



STELLENBOSCH
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MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

FRAUD AND CORRUPTION POLICY

As adopted by Council on 25 August 2011

FRAUD AND CORRUPTION POLICY

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1 PREAMBLE

1.1 The Municipal Manager and Council have committed the Stellenbosch Municipality to a process of fraud risk management that is aligned to the principles of the Local Government: Municipal Finance Management Act 56 of 2003 and other related legislative and regulatory standards including policies, procedures, codes and standards adopted by the Council of the Stellenbosch Municipality.

1.2 This policy sets out the Stellenbosch Municipality's commitment to zero tolerance aimed at eradicating fraudulent and corrupt activities.

2 INTERPRETATION CLAUSE

The headings of the clauses in this Policy are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Policy, nor any clause hereof, unless a contrary intention clearly appears: -

2.1 Words importing:-

2.1.1 Any one gender include the other two genders;

2.1.2 The singular include the plural and vice versa; and

2.1.3 Natural persons include created entities (corporate or unincorporated) and the state and vice versa;

2.2 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:-

2.2.1 "AC" means the Audit Committee established in terms of Section 166 of the MFMA;

2.2.2 "Corruption" means any conduct or behaviour where a person accepts, agrees or offers any gratification for him/her or for another

person where the purpose is to act dishonestly or 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;

2.2.3 “Fraud”

means the intentional, false representation or concealment of a material fact for the purpose of inducing another party to act upon it to his or her injury and the perpetrator achieving gain;

2.2.4 “FRC”

means the Fraud Response Committee;

2.2.5 “Irregularity”

means any unlawful act or omission committed by any person responsible for the management of an entity, which has caused or is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of his, her or its dealings with that entity;

2.2.6 “MFMA”

means the Local Government: Municipal Finance Management Act 56 of 2003, including any regulations made in terms thereof and amendments thereto as enacted from time to time;

2.2.7 “Municipality”

means the Stellenbosch Municipality, a local municipality established in terms of section 12 of the Structures Act;

- 2.2.8 "Policy" means this Policy including all annexures and schedules hereto;
- 2.2.9 "Strategy" means the Anti-Corruption Strategy as approved by Council on the 9th December 2010, with amendments thereto as approved by Council from time to time;
- 2.2.10 "Structures Act" means the Local Government: Municipal Structures Act 117 of 1998, including any regulations made in terms thereof and amendments thereto as enacted from time to time;
- 2.2.11 "Systems Act" means the Local Government: Municipal Systems Act 32 of 2000, including any regulations made in terms thereof and amendments thereto as enacted from time to time;
- 2.3 when any number of days is prescribed in this Policy, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 2.4 when figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 2.5 expressions defined in this Policy shall bear the same meanings in schedules or annexures to this Policy which do not themselves contain their own definitions; and

where any term is defined within the context of any particular clause in this Policy, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meanings ascribed to it for all purposes in terms of this Policy, notwithstanding that, that term has not been defined in this interpretation clause.

3 APPLICATION AND SCOPE

- 3.1 This Policy is applicable to the Municipality, its municipal entities and related joint ventures entered into, which may involve the following persons or entities:
 - 3.1.1 All Municipal staff;
 - 3.1.2 Consultants, suppliers, contractors and other providers of goods or services to the Municipality; and
 - 3.1.3 Community structures, organisations and other parties receiving services from the Municipality.
- 3.2 The Policy applies to all fraud, corruption, theft or suspected irregularities of this nature.

4 OBJECTIVES

- 4.1 As instances of fraud remain a constant threat to public trust and confidence, it becomes essential to recognise fraud risk management as an integral part of strategic management and the Municipality is therefore adopting a comprehensive approach to the management of fraud risks.
- 4.2 The Municipality's agenda is to focus its efforts on the following processes and objectives:
 - 4.2.1 Understand the fraud risks that can undermine the institution's service delivery / business objectives;
 - 4.2.2 Determine whether fraud prevention programmes and controls are actually effective in reducing instances of fraud;

- 4.2.3 Gain insight into better ways of designing and evaluating controls to prevent, detect and respond appropriately to fraud;
 - 4.2.4 Reduce exposure to liability, sanctions and litigation that may arise from violations of law or stakeholder expectations;
 - 4.2.5 Derive practical value from the development of a sustainable process of managing fraud risk and improving performance; and
 - 4.2.6 Achieve the highest levels of business integrity through sound corporate governance, internal control and transparency.
- 4.3 The features of this process are outlined in the Strategy approved by Council and it is expected that all personnel will adhere to the Strategy. It is the intention that individual personnel, as well as business units will work together in a consistent and integrated manner, with the overall objective of reducing fraud risk.

5 PARTICIPATION

- 5.1 All stakeholders have a role to play in ensuring that the Municipality operates in a fraud and corruption-free environment to achieve the organisational objectives.

6 RESPONSIBILITIES OF STAKEHOLDERS

6.1 Councillors

- 6.1.1 Councillors have a fiduciary responsibility to the Municipality, including a duty to promote the reputation and business of the institution.
- 6.1.2 Councillors are not to make any personal gain at the expense of or as a result of their relationship with the Municipality.
- 6.1.3 Councillors are further required to declare their interests in terms of the Systems Act.

6.1.4 It is the responsibility of every Councillor who suspects that some kind of fraud or corruption or irregularity has been attempted or committed, to immediately report their suspicion to the Speaker of Council and/or the FRC.

6.2 **Audit Committee (AC)**

6.2.1 The AC is responsible to ensure that adequate risk management and internal controls are introduced by management for the effective and efficient delivery of services to the community of Stellenbosch.

6.2.2 The AC has unlimited access to records, property, personnel and information of the Municipality to the extent that is necessary to discharge its fiduciary duties in terms of the MFMA.

6.2.3 Some of its duties include the management of fraud and commissioning of investigations within the institution.

6.2.4 The AC shall officially set up an FRC made up of its members and that of management, as detailed below.

6.3 **Management**

6.3.1 Management plays a key role in the prevention of fraud and corruption, and fulfils this responsibility through the establishment, implementation and continued operation of suitable internal controls and by leading with the correct “tone at the top”.

6.3.2 A major element of good corporate governance is a sound assessment of the Municipality’s business risks.

6.3.3 Managers are expected to fully implement the letter, spirit and purpose of this Policy and establish an ethical culture in their respective management units, implementing the following processes that are updated annually:

6.3.3.1 The identification of fraud risks within Risk and Control Frameworks, encompassing all operations for which they are responsible;

- 6.3.3.2 The assessment of each risk for likelihood and potential impact;
- 6.3.3.3 The identification of adequate and effective controls for each risk;
- 6.3.3.4 The regular review and testing of control systems to ensure that controls are being complied with;
- 6.3.3.5 The review of control and/or implementation of new control where fraud has occurred, or has been attempted to reduce the risk of fraud recurring; and
- 6.3.3.6 The quantification of fraud occurrences on an annual basis and the updating of Risk Registers regularly (at least quarterly) to reflect the quantum of fraud within their business area.

6.4 **Fraud Response Committee (FRC)**

- 6.4.1 The FRC shall be established in the Municipality to give effect to this Policy.
- 6.4.2 The FRC will have its terms of reference defined and approved by the AC in compliance with this Policy, the Strategy and any other legislative requirements.
- 6.4.3 The members of the FRC shall be the following persons:
 - 6.4.3.1 Chairperson of the Audit Committee who shall automatically be the chairperson of the FRC;
 - 6.4.3.2 Any 1 additional member of the Audit Committee;
 - 6.4.3.3 Municipal Manager;
 - 6.4.3.4 A Legal Advisor as designated by the Municipal Manager;
 - 6.4.3.5 Chief Financial Officer (as an invitee); and
 - 6.4.3.6 Chief Audit Executive (as an invitee).
- 6.4.4 The FRC shall be responsible for the management of the whistleblower mechanism which is available to all Municipality stakeholders.

6.4.5 The FRC will *inter alia*:

6.4.5.1 Receive reports of suspected fraud from the Hotline and any person, whether in writing or otherwise;

6.4.5.2 Review the reports;

6.4.5.3 Determine whether the allegation warrants further investigation; and

6.4.5.4 Refer those reports that warrant further investigation to the Investigation Unit, who shall thereafter manage the investigation and report to the FRC.

6.5 **Investigation Unit**

6.5.1 It is noted that at the adoption of this Policy, an Investigation Unit has not been appointed. As a transitional measure, the FRC may designate any one or more of the following to attend to those specific functions and responsibilities of the Investigation Unit as it deems necessary, or on an *ad hoc* basis as may be required, who shall be deemed to have the same powers as the Investigation Unit for the duration of its appointment:

6.5.1.1 Any one of its (the FRC's) members;

6.5.1.2 Another suitably qualified and experienced Municipal official; and/or

6.5.1.3 Outsource the requirements and appoint a suitably qualified and experienced service provider in compliance with the Municipality's supply chain processes.

6.5.2 The Investigation Unit shall be responsible for ensuring awareness of the implementation of the fraud and corruption strategy, creating fraud awareness amongst all stakeholders and accepting responsibility for considering any reports for fraud, corruption and irregularities, and for taking appropriate action including the following:

6.5.2.1 Proactively anticipate, prevent, detect and investigate fraud, corruption and irregularities, to support the strategic intent and service delivery business objectives of the Municipality;

6.5.2.2 Develop and implement the fraud prevention strategy for the Municipality i.e. fraud awareness, fraud response plan, fraud risk assessment, etc.;

- 6.5.2.3 Investigate suspected fraudulent activities within the Municipality, and notify the FRC of the results thereof;
- 6.5.2.4 Establish a series of physical, logical and procedural measures to discourage fraudulent conduct;
- 6.5.2.5 Implement cost effective counter-measures to prevent or reduce the impact of the threats identified by assessing the risk of fraud and corruption;
- 6.5.2.6 Identify losses or attempt to cause loss at the earliest possible opportunity and prevent or reduce them; and
- 6.5.2.7 Comply with legal requirements as applicable from time to time, including but not limited to those delineated in the Prevention and Combating of Corrupt Activities Act 12 of 2004, Protected Disclosure Act 26 of 2000, Financial Intelligence Centre Act of 2001, etc.

6.6 **Internal Audit**

- 6.6.1 Internal Audit is responsible for the provision of an independent and objective opinion on the adequacy and effectiveness of risk management, control and governance processes which includes the fraud and corruption management processes.
- 6.6.2 The adequacy of arrangements for managing the risk of fraud and ensuring that the Municipality promotes an anti-fraud culture is a fundamental element in arriving at an overall opinion.

6.7 **Employees**

- 6.7.1 It is the responsibility of every Municipal employee who suspects that some kind of fraud has been attempted or committed, to immediately report their suspicion to the FRC or via the hotline.
- 6.7.2 In the event that the employee wishes to remain anonymous, they may contact the external fraud Hotline to report the matter.

6.7.3 Each employee is governed within the scope of their duty in execution of the work, by the MFMA, the Structures Act, the Systems Act, the Municipality's by-laws and policies including policies on conduct and on IT usage, the guidelines on gifts and hospitality, and additional codes of conduct associated with their professional and personal conduct.

6.8 **External Audit**

6.8.1 The primary duty of external auditors is to determine the fairness of the accounts with reference to materiality.

6.8.2 In forming an opinion, the external auditor carries out procedures designed to obtain evidence that will provide reasonable assurance that financial information is properly stated all material respects

6.8.3 External auditors should plan the audit on the assumption that there is reasonable expectation of detecting material misstatements in the financial information, which may result from some kind of an irregularity.

6.9 **Community**

6.9.1 The Municipality also recognizes the important role of the Greater Stellenbosch community and general public at large to contribute to an environment that is free of corruption and other irregularities.

6.9.2 In the event that members of the community wish to remain anonymous, they may contact the external fraud Hotline to report the matter.

7 **CONFIDENTIALITY**

7.1 To ensure that the identity of the whistleblower, whether it be a member of staff or the community is protected, all information provided in connection with fraud and corruption allegations and suspicions will be treated as highly confidential.

8 CONCLUSION

- 8.1 The Municipality encourages its personnel, members of the public as well as all other stakeholders as set out in this Policy to freely report any suspicion of fraud, corruption and any other irregularities that has been attempted or committed without fear or favour.