



**MOGALAKWENA LOCAL MUNICIPALITY (MLM)**

**ANTI-FRAUD AND CORRUPTION POLICY**

**2020/2021 FINANCIAL YEAR**

**VERSION 1**

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**MLM Anti-Fraud and Corruption policy**

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## **1. INTRODUCTION**

Fraud represents a significant potential risk to the MLM's assets, service delivery efficiency and reputation. The MLM will not tolerate fraudulent or corrupt activities, whether internal or external to the municipality. The MLM will vigorously pursue or take effective and concrete action to combat all forms of corruption and related corrupt practices.

The Municipal Finance Management Act (MFMA), Act no. 56 of 2003 was introduced to eliminate hierarchical systems of management, poor information and weak accountability. One of the key objectives of the Act is to eliminate waste and corruption in the use of municipal resources.

Strategically, the policy forms part of the administration's endeavour to reach the Integrated Development Plan objective of ensuring good governance and institutional development. The policy is also part of the internal controls of the municipality.

## **2. DEFINITIONS**

### **2.1. Fraud**

In South Africa, the Common Law offence of **fraud** is defined as "the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another".

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

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

- a) The illegal or unauthorised performance of such other person's powers, duties or functions;

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- b) An abuse of authority, a breach of trust, or the violation of a legal duty or a set of rules;
- c) The achievement of an unjustified result; or
- d) Any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of Corruption.

## **2.2. Corruption**

It includes 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, abuse of a position of authority or a breach of trust or violation of duty.

### **Forms of corruption**

Corruption takes various forms in the Municipality and elsewhere in society. The following are examples of different types of corruption:

#### **2.2.1. Bribery**

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of municipal employees.

#### **2.2.2. Embezzlement**

This involves theft of resources by persons who control such resources.

#### **2.2.3. Extortion**

Coercion of a person or entity to provide a benefit to a municipal employees, another person or an entity, in exchange for acting (or failing to act) in a particular manner.

#### **2.2.4. Abuse of power**

The use by a Municipal employee of his or her vested authority to improperly benefit another person or entity (or using vested authority to improperly to discriminate against another person or entity).

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**2.2.5. Conflict of interest**

The failure by a municipal employees to act or to consciously fail to act on a matter where the municipal employees has an interest or another person or entity that has some form of relationship with a municipal employees has an interest.

**2.2.6. Abuse of privileged information**

This involves the use, by municipal employees of privileged information and knowledge that a municipal employee possesses as a result of his/ her office to provide unfair advantage to another person or entity to obtain a benefit.

**2.2.7. Favouritism**

The provision of services or resources according to personal affiliation by a municipal employee who does not meet minimum requirements.

**2.2.8. Nepotism**

An official ensuring that family members are appointed to municipal positions or that family members receive contracts from the municipality without meeting minimum requirements is regarded as nepotism.

These manifestations are by no means exhaustive as corruption appears in many forms and it is virtually impossible to list all of these.

**2.3. Theft**

It is an unlawful and intentional appropriation of movable corporeal property belonging to another person with the intention of depriving the owner permanently of his/her possession.

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**Actions constituting fraud and corruption**

Fraud and corruption manifests in a number of ways and varying degrees of intensity. These include, but are not limited to:

- a) Unauthorised private use of the Institution's assets, including vehicles;
- b) Falsifying of records;
- c) Conspiring unfairly with others to obtain a tender;
- d) Disclosing proprietary information relating to a tender to outside parties;
- e) Accepting inappropriate gifts from suppliers;
- f) Operating a private business in working hours;
- g) Stealing equipment or supplies from work;
- h) Soliciting bribes or favours to process requests;
- i) Soliciting bribes or favours for turning a blind eye to a service provider who does not provide an appropriate service;
- j) Submitting or processing false invoices from contractors or other service providers; and;
- k) Misappropriating fees received from customers, and avoiding detection by not issuing receipts to those customers.

**3. PURPOSE**

The purpose of this policy is to articulate MLM's zero tolerance approach to fraud and corruption in promoting integrity by strengthening measures to improve anti-fraud and corruption management. The MLM adopts an integrated approach to fight against fraud and corruption, this will include an analysis of fraud and corruption risks as part of the municipality's system of risk management.

**4. POLICY STATEMENT**

This policy is issued in terms of Section 62(1) (c) (i) of the Municipal Finance Management Act, Act 56 of 2003, which stipulates that

*"The Accounting Officer of a municipality is responsible for managing the financial administration of the municipality ,and must for this purpose take all responsible steps to ensure that the municipality has and maintains effective, efficient and transparent systems of financial and risk management and internal controls "*

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The risk of corrupt or fraudulent activities is ever present in all organizations and in all industries, therefore MLM is not immune to the possibility of corruption and fraud activities occurring. These activities sabotage the municipality in its efforts to render affordable and sustainable municipal services to the community. It also have a negative impact on the reputation of MLM as an institution as well as all personnel. The community expects the highest of standards of ethical behaviour from all who are associated with the municipality.

It expects the employees to practice the highest standard of stewardship of public resources and to establish and maintain a sound system of internal controls. All councillors and employees must take note of the negative impact of corruption and fraud. Any suspicious activity must be duly reported to the relevant authority.

Management has an obligation to ensure that sound internal controls are in place and that all municipal activities are conducted in compliance with these internal controls.

The Municipal Manager have committed MLM to a zero tolerance stance with regards to fraud and corruption were prima-facie evidence of fraud and corruption is submitted, management will act against the perpetrators.

The Municipal Manager and MLM oversight structures will endeavour to work closely with all officials to successfully prevent and detect fraud and corruption.

Let us all work together to create a municipality that is free from the scourge of fraud and corruption.

## **5. LEGISLATIVE FRAMEWORK**

This policy is based on the following legislative framework: -

**5.1.** The Republic of South Africa Constitution 1996 , Section 195

**5.2.** Protected Disclosure Act, 2000( Act No. 26 of 2000)

**5.3.** Labour Relations Act, 66 of 1995

**5.4.** Practical Guidelines for employees issued in terms of section 10 of the Protected disclosures Act , 2000 (Act .26 of 2000)

**5.5.** Municipal Finance Management Act 56 of 2003

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- 5.6. National Treasury Regulations of 2005 ( as amended)
- 5.7. Local Government Anti-Corruption Strategy, 2006
- 5.8. National Anti-corruption strategy adopted by Cabinet in 2002
- 5.9. Minimum Anti-Corruption Capacity Requirements approved by Cabinet in 2003
- 5.10. Organised Crime Act no .121 of 1998
- 5.11. Criminal Procedure Act No. 51 of 1977 ( Check you have stated Act 65 of 2008 )
- 5.12. Justices of the Peace and Commissioners of Oath Act no .16 of 1963
- 5.13. Limpopo Provincial Government Anti-Corruption Strategy ;
- 5.14. National Road Traffic Act No .93 of 1996
- 5.15. Limpopo Protected Disclosure Policy Framework
- 5.16. Prevention and Combating of Corrupt Activities Act, 2004( Act no 12 of 2004)
- 5.17. Municipal System Amendment Act 1 of 2011
- 5.18. Intimidation Act 72 of 1982
- 5.19. Witness Protection Act 112 of 1998
- 5.20. Promotion of Access to Information Act, 2 of 2000
- 5.21. Municipal Regulations on Financial Misconduct (MFMA Circular 76) - The  
Disciplinary Board to Investigate Financial Misconduct
- 5.22. Government Integrity Management Framework: 2015
- 5.23. Local Government Municipal Systems Act no 32 of 2000: Code Of Conduct For  
Municipal Staff Members

## **6. SCOPE AND APPLICATION**

This policy is applicable on all councillors, officials and service providers of MLM, regardless of their level or seniority. It covers all circumstances where staff and service providers are performing work, duties or functions for the municipality, as well as related activities, such as work related social functions, travel, conferences and any circumstances where a person is representing the MLM .

## **7. FRAUD AND CORRUPTION CONTROL STRATEGIES**

The approach in combating fraud and corruption activities is focused into 3 areas, namely:



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- **Structural strategies**
- **Operational strategies; and**
- **Maintenance strategies**

### **7.1. Structural strategies**

The structural strategies represent the actions to be undertaken in order to address fraud and corruption at the structural level. The following section outlines the fraud and corruption responsibilities associated with different roles within the municipality.

#### **7.1.1. Council/Oversight Committees**

The anti-fraud and corruption policy must be approved by council. All Section 79 oversight committees, must fulfil an oversight function as per their mandate and delegated powers. The committees must set the tone and support the administration in its endeavours to combat fraud and corruption.

#### **7.1.2. Municipal Manager**

The Municipal Manager bears the ultimate responsibility for fraud and corruption management within the Institution. This includes the coordination of risk assessments, overseeing the investigation of suspected fraud and corruption, and facilitation for the reporting of such instances.

It is the responsibility of the Municipal Manager to ensure that this policy is successfully implemented.

#### **7.1.3. Senior Managers/Managers and supervisors**

It is the responsibility of every Senior Manager/Manager/Supervisor to ensure that all internal controls that support this policy are in place, maintained to identify possible cases of fraud and corruption and ensure that are strictly enforced. They must fulfil their supervisory duties in such a way that ensure consequence management in cases where fraud and corruption are detected.

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**7.1.4. Risk Management Committee**

Mogalakwena Municipality's Risk Management Committee will advise the Municipal Manager on the Municipality's approach to fraud prevention, fraud detection strategies and response to fraud and corruption incidents reported by employees or other external parties.

The Risk Management Committee shall meet at least once a quarter as per the Risk Management Committee Charter to discuss the following issues:

- a) Progress made in respect of implementing the Anti-Fraud and Corruption Strategies;
- b) Reports received by the Institution regarding fraud and corruption incidents with the view to making any recommendations to the Municipal Manager and Chairperson of the Audit Committee;
- c) All allegations received via the Presidential hot-line and the Premier's hot-line.

**7.1.5. Disciplinary Board**

The Minister of Finance has, in terms of sections 168 and 175, of the Local Government: Municipal Finance Management Act, 56 of 2003, promulgated municipal regulations with regards to procedures and criminal proceedings, pertaining to financial misconduct.

These regulations, were published in Government Gazette no 37699 dated 30 May 2014. (Regulation R430.) .

In terms of section 4 (1) of the Regulations, a Municipal Council must establish a Disciplinary Board to investigate allegations of financial misconduct and monitor the institution of disciplinary proceedings against an alleged transgressor.

In terms of section 4 (1) of the Regulation R 430, *"A disciplinary board is an independent advisory body that assists 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."*

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**7.1.6. An ethical culture**

All municipal staff are required to conduct themselves in an ethical and moral way. Ethical conduct is based on a set of principles referred to as values or norms. The collective ethical conduct of all the employees of the municipality reflects the municipal's ethical conduct. In this regard, the highest standards of ethics are required by employees when fulfilling their duties.

Good governance indicates that municipality should develop codes of conduct (ethics) as part of their corporate governance frameworks. All employees are expected to abide by the Code of Conduct for the municipality.

**7.2. Operational structures**

**7.2.1. Internal controls**

Internal controls are the first line of defence against fraud and corruption. While internal controls may not fully protect the municipality against fraud and corruption, they are essential elements in the overall Anti-Fraud and Corruption policy.

All areas of the policy require internal controls; for example:-

- a) Physical control (security of assets);
- b) Authorization controls (Approval of expenditure);
- c) Supervisory controls (supervising day-to-day issues);
- d) Analysis of data;
- e) Monthly and annual financial statements;
- f) Reconciliation of bank statements, monthly;
- g) Reconciliation of vote accounts, monthly
- h) Procurement process
- i) Segregation of duties (it reduces the risk of intentional manipulating or error and increase the element of checking.

An internal audit will be responsible for implementing an internal audit program which will incorporate steps to evaluate adherence to internal controls.

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**7.2.2. Prevention strategies**

A number of combined initiatives result in an overall preventative environment in respect of fraud and corruption. These include the following:

**a) Employee awareness**

The main purpose of fraud and corruption awareness workshops / training is to assist in the prevention, detection and reporting of fraud and corruption by raising the level of awareness as to how fraud and corruption is manifested in the workplace. In this regard, all employees will receive training on the following:

- Anti-Fraud and Corruption policy;
- Code of Conduct for employees;
- Whistle blowing policy;
- How to respond to fraud and corruption; and
- Manifestations of fraud and corruption in the workplace.
- The Divisional Head: Risk management will be responsible for employee awareness and that will arrange and schedule awareness sessions throughout the year.

**b) Pre-employment screening**

Pre-employment screening will be carried out for all appointments, and evidence of such screening will be maintained by Human Resource department. A consideration should be given to the following pre-employment screening:

- i. Verification of identity.
- ii. Police criminal history.
- iii. Reference checks with the two most recent employers – this will normally require telephone contact.
- iv. A consideration of any gaps in employment history and the reasons for those gaps.
- v. Verification of formal qualifications claimed.

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The screening will be performed by a person / people nominated by the Human Resources department in conjunction with the Municipal Manager to ensure that screening is consistent and appropriately resourced throughout all departments.

**c) Recruitment process**

Recruitment will be conducted in accordance with the municipal recruitment procedure. It will be a transparent process and all appointments will be confirmed only after due recommendation. Any person, involved in any decision-making process, who may have a conflict of interest, must declare such a conflict in writing to the HR Department and withdraw from any further procedures.

**d) Risk assessment**

Risk assessment should be conducted at a strategic level and in all operation business level. The fraud and corruption risk assessment shall be done in line with the guidelines as set in MLM risk management strategy.

**e) Internal audit**

An internal audit annual plan will be based on the results of risk assessment which will prioritise high risk areas including high fraud and corruption risks.

**f) Disclosure of interest**

All directors, managers, assistant managers, staff and councillors of the municipality will be required to disclose their business interests on an annual basis. This register will be kept with the Divisional Head: Risk Management

**7.2.3. Detection strategies**

Detection of fraud and corruption may occur through:

- a) Vigilance on the part of employees, including line management;
- b) The internal audit function;
- c) Ad hoc management reviews;

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- d) Anonymous reports; and
- e) The application of detection techniques

Divisional Head: Risk Management will be responsible for developing detection strategies, and will work closely with line management and the Internal Audit function for this purpose. The municipality will embark on a number of initiatives to detect fraud and corruption in the workplace.

**7.2.3.1. Internal audit**

As part of the prevention strategy, internal audit will examine and evaluate the adequacy and effectiveness of the system of internal control according to the plan, commensurate with the extent of the potential exposure / risk in the various segments of the municipality's operations.

**7.2.3.2. External audit**

The Municipality recognises that the external audit function is an important control in the detection of fraud. The Chief Financial Officer will need to hold discussions with all engaged external auditors to ensure that due consideration is given, by the auditors, to ISA 240 "*The Auditors' Responsibility to Consider Fraud in the Audit of a Financial Statement*".

**7.2.4. Response strategy**

**a) Reporting fraud and corruption – a whistle blowing policy**

One of the key obstacles to fighting fraud and corruption is the fear by employees of being intimidated to identify or "blow the whistle" on fraudulent, corrupt or unethical practices witnessed in the work place. Those who often do "blow the whistle" end up being victimised and intimidated. For this reason, the municipality will adopt a whistle blowing policy setting out the detailed procedure which must be followed in order to report any incidents of fraud and / or corruption. This policy will be designed to comply with the provisions of the Protected Disclosures Act.

Any suspicion of fraud and corruption will be treated seriously and will be reviewed,

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analysed, and if warranted, investigated. If an employee becomes aware of a suspected fraud, corruption or any irregularity or unethical behaviour, such issues should be reported in terms of a whistle blowing policy.

**b) Investigating fraud and corruption**

In the event that fraud or corruption is detected or suspected, investigations will be initiated, and if warranted, disciplinary proceedings, prosecution or action aimed at the recovery of losses will be initiated. Investigations will be carried out guided by the office of the Municipal Manager.

**7.2.5. Recovery and other remedies**

For any recoveries and other remedies relating to fraud and corruption, the municipality will involve the Municipal Public Accounts Committees (MPAC) in terms of the provisions of the Local Government Municipal Structures Act, Act 117 of 1998 and the Municipal Finance Management Act, Act 56 of 2003 to serve as an oversight committee to exercise oversight over the executive obligations of council and the Municipal Disciplinary Board established in terms of Regulation 4 sub-regulation (1, 2,4,5,7 and 8) of the Municipal Regulations on Financial Misconduct procedures and Criminal Proceedings 2014.

**7.2.7. Fraud risk assessment and fraud prevention plan**

Fraud and corruption risk assessments should also be conducted annually and the results should be considered when drafting fraud prevention plan.

Mogalakwena Municipality requires all staff at all times to act honestly and with integrity and to safeguard the municipal resources for which they are responsible.

The Municipality is committed to protecting all revenue, expenditure and assets from any attempt to gain illegal financial or other benefits.

Any fraud or corruption committed against the Municipality is a major concern to the Council. Consequently, any case will be thoroughly investigated and appropriate corrective action will be taken against anyone who is found guilty of corrupt conduct.

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This may include referral to the South Africa Police Services and other relevant state organ depending on the nature of the matter.

## **8. MAINTENANCE OF THE POLICY**

### **8.1.1. Review and updating the Anti-Fraud and Corruption policy**

The Divisional Head: Risk Management is the central part of fraud and corruption control programme and should involve an ongoing review of fraud and corruption risk exposures. The policy will be reviewed as and when required to incorporate changes in the legislative framework within Local Government.

### **8.1.2. Communication**

The Anti-Fraud and Corruption Policy should be advertised in all public places within MLM premises and issued to all stakeholders, namely shareholders, employees and service providers.

## **9. REPORTING OF ALLEGATIONS OF FRAUD/CORRUPTION**

Officials/Supervisors/Managers/Senior Managers in the municipality, must report all cases of alleged fraud and corruption in writing to the Municipal modifier or investigation office.

The Municipal Modifier or investigation officer must within 24 hours after the information about possible fraud/corruption was reported to him conduct a preliminary investigation to obtain facts and possible evidence that might support the allegation of fraud/corruption. If no capacity to investigate the allegations is available within the municipality, external service provider can be appointed this must be done through the Office of the Municipal Manager.

This investigation must be concluded within seven working days and a written report must be submitted to the Municipal Manager and Municipal modifier.

The Municipal modifier must duly inform the Municipal Manager, and the relevant member of the Mayoral Committee of the nature of the allegations.



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All cases of suspected fraud within Mogalakwena Municipality must be reported to the following hotline numbers:

- a) Presidential Hotline : 17737
- b) Premier's Hotline : 0800 687 432
- c) Consumer Call Centre : 0800 687 432

**Or to the municipal modifier / Investigation office on the following numbers:**

- a) Office Line : 015 491 9868
- b) Cell Number : 071 745 8924

**10. APPROVAL AND EFFECTIVE DATE OF THE POLICY**

The Anti-Fraud and Corruption policy shall come into effect immediately upon approval by the Council of Mogalakwena Local Municipality.

\_\_\_\_\_  
**Prepared by:**  
**Divisional Head Risk Management**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Recommended by:**  
**Chief Operations Officer**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Recommended by:**  
**Risk Management Committee Chairperson**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Endorsed by:**  
**Municipal Manager**

\_\_\_\_\_  
**Date**