service; and
- e) Any steps taken or to be taken to recover any unauthorised, irregular or *fruitless and wasteful expenditure* incurred as a result of the alleged *financial misconduct* or *financial offence* in terms of section 32 of the *MFMA*.

18.2 The *Municipality* or a Municipal Entity must within five (5) days of finalising the information document, submit it, together with any investigation report compiled in terms of Regulation 5 and 6 to:

- a) The *Executive Mayor* of the *Municipality*;
- b) The *Accounting Officer* of the *Municipality*;
- c) The chairperson of the board of directors;
- d) The MEC for local government in the province;
- e) The national department responsible for local government;
- f) The provincial treasury;
- g) The National Treasury; and
- h) The Auditor-General.

19. TABLING OF INFORMATION DOCUMENT IN MUNICIPAL COUNCIL OR BOARD OF DIRECTORS OF MUNICIPAL ENTITIES (REGULATION 15)

- 19.1 The *Executive Mayor* of the *Municipality* or the chairperson of the board of directors must table the information document submitted in terms of Regulation 14(2) of the *MFMA* in the *Council* or the board of directors at the first meeting of the *Council* or the board of directors after receipt of the document.
- 19.2 Any resolutions taken by the *Council* or the board of directors relating to the information document referred to in paragraph 19.1 must be reported to the Provincial Treasury and the National Treasury.
- 19.3 If the *Executive Mayor*, the *Accounting Officer* or the chairperson of the board of directors, as the case may be, is of the view that the alleged *financial misconduct* or *financial offence* may have a significant impact on the finances of the *Municipality*, and that the funds need to be recovered from the alleged transgressor concerned, the *Executive Mayor* must request the Speaker of Council to convene a special meeting of the *Council* to discuss the recoverability of the funds in accordance with section 32 of the *MFMA*.

20. REPORTS ON DISCIPLINARY PROCEEDINGS AND CRIMINAL CHARGES (REGULATION 16)

- 20.1 The *Municipality* or a Municipal Entity must report to the institutions referred to in Regulation 14:
- a) Any decision to institute or not to institute disciplinary proceedings against the person who allegedly committed a *financial misconduct*;
 - b) The reasons for the decision;
 - c) The outcome where disciplinary proceedings have been instituted; and whether a charge has been laid against the person concerned with the South African Police Service, if the alleged *financial misconduct* constitutes a *financial offence* in terms of section 173 of the *MFMA*.

20.2 The *Municipality* or a Municipal Entity must report on all suspensions, disciplinary or criminal proceedings instituted in case of *financial misconduct* in its annual report.

21. WHISTLE BLOWING – PROCEDURES FOR CONFIDENTIAL REPORTING FINANCIAL MISCONDUCT AND FINANCIAL OFFENCE (REGULATION 17)

21.1 The *Municipality* must:

- a) Establish reporting procedures for persons to report allegations of *financial misconduct* and *financial offences* on a confidential basis; and
- b) make public the reporting procedures in accordance with section 21(1)(a) and (b) of the Municipal Systems Act.

21.2 The *Municipality* together with its Municipal Entity, must establish reporting procedures to allow persons to report allegations of *financial misconduct* and *financial offence* on a confidential basis and the Municipal Entity must make the reporting procedure public.

22. NELSON MANDELA BAY MUNICIPALITY ETHICS LINE

22.1 The primary objective of the NMBM Ethics Line is to provide a 24-hour Ethics Line service by providing the following communication mediums, with the emphasis on “anonymous reporting” in protection of “whistle-blowers”; etc.:

- a) A toll-free telephone number;
- b) A toll-free fax number;
- c) A secure email address;
- d) A free post address;
- e) A web based address.

22.2 A toll-free number which will be manned 24 hours a day, 365 days a year, to receive calls from municipal employees and members of the public.

- 22.3 All calls to the hotline number will be dealt with by a call operator, who will transcribe the information provided on to a customised call sheet.
- 22.4 Each caller (whistle-blower) will be allocated a specific reference number to be used should the caller wish to provide further information on a subsequent date or should the caller, at a later stage, enquire regarding progress in respect of the matter reported.
- 22.5 The information transcribed on to the call sheet will be transmitted to designated recipients at the *Municipality* who will be responsible for taking action on the information received from such reports.
- 22.6 The option of remaining anonymous will be explained to each caller. In the event of the caller requiring anonymity, whilst no information regarding the identity of the caller will be furnished to the *Municipality* or the *investigator* concerned.
- 22.7 All calls will be recorded and the recordings will be maintained for a period of twelve months.
- 22.8 In the event of the information provided indicating *prima facie* immediate or physical threat to members of the *Municipality* or the general public, the information will be conveyed to the South African Police Service at 10111 as well as the Chief Forensic Auditor of the *Municipality*.

23. HARASSMENT OR VICTIMISATION

- 23.1 The *Municipality* recognises that fact the decision to report a concern can be a difficult one because of the fear of reprisals from those responsible for the irregularity.
- 23.2 The *Municipality* will not tolerate harassment or victimisation and will take action to protect staff when they raise a concern in good faith. This does not

mean that if a *Municipal Official* is already the subject of disciplinary action, that action will be halted as a result of whistle blowing

24. CONFIDENTIALITY

24.1 The *Municipality* will do its best to protect an individual's identity when he / she raises a concern and does not want his/ her identity to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information with prior consent of the whistle blower, and a statement by the individual may be required as part of evidence.

24.2 The *Municipality* accepts that those people who reported alleged *fraud* or *corruption* 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'.

24.3 In respect of all reported incidents of alleged / suspected *fraud* and *corruption*, managers are required to immediately review and where possible, improve the effectiveness of controls, which have been breached in order to prevent similar irregularities from taking place in the future.

25. CODE OF CONDUCT

25.1 The *Municipality* subscribes wholly to the Code of Conduct for staff and *Councillors* as outlined in the Municipal Systems Act, Act No. 32 of 2000.

25.2 In line with section 70 of the Municipal Systems Act, Act No. 32 of 2000, the *Municipality* commits to itself to ensure that all *Councillors* and staff are aware of the code conduct and the consequences of breaching the code. The following sections are highlighted given their peculiar relevance to matters relating to *fraud* and *corruption*.

25.3 **General Conduct**

25.3.1 *Councillors* and staff must at all times:

- a) Loyally execute the lawful policies of the *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, purpose 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;
- e) Act impartially and treat all people equally without favour or prejudice.

25.4 **Personal Gain**

25.4.1 A *Municipal Official* of the *Municipality* may not:

- a) Use the position or privileges of a *Municipal Official*, or confidential information obtained as a *Municipal Official*, for private gain or improperly benefit another person; or
- b) Take a decision on behalf of the *Municipality* concerning a matter in which that *Municipal Official*, or that *Municipal Officials* spouse, partner or business associate, has a direct or indirect personal or private business interest.

25.4.2 Except with the prior consent of the *Council* of the *Municipality*, a *Municipal Official* 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* other than as a *Municipal Official*;
 - iii. Obtain a financial interest in any business of the *Municipality*; or
 - iv. Be engaged in any business, trade or profession other than work of the *Municipality*.

25.5 Disclosure of benefit

25.5.1 A *Councillor* or *Municipal Official* of the *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 *Municipality*, must disclose in writing, full particulars of the benefit to the *Council*.

25.6 Unauthorised disclosure of information

25.6.1 A *Councillor* or *Municipal Official* of the *Municipality* may not without permission disclose privileged information obtained as *Municipal Official* of the *Municipality* to an unauthorised person.

25.6.2 For the purpose of this item 'privileges or confidential information includes any information:

- a) Determined by the *Council* or any structure or functionary of *Municipality* to privileged or confidential;
- b) Discussed in closed session by the *Council* or a committee of the *Council*;
- c) Disclosure of which would violate the person's right to privacy; or
- d) Declared to be privileged, confidential or secret in terms of the law

25.6.3 This clause does not derogate from a person's right of access to information in terms of national legislation.

25.7 Undue influence

25.7.1 A *Councillor* or a *Municipal Official* of the *Municipality* may not:

- a) Unduly influence or attempt to influence the *Council* of the *Municipality*, or a structure or functionary of the *Council* 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 *Council*, in its consideration of any matter, or;

- c) Be involved in a business venture with a *Councillor* with the prior consent of the *Council* of the *Municipality*.

25.8 **Rewards and Gifts**

25.8.1 A *Councillor* or *Municipal Official* of the *Municipality* may not request, solicit or accept any reward, gift or favour for:

- a) Persuading the *Council of Municipality*, or any structure or functionary of the *Council*, with regard to the exercise of any power of the performance of any duty;
- b) Making a representation 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 *Municipal Officials* powers or duties.

25.8.2 A *Municipal Official* must without delay report to a senior official or to the Speaker of Council any offer, which, if accepted by the *Municipal Official*, would constitute a breach of paragraph 26.8.1.

25.8.3 All *Councillors* and *Municipal Officials* of the *Municipality* must comply with the gift policy of the municipality as stated in the Supply Chain Management policy.

25.9 **Council property**

25.9.1 A *Councillor* or *Municipal Official* of the *Municipality* may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the *Municipality* to which that *Municipal Official* has no right.

25.10 **Reporting duties of Municipal Officials**

25.10.1 A *Councillor* and *Municipal Official* of the *Municipality* has reasonable grounds for believing that there has been a breach of this code, the *Municipal Official*

must without delay report the matter to a Senior Official or the Speaker of Council.

26. DUTY TO REPORT CORRUPT TRANSACTIONS (SECTION 34 OF PRECCA NO 12 OF 2004)

26.1 Section 34 of the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 stipulates that the failure to report matters in relation to suspected *fraud and/or corruption* constitutes an offence as follows:

(1) *“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;*
a) *an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or*

b) *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.”*

(2) *“Subject to the provisions of section 37(2), any person who fails to comply with subsection (1), is guilty of an offence.”*

(3) (a) *“Upon receipt of a report referred to in subsection (1), the police official concerned must take down the report in the manner directed by the National Commissioner, and forthwith provide the person who made the report with an acknowledgment of receipt of such report.”*

(b) *“The National Commissioner must within three months of the commencement of this Act publish the directions contemplated in paragraph (a) in the Gazette.”*

(c) *“Any direction issued under paragraph (b) of the PRECCA Act, must be tabled in Parliament before publication thereof in the Gazette.”*

(4) *“For purposes of subsection (1) of the PRECCA Act the following persons hold a position of authority, namely*

(a) *The Director-General or head, or equivalent officer, of a national or provincial department;*

(b) *In the case of the Municipality, the City Manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);*

(c) *Any public officer in the Senior Management Service of a public body;*

(d) *Any head, rector or principal of a tertiary institution;*

(e) *The manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);*

(f) *The executive manager of any bank or other financial institution;*

(g) *Any partner in a partnership;*

- (h) *Any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, Council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;*
- (i) *Any other person who is responsible for the overall management and control of the business of an employer; or*
- (j) *Any person contemplated in paragraphs (a) to (i), who has been appointed in an acting or temporary capacity.”*

27. POLICY IMPLEMENTATION AND REVIEW

- 27.1 *The Policy will take effect on the day of adoption by Council, and will supersede other Anti-fraud and Anti-Corruption Strategy and Related Policies that may have been adopted by Council.*
- 27.2 *The Policy will be subject to review and revision every three (3) years from the date of adoption.*