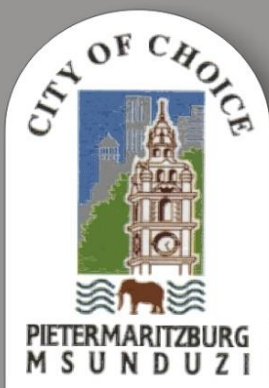


MSUNDUZI MUNICIPALITY



Policy Name	CONSEQUENCE MANAGEMENT AND ACCOUNTABILITY POLICY
Policy Number	CITY MANAGER 01/2023
Status	NEW POLICY
Commencement Date of Review	N/A
Approved By	Council
Date Last Approved	29 June 2023
Date Last Reviewed	N/A
Date For Next Review	WITHIN 12 MONTHS OF APPROVAL BY COUNCIL



The Msunduzi Municipality

CONSEQUENCE MANAGEMENT AND ACCOUNTABILITY POLICY

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1. Introduction

The Municipal Finance Management Act (MFMA), other legislation and regulations governing municipalities and municipal entities sets the enabling framework within which public resources are appropriated for service delivery. The key principles of good governance, transparent and accountable use of public finances and resources, underpin the MFMA. The Consequence Management and Accountability Policy draws from various legislation and elaborates on its linkages and alignment to strengthen public accountability and clarifies the roles of different stakeholders to assist in the practical implementation of process and procedures required to address instances of financial misconduct as defined in section 171 of the MFMA.

The Consequence Management and Accountability Framework (CMA Framework) provides information and guidance, from a Municipal Finance Management Act (MFMA) perspective, to deepen understanding of consequence management and accountability.

CMA is being applied, sometimes successfully, in various municipalities and municipal entities. However, the process is uneven. The CMA framework developed, and which is explained below has been drawn out of research into various South African and international cases. Whilst CMA is distinct from anti-corruption, this CMA Framework has also sought to follow national perspectives on the organisational starting points for anti-corruption initiatives. As in the National-anti-corruption-strategy-2020-2030, the analysis is that effective CMA should start with an “active citizenry and whistleblowing” and conclude with strengthening “the resourcing, coordination, performance, accountability and independence of dedicated agencies.”. The CMA Framework presented here chooses these very starting and concluding points. Whilst the CMA Framework presented here deals with the modalities for addressing consequences and accountability for acts of financial misconduct, it is better to also have in place those aspects of work cultures and ethics which prevent such acts. This Framework is provided to add to the positive effects of building such cultures in municipalities and municipal entities, rather than to replace them.

2. Purpose

This policy presents a framework specifically for financial misconduct in relation to officials and financial offences broadly for both officials and councillors within the context of the MFMA and synergises with other legislation that deals with consequence management. Furthermore, it aims to support various stakeholders in the national, provincial and municipal government to effectively and efficiently discharge their obligations as it relates to financial misconduct and financial offences. Lastly, the CMA Framework contributes directly to the functionality of Disciplinary Boards.

3. Abbreviations and Definitions

For the purpose of this policy and interpretation the following terms are defined as follows:

AO	– Accounting Officer
CFO	– Chief Financial Officer
DB	– Disciplinary Board
PRECCA	– Prevention and Combating of Corrupt Activities Act
CMA	– Consequence Management and Accountability Framework
MFMA	– Municipal Finance Management Act
NT	– National Treasury
PT	– Provincial Treasury
UIFW	– Unauthorized, Irregular, Fruitless and Wasteful expenditure.

Corruption, apart from its usual meaning, is defined generally in PRECCA as being committed by:

"Any person who, directly or indirectly-

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person;
- (b) or gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-
 - (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (ii) that amounts to-
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules,
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption.

Fraud means wrongful or criminal deception intended to result in financial or personal gain.

Non-Compliance means a breach of any organizational policies, code of conduct, applicable laws, regulations, and organizational standards.

Non-compliance incident means any action that does not comply with legislations, regulations, code of conduct and organizational policies.

4. Legislative Framework

- AGSA – Auditor General South Africa
- The Basic Conditions of Employment Act 75 of 1997
- The Criminal Procedure Amendment Act, 2017
- The Criminal Procedure Amendment Act, 2017
- The Criminal Procedure Amendment Act, 2017
- The Constitution of the Republic of South Africa, Act 108 of 1996
- The Circular 76 - Local Government: Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2015
- The MFMA Circ. 121-Consequence Management and Accountability Framework, 2022
- The Local Government Municipal Systems Act 32 of 2000 (MSA)
- The Local Government: Municipal Structures Act 117 of 1998, Amendment Act 3 of 2021
- The Local Government: Municipal Finance Management Act 56 of 2003
- The Local Government: Municipal Planning & Performance Management Regulations, 2001
- The Local Government: Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, 2006
- The Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA)
- The Public Audit Amendment Act 5 of 2018
- The Local Government - Code of Conduct for Councillors
- The Local Government - Code of Conduct for Municipal Staff Members
- The Local Government - Disciplinary Regulations for Senior Managers, 2010
- The South African Local Government Bargaining Council Collective Agreement
- The Labour Relations Act: Schedule 8 Code of Good Practice: Dismissal

5. Legislative Reference

5.1. International Obligations of the Republic

Globally, corruption is regarded very seriously and there are numerous international guidelines and treaties on the subject, an example of which is the UN Guide for Anticorruption Policies issued by the United Nations Office on Drugs and Crime. Where there is an international dimension to a possible transgression of the MFMA (for example suspicious financial transactions), this Guide should be referred to besides the other South African legislation as referred to below.

5.2. The Constitution of the Republic of South Africa

The Constitution is the supreme law against which all other South African legislation is measured. From a CMA perspective, the significant provisions are those which lay the foundation for Local Government, and which provide for a specific list of 'competencies' (or functions) for local government some of which are shared by

provincial and national government; and which entrench the role of NT and PT in respect of oversight functions in respect of municipal finance.

5.3. Local Government: Municipal Structures Act 117 of 1998

This Act, as its name suggests, provides for the structures fundamental to the system of local government including, the establishment of municipalities and the criteria for determining the type of municipality to be established in a particular area. Importantly, it regulates the internal systems, structures, and office bearers of municipalities.

5.4. Local Government: Municipal Systems Act 32 of 2000

This legislation provides for the core principles, mechanisms and processes necessary for municipalities to achieve the vision in Chapter 12 of the Constitution but, for present purposes, the salient provision is Schedule 2 which is the Code of Conduct for Municipal Staff Members

5.5. Local Government: Municipal Property Rates 6 of 2004

Although this Act provides for a vital element of municipal existence namely the power to impose property rates, it is not directly relevant to financial CMA except insofar as there could be certain improprieties for example regarding municipal valuations which officials or councilors may benefit from in which case, they should be dealt with in terms of the MFMA and the Financial Misconduct Regulations.

5.6. Organized Local Government Act 52 of 1997

Again, this legislation is, though vital to the system of co-operative governance, not central to the nitty-gritty of financial CMA.

5.7. Local Government: Municipal Finance Management Act 56 of 2003

The MFMA constitutes a vital point of reference for financial CMA. The Act deals with vitally important issues including:

- Section 32 - unauthorized, Irregular or Fruitless and Wasteful Expenditure (UIFWe)
- Chapter 8 - Responsibilities of Municipal Officials (including: the Accounting Officer, financial management and administration, the top management of the municipality and the officials to whom they may delegate certain functions and reports and reportable matters)
- Chapter 10 – municipal entities
- Section 164 relating to forbidden activities
- Sections 171 and 172 - Financial Misconduct by officials of municipalities or municipal entities
- Sections 173 and 174 - Financial Offences and penalties

5.8. Municipal Structures Amendment Act 3 of 2021

This legislation, inter alia, refines the definition of roles of various municipal office bearers and importantly provides a Code of Conduct for councillors in schedule 7, including those relating to their financial affairs. It is critically important legislation for implementing CMA within municipalities and therefore should be studied carefully in its entirety.

5.9. Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA)

This Act is sometimes overlooked in relation to municipal financial CMA. Perhaps the reason for this is that it is, primarily, a tool for law enforcement. However, it is a vital resource if utilized properly within the municipality or municipal entity, especially where those who learn of wrongdoing don't report it to the relevant authorities. This is because, emphasizing the grave consequences of its provisions can have a deterrent effect on those engaged in, or contemplating, acts of financial misconduct. This legislation applies to both officials and public office bearers within municipalities and municipal entities. We therefore encourage municipalities and municipalities to include the relevant provisions of this Act in their consequence management policy and in internal awareness campaigns on consequence management. Municipalities and municipal entities are also advised to include the following details in their consequence management policies as it will further enhance reporting in terms of confidentiality: SA Anti-corruption hotline: 0800 43 43 73, SIU Whistle-blower Hotline: 0800 037 774; Hawks Hotline: 012 846 4590 or E-mail: CorruptionReports@saps.gov.za. The salient provisions of the Act appear in Annexure F and are:

- Section 3 - which creates the general offence of corruption (which is much wider than the man in the street might believe and probably encompasses a lot of what has become common practice in some municipalities)
- Section 13 - which deals specifically with tenders and corrupt activities relating to the procuring or withdrawal of tenders
- Section 17 - which criminalizes the acquisition of a private interest in any contract, agreement, or investment of a public body
- Section 18 & 19 - which deal, respectively, with unacceptable conduct in relation to witnesses (including those in relation to investigations or disciplinary enquiries) and intentional interference with any investigation (provisions which may be useful for deterring the harassing or intimidation of whistle-blowers)
- Section 26 - which sets out the penalties for contraventions of the Act. These penalties are significantly more serious than those provided for in the MFMA and include life imprisonment.

- Section 34 - which creates a duty to report corrupt transactions. It applies to any person who holds a position of authority as specified and who knows, or ought reasonably to have known or suspected that another person has committed corruption involving an amount of more than R100,000. Contraventions of this section could mean jail sentence of 10 years for the person concerned.

5.10. Public Audit Amendment Act

The amendments are important for several reasons, principal amongst which is that the Auditor General is now entitled to issue a "certificate of debt" in respect of those who fail to comply with an obligation to take action to recover losses and/or prevent further losses. This is significant in the context of financial CMA because: firstly, it reinforces what must be done in terms of the MFMA by the role-players and secondly, it provides the AGSA with "step-in" right to engage and involve law enforcement agencies if such action is not taken. This legislative reform which, if implemented correctly, will contribute substantially towards enhancing consequence management within municipalities and municipal entities.

5.11. Criminal Procedure Act, as amended.

Section 300 of the Act provides for victim compensation. The legislation allows the court to suspend a jail sentence, in whole or in part, on condition that losses caused are repaid. This can provide a powerful incentive for a wrongdoer to disgorge monies which would otherwise have been difficult to recover by civil means if the ill-gotten gains are hidden in trusts, opaque offshore structures or in the names of relatives and so on. The process is not frequently used and will not happen automatically. What is required is proactive intervention by the municipality or municipal entity, as the case may be, to request an appropriate order. The best way of doing this is for a legal representative of the municipality or municipal entity to liaise with the prosecutor concerned well in advance of sentencing.

In addition, the Act is the legislation which controls how criminal prosecutions for MFMA offences are prosecuted. For some time, cases such as the Pietersen case (an appeal against a jail sentence for MFMA offences and in which the prison sentence was partially upheld) were rare. However, of late, there has been a marked increase in reported cases of arrests of municipal managers for MFMA offences and, sometimes, the imposition of substantial periods of imprisonment. This framework will further enhance the understanding and alignment of cases resulting from MFMA transgressions.

5.12. Code of Conduct for Councilors

This Code, which was previously a Schedule to the Systems Act, has now been replaced by an amendment to the Structures Act and been substantially updated in the process. In addition, it is illegal, in terms of Section 76 of the MFMA, for councilors to exert pressure on Accounting Officers to depart from the MFMA.

5.13. Code of Conduct for Municipal Staff Members

This Code, a copy of which is a Schedule to the Systems Act applies to all municipal officials.

5.14. Disciplinary Regulations for Senior Managers

These Regulations must be adhered to regarding senior managers i.e., the administrative top structure of the municipality including the so-called Section 57 managers (who report directly to the Municipal Manager).

5.15. SA Local Government Bargaining Council Collective Agreement

Municipal employees, other than the senior managers referred to above, are subject, for disciplinary purposes, to the collective bargaining agreement concluded within the SALGBC.

5.16. Labour Relations Act: Schedule 8 Code of Good Practice: Dismissal

This document is important because, regardless of the seniority of the municipal official, its principles must be adhered to in any disciplinary proceedings. The Schedule sets out in Plain English some of the key aspects of dismissals related to conduct and capacity. Amongst other things, it provides that a dismissal is unfair if it's not for a fair reason and in terms of a fair procedure, even if it complies with any notice period in a contract of employment. It spells out the three recognized grounds on which a dismissal might be regarded as fair, namely: conduct of the employee, capacity, and the operational requirements of the business of the employer. The Code provides for so-called progressive discipline against the background of clear and well-known rules and standards of conduct. It recognizes that formal procedures need not be invoked every time a rule is broken, or a standard not met and provides for informal redirection, counselling, and written warnings for less serious infractions, but makes it clear that dismissal may be appropriate regarding serious offences (such as those set out in the MFMA). The Code also records the basics of a fair disciplinary procedure and, importantly, provides, in paragraph 5 that: "Employers should keep records for each employee specifying the nature of any transgressions, the actions taken by the employer and the reasons for the actions."

6. Statement of Intent

This policy is in line with the National Treasury Circular 121 and the Consequence Management and Accountability Framework, 2022. The intention of this policy is to provide legislative parameters with regards to issues of financial misconduct, and further guide the municipality on how to respond financial misconduct.

7. Objectives

- 7.1. To empower the political and administrative leadership within Msunduzi Municipality on the effective implementation of the Consequence Management and Accountability Policy.
- 7.2. To address matters of financial misconduct and financial offences as defined in the MFMA and other financial crimes committed by officials within municipalities and municipal entities.
- 7.3. To operationalize the implementation of the Municipal Finance Management Act and the Consequence Management and Accountability Framework (2022).
- 7.4. To ensure that there is consequence management with regards to non-compliance.
- 7.5. To encourage ethical conduct at Msunduzi Municipality.
- 7.6. To ensure Prevention (through good internal controls and external checks, amongst other things).
- 7.7. To Detect (through sound internal and external audits but also through the facilitation of the flow of information from all stakeholders, especially whistle-blowers).

8. Application

This framework is not intended to cover CMA generally but is rather focused on CMA in relation to financial misconduct and financial offences as defined in the MFMA and other financial crimes committed by officials within municipalities and municipal entities. The reason for this is implicit in the title - the subject is approached from the perspective of the MFMA. Consequently, the framework does not deal with minor, day-to-day workplace infractions, which should be dealt with progressive discipline according to the principles of the applicable labour law.

9. Policy interpretation

This policy shall be interpreted in accordance with the above-mentioned legislations.

10. Policy Structure

10.1. Policy principles

- Msunduzi Municipality should create an environment and the culture that promotes ethical, transparent, efficient and effective Council that conforms to the constitutional accountability principles.

- This policy will guide and provide direction to relevant stakeholders and role players in order to effectively provide effective oversight with regards to consequence management and related outcomes.
- This policy is line with the City's zero-tolerance approach to fraud and corruption, any misconduct will not be tolerated and corrective measures, including, disciplinary actions, where merited, will be taken.
- Employees and Councilors have several specific duties to minimize risk, including the requirement to:
 - Comply with all applicable laws and regulations.
 - Adhere to Council policies and abide to Council resolutions.
 - Adhere to the code of conduct and Disciplinary Procedure Collective Agreement.
 - Report any suspicious activities that might be inconsistency with the legislation, regulations, and Council policies.
- It is the duty of employees and councilors to understand their obligations arising as a result and to always act in a transparent manner in line with the principles set out in the Disciplinary Code of Conduct and exercise good judgement.
- The manager and supervisors of an employee shall properly supervise or oversee the employee's conduct and ensure systems of work to enable employees to meet their obligations.

10.2. Basic requirements for successful implementation of CMA

10.2.1. Strong Leadership

As has been recognized in the initiatives of several ministries in different fields, leadership at local level is essential to give direction to local implementation. This means those in higher office must not only be beyond reproach themselves, but they must also encourage and empower all within the municipality to contribute towards effective, systemic CMA. A good starting point for this will be written commitments from the Municipal Manager, the Mayor and a Council Resolution supporting CMA and in the case of a municipal entity, the board of directors and chief executive officer providing a similar level of commitment in writing. Another building block is the incorporation of implementing CMA as a key result area in the performance agreements of each senior manager. In this way, senior managers can be held accountable where they fail to hold officials within their respective functional departments accountable for acts of financial misconduct.

10.2.2. Initiation of CMA project

Responsibility for establishment and implementation of CMA systems within municipalities should be led by the Mayor, assisted by the Municipal Manager and the Speaker and in the case of a municipal entity, the chief executive officer and the

chairperson of the board of directors, who should initiate the system described below through consensus decision making.

10.2.3. Assignment of Responsibility for Project

This will vary from municipality to municipality. However, the initial point for monitoring would usually be in terms of provisions of the MFMA read with the Municipal Regulations (see sections to follow) and may also follow a previous COGTA directive on the current arrangements and capacity of the municipality. Where municipalities do not have the capacity internally, they should look to shared service arrangements, for example with District Municipalities, or a combination thereof, provided their responsibilities and processing of recommendations and reports is clearly in their operational procedures. Once detected, alleged financial misconduct and financial offences as defined in the MFMA and other financial crimes committed by officials, councilors, and members of board of directors within municipalities and municipal entities must be dealt with in terms of the Municipal Misconduct Regulations as set out in more detail below.

10.2.4. Education

Initial training of municipal Financial Managers, Internal Audit units, HR divisions amongst others, on the CMA Framework is important. NT is developing e-learning material on this Framework to further assist provinces, municipalities, and municipal entities towards enhancing their capacities regarding implementation of CMA for municipal financial management.

10.2.5. Measurable Outcomes

The most important measurable outcomes would include:

- Improved municipal performances in financial terms, notably in terms of reduced Unauthorized, Irregular, Fruitless and Wasteful Expenditures (UIFWe) as evidenced by reduced UIFWe identified through the system of internal control within the municipality or municipal entity.
- Improved staff awareness, councillor, and public perceptions about the municipality or municipal entity operations consistent with the principles in the MFMA, improving accountability and transparency (as determined for example through opinion surveys, voter turnout rates, etc.).
- Reduced or eliminated periods of suspension of alleged offenders on full pay within municipalities and municipal entities.

10.2.6. Process Monitoring Routines

NT has a mechanism and platform through which it is receiving regular reporting on progress regarding reported acts of financial misconduct and financial offences. Municipalities and municipal entities can visit the NT MFMA website, MFMA helpdesk and MFMA Circulars for further guidance and assistance. Compliance with the reporting requirements and other measures in the Financial Misconduct

Regulations is an important aspect of this policy. Municipal reporting to NT on the MFMA and could also include a new sub-section on at least statistical dimensions of CMA progress, comprised of a statistical summary of the Disciplinary Board proceedings/Minutes of the past quarter etc. These are to be reviewed annually at NT and, if need be, feedback provided to the municipalities and municipal entities by NT in terms of its own oversight responsibilities. A final process monitoring routine which all municipalities and municipal entities should implement is that, where an official resigns in the face of allegations of financial wrongdoing, that fact should be reported by the municipality to NT, PT and COGTA to facilitate proper vetting of candidates by HR who should make inquiries with those bodies.

10.3. Policy implementation

The implementation of CMA in relation to Financial Misconduct and Offences within municipalities in terms of the MFMA concludes this document. The components reviewed include:

10.3.1. Regulatory Toolkit for Financial CMA.

Even though there is a substantial amount of regulatory material surrounding the subject, all that is needed for practical purposes is an understanding and application of the following:

- Chapter 15 of the MFMA which deals with disciplinary and criminal proceedings in respect of financial misconduct and offences.
- The Financial Misconduct Regulations which form the regulatory framework supporting chapter 15 of the MFMA.
- The Systems Act and Disciplinary Regulations for Senior Managers.
- The applicable circulars issued by NT, particularly, Circulars 76 and 111.

10.3.2. Approach to understanding the applicable precepts.

Understanding and applying the Financial Misconduct Regulations becomes a lot easier if one bears the following points in mind:

10.3.3. The Spirit and intention of the regulations

The dominant intention of the Financial Misconduct Regulations is to facilitate discipline and if necessary, criminal action against the office bearers and officials of municipalities and the municipal entities who are guilty of financial misconduct in order to ensure efficient utilisation of public resources and, ultimately, delivery of services to residents.

10.3.4. The Regulations don't cater for every conceivable situation.

Once the information is crystallised into an allegation relating to a particular functionary, that allegation must be routed to the person/body and be dealt with in terms of the processes specified in the regulations.

10.4. Distinctions drawn in Regulations.

The Financial Misconduct Regulations draw distinctions between:

10.4.1. Types of Wrongdoing

Broadly, the types of wrongdoing referred to fall into the following categories:

- Financial Misconduct (defined as act referred to in sections 171 and 172 of the MFMA)
- Sections 171 & 172 is defined in the MFMA as follows:

171. Financial misconduct by municipal officials

(1) The accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently—

- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality;
- (c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular, or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which in terms of a requirement of this Act must be—
 - (i) submitted to the mayor or the council of the municipality, or to the Auditor-General, the National Treasury or other organ of state; or
 - (ii) made public.

(2) The chief financial officer of a municipality commits an act of financial misconduct if that officer deliberately or negligently—

- (a) fails to carry out a duty delegated to that officer in terms of section 79 or 81(1)(e);
- (b) contravenes or fails to comply with a condition of any delegation of a power or duty in terms of section 79 or 81(1)(e);
- (c) makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular, or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).

(3) A senior manager or other official of a municipality exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79, commits an act of financial misconduct if that senior manager or official deliberately or negligently—

- (a) fails to carry out the delegated duty;

- (b) contravenes or fails to comply with a condition of the delegated power or duty;
- (c) makes an unauthorised, irregular, or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).

(4) A municipality must—

- (a) investigate allegations of financial misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the municipality unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or that senior manager or other official in accordance with systems and procedures referred to in section 67 of the Municipal Systems Act, read with Schedule 2 of that Act.

172. Financial misconduct by officials of municipal entities

- (1) The accounting officer of a municipal entity commits an act of financial misconduct if that accounting officer deliberately or negligently—
 - (a) contravenes a provision of this Act;
 - (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipal entity;
 - (c) makes or permits, or instructs another official of the municipal entity to make, an irregular or fruitless and wasteful expenditure; or
 - (d) provides incorrect or misleading information in any document which in terms of this Act must be—
 - (i) submitted to the entity's board of directors or parent municipality or to the Auditor-General; or
 - (ii) made public.

- (2) A senior manager or other official of a municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 106, commits an act of financial misconduct if that senior manager or official deliberately or negligently—
 - (a) fails to carry out the delegated duty;
 - (b) contravenes or fails to comply with a condition of the delegated power or duty;
 - (c) makes an irregular or fruitless and wasteful expenditure; or
 - (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).

(3) A municipal entity must—

(a) investigate allegations of financial misconduct against the accounting officer, a senior manager or other official of the entity unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and

(b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, senior manager or official in terms of Schedule 3 of the Municipal Systems Act.

- Financial Offences (defined as an offence referred to in section 173 of the MFMA committed by: an official of the municipality or municipal entity; a councillor of the municipality; a member of the Board of Directors or municipal entity or "any other person").
- Section 173 is defined in the MFMA as follows:

(1) The accounting officer of a municipality is guilty of an offence if that accounting officer—

(a) deliberately or in a grossly negligent way—

(i) contravenes or fails to comply with a provision of section 61(2)(b), 62(1), 63(2)(a) or (c), 64(2)(a) or (d) or 65(2)(a), (b), (c), (d), (f) or (i);

(ii) fails to take reasonable steps to implement the municipality's supply chain management policy referred to in section 111;

(iii) fails to take all reasonable steps to prevent unauthorised, irregular, or fruitless and wasteful expenditure; or

(iv) fails to take all reasonable steps to prevent corruptive practices—

(aa) in the management of the municipality's assets or receipt of money; or

(bb) in the implementation of the municipality's supply chain management policy;

(b) deliberately misleads or withholds information from the Auditor-General on any bank accounts of the municipality or on money received or spent by the municipality; or

(c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be—

(aa) submitted to the Auditor-General, the National Treasury or any other organ of state; or

(bb) made public.

(2) The accounting officer of a municipal entity is guilty of an offence if that accounting officer—

(a) deliberately or in a grossly negligent way—

(i) contravenes or fails to comply with a provision of section 94(2)(b), 95(1), 96(2), 97(a) or 99(2)(a), (c) or (e);

(ii) fails to take all reasonable steps to prevent irregular or fruitless and wasteful expenditure; or

(iii) fails to take all reasonable steps to prevent corruptive practices in the management of the entity's assets, receipt of money or supply chain management system;

(b) deliberately misleads or withholds information from the Auditor-General or the entity's parent municipality on any bank accounts of the municipal entity or on money received or spent by the entity; or

(c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be—

(aa) submitted to the entity's parent municipality, the Auditor-General, the National Treasury or any other organ of state; or

(bb) made public.

(3) A senior manager or other official of a municipality or municipal entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79 or 106, is guilty of an offence if that senior manager or official deliberately or in a grossly negligent way contravenes or fails to comply with a condition of the delegation.

(4) A councillor of a municipality is guilty of an offence if that councillor—

(a) deliberately influences or attempts to influence the accounting officer, the chief financial officer, a senior manager or any other official of the municipality to contravene a provision of this Act or to refrain from complying with a requirement of this Act;

(b) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of the municipality or delegated to the chief financial officer of the municipality in terms of this Act;

(c) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of a municipal entity under the sole or shared control of the municipality; or

(d) interferes in the management or operational activities of a municipal entity under the sole or shared control of the municipality.

(5) A councillor, an official of a municipality or municipal entity, a member of the board of directors of a municipal entity or any other person is guilty of an offence if that person deliberately or in a grossly negligent way—

(a) impedes an accounting officer from complying with a provision of this Act;

(b) gives incorrect, untrue or misleading information material to an investment decision relating to borrowing by a municipality or municipal entity;

(c) makes a withdrawal in contravention of section 11;

(d) fails to comply with section 49;

(e) contravenes a provision of section 115(2), 118 or 126(5); or

(f) provides false or misleading information for the purposes of any document which must in terms of a requirement of this Act be—

- (i) submitted to the council, mayor or accounting officer of a municipality or to the Auditor-General or the National Treasury; or
- (ii) made public.

- Financial Offences alleged to have been committed by municipal councillors which amount to breaches of the code of conduct for councillors.
- Financial Offences alleged to have been committed by municipal councillors, but which do not amount to breaches of the code of conduct for councillors.

10.4.2. Structural components

The Regulations distinguish broadly between:

- The executive of the municipality (the mayor, speaker, and councillors i.e., the political office bearers).
- The administration of the municipality (its officials including senior management and Municipal Manager/AO).
- The board members and employees of municipal entities.

10.4.3. Implicated Individuals

The Regulations also reference different categories against whom complaints of financial wrongdoing are directed, namely:

- The AO and the senior, so-called section 57 managers of municipality (including the CFO)
- Officials of the municipality
- Municipal Councillors
- Board members of Municipal Entities
- Officials of Municipal Entities

10.5. Categorisation of Information Suggesting Financial Misconduct

- If financial CMA is to be properly applied, all credible information suggesting financial wrongdoing must be assessed and appropriately routed.
- The whistle-blower of information may not be nearly as specific, but equally important, and require further work before it is clear who the alleged wrong doer is or might be.
- The regulations proceed from the assumption that this information has already been refined and lay out a reporting flow from that point forward.

10.6. Standard Operating Procedures

10.6.1. Phase 1: Initial Reporting of Allegations of Financial Wrongdoing

Once there are allegations implicating a particular person, the Regulations stipulate to whom the allegations must initially be directed namely, if the implicated person is:

- The AO, CFO Or Senior Manager of the municipality, the allegations must be reported to the Council of the municipality, the PT, and NT;
- An official of the municipality, other than the AO (and presumably, any senior manager or the CFO) the allegations must be reported to the AO.
- The AO of municipal entity, the allegations must be reported to the chairperson of the board of directors of the municipal entity, and also to the Mayor and the accounting officer of the parent municipality.
- A councillor of the municipality or board member of a municipal entity (but only in relation to financial offences not amounting to a breach of the Code of Conduct for that implicated person) must be reported to the “designated official” (who is a person whom the municipality must appoint for the purpose of receiving and processing such allegations/complaints).

10.6.2. Phase 2: Investigation: Role of the Disciplinary Board and Others

10.6.2.1. Preliminary Investigation

- The Disciplinary Board (“DB”) (which is an independent but advisory body which is charged with the investigation of allegations of financial misconduct and the provision of recommendations on further steps regarding discipline and other relevant matters) must conduct a preliminary investigation to determine whether or not the allegation is “founded” (i.e., whether it has substance, and if so, whether sufficient grounds exist for instituting disciplinary proceedings).
- If the DB determines that the allegation is “Frivolous, vexatious, speculative, or obviously unfounded”, the investigation must be terminated and reported. If the DB is of the view that the allegation is “founded” it must recommend a full investigation to the Council or Board, as the case may be.

10.6.2.2. Full Investigation

- If the DB has determined that the allegation is “founded” a full investigation must be conducted. The investigation must be done and monitored by the DB subject to the following. Firstly, the DB doesn’t necessarily have to conduct the investigation itself but can call upon other internal resources to assist (such as internal audit for example).
- Secondly, the Council or Board may appoint an individual, who is not an official and who has the appropriate experience/expertise or an

independent team of investigators to investigate the allegations, if, considering relevant factors (such as cost, seniority of the alleged transgressor and the seriousness/sensitivity of the issue) that body is of the view that such appointment is warranted.

- Thirdly, if the Council or Board fails to act on the allegations, Provincial or National Treasury could direct that the allegation be investigated (presumably also through an outside team or individual).

10.6.3. Reports by Investigator

- The party investigating the allegation (the DB or investigator/team) must, within 30 days of being appointed, submit a report with recommendations to the Mayor or the AO, as the case may be. This doesn't mean that the investigation must have been completed within that period; only that a report must be submitted.
- The system of delegations should make provision for any failure to provide the 30-day report and, in particular, set out an effective mechanism for the detection and prevention of the failure.
- On completion of the investigation, the party investigating must compile a report on the investigation. The report must contain findings of the investigator as well as a recommendation regarding disciplinary steps to be taken against the alleged transgressor.
- The report must be submitted to the Mayor or chairperson of the board of directors (as the case may be) as well as the relevant AO. The investigating party must also, immediately, inform the speaker of the Council of the submission of the report and submit copies to PT and NT.
- If the report which is tabled, is amended, the person tabling the report must provide written reasons for such amendments to the council or the Board, as the case may be. If the council or Board rejects the findings of the investigator, it must, within five days of such rejection, provide written reasons to the investigator.
- If the investigator recommends disciplinary steps against the alleged transgressor in the report, the council or Board must pass a resolution instituting such disciplinary steps.
- If, for whatever reason, the disciplinary steps recommended by the investigator are not implemented, the investigator must advise PT and NT for possible intervention in terms of Regulation 19.

10.6.4. Monitoring of Progress

- It is the responsibility of the DB, Human Resource, and the AO to monitor the disciplinary process. The system of delegations should set out clearly what role is to be played by the parties involved, specify time frames and create a system for ensuring compliance.

10.6.5. Disciplinary Process

- The provisions applicable to the disciplinary process vary according to the position of the alleged transgressor.
- Where the employee is a senior manager (that is the Municipal Manager or any of the so-called Section 57 managers who report to him) the proceedings are governed by the Local Government: Disciplinary Regulations for Senior Managers promulgated in terms of the Systems Act.
- Where the employee is an official other than a senior manager, the proceedings are governed by the current South African Local Government Association Collective Main Bargaining Agreement.
- In either case, the employee is entitled to fair labour practices as enshrined in the LRA and specifically Schedule 8 Code of Good Practice: Dismissal.

10.6.6. Reports and Information Sharing

10.6.6.1. Compilation of an Information Document

In relation to both financial misconduct and offences, the municipality or municipal entity must prepare an information document which sets out the following information:

- The name and position of the person against whom the allegation was made;
- A summary of the facts and circumstances of the alleged financial misconduct or financial offence, including the monetary value involved;
- Details of 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;
- In the case of a financial offence, the case number issued by the South African Police Service; and
- Any steps taken or to be taken to recover (in terms of section 32 of the Act) any unauthorised, irregular, or fruitless and wasteful expenditure incurred because of the alleged financial misconduct or financial offence.

10.6.7. Compulsory Distribution of Information Document and Investigation Report

The municipality or municipal entity must, within five days of finalising the information document submit it (together with any investigation report compiled in terms of the regulations) to the following parties:

- The Mayor
- The accounting officer of the parent municipality
- The chairperson of the Board of Directors
- The MEC for local government in that province
- The National Department responsible for local government

- PT
- NT
- The AGSA

10.6.8. Compulsory Tabling of Information Document

The Mayor, or, if applicable, the chairperson of the board of the municipal entity, must table the information document at the first meeting of the council or Board after receipt of the document and any resolutions taken in relation to the information document must be reported to PT and NT.

10.6.9. Allegations Against Councillors

- The regulations provide for a separate process in respect of political office bearers of the municipality and distinguish between two kinds of alleged wrongdoing.
- The first category of wrongdoing involves contraventions of the Code of Conduct (which seeks to prevent conflicts of interest and improper personal profit from office by a councillor or close family members; interference in the administration of the municipality; unauthorised disclosure of privileged information and the like) which wrongdoing must be dealt with in terms of that code.
- The second category relates to financial offences other than those dealt with in the code. This may, include for instance, corruption or bribery and so on. This category must be reported to the “designated official” appointed by the municipality for the purpose of receiving such allegations.
- Once the designated official receives a report of an alleged financial offence or offences in terms of section 173 (4) or (5) of the MFMA, the designated official is obliged to do the following:
 - authorise an investigation of the facts and circumstances of the alleged offence.
 - give the councillor an opportunity to make, within five days, a written submission regarding the allegations.
 - as soon as the designated official has complied with the above, that official must, within five days of completion of the investigation, submit a report to the municipal council.

10.6.10. Ensure that members of the public have access to that report.

10.6.10.1. Loss Recovery

- In terms of section 32 (2) of the MFMA, a municipality is obliged to recover UIFW.

- To the extent that the financial misconduct or offence has occasioned loss, efforts should be made to recover those losses through the municipality's debt collection policy.
- It is the responsibility of the MPAC) to exercise oversight in relation to those efforts.
- Only after investigation by a council committee (often, but not necessarily, the MPAC) indicating that it is irrecoverable, can the loss be written off after certification by the council.
- In cases where a criminal conviction is obtained in connection with the loss, Section 300 of the Criminal Procedure Act (which makes provision for victim compensation) may be of assistance to the municipality.
- The suspension of the whole or part of a jail sentence on condition of repayment is a powerful tool for recovering loss resulting from criminality.
- It is therefore advisable that the municipality interacts with the relevant representative of the NPA about the possibility of the sentence being suspended in whole or in part on condition that the losses are repaid.

10.6.11. Resignation in the Face of Allegations or Impending Disciplinary Proceedings

10.6.11.1. Resignation: Employment Law Basics

- An employment relationship entitles either party to terminate the contract by giving the other party due notice. The letter of employment or (where there is no contract), the Basic Conditions of Employment Act ("BCEA"), govern how much notice must be given and when and how to give notice.
- If there is an employment contract, the notice in that contract applies but, where there is no contract prescribing the amount of notice, the absolute minimum notice period is one week.
- This period escalates to 2 weeks for an employee who has been employed for more than six months but less than one year and to 4 weeks for an employee employed for longer than one year.
- Resignation is a unilateral act which takes effect immediately it is communicated to the employer. What this means is that once the employee has resigned, she can't withdraw that resignation without the consent of the employer. This is regardless of whether or not the employer has "accepted" the resignation.
- The fact that a resignation takes effect immediately does not mean that the employment relationship is terminated immediately. That

relationship only ends at the end of the applicable notice period unless the employer agrees to a shorter notice period.

- The employer does not have to accept the terms on which the employee resigns. If the employee reports to resign without the applicable notice, the employer is entitled to regard that as a repudiation of the contract, to reject the purported notice period and hold the employee to the applicable notice period.
- The employer may discipline the employee during the notice period, but once the employment relationship ends, so does the right to discipline.
- The BCEA prohibits the deduction of any amounts from the employee's remuneration unless certain conditions are met.
- Where the employee does not work during the notice period, the employer may exercise a no work no pay principle.
- The employer can insist that the relevant pension fund suspend payment of any amounts due to the employee pending prosecution and/or legal recovery of the defalcated amount. However, this is subject to the municipality moving quickly to report the matter to the police (if that is appropriate) and taking legal steps to recover the loss.

10.7. Types of Financial Wrongdoing and Penalties

10.7.1. Possible Criminal Liability in the Local Government Sphere: Some Salient Provisions

The two important statutes to be borne in mind are the MFMA and PRECCA, both of which create statutory offences and specify penalties for commission of those offences.

MFMA

Section 173 spells out the offences in relation to:

- the AO of a municipality.
- the AO of a municipal entity.
- senior managers or other officials of a municipality or municipal entity to whom a power or duty was delegated in terms of Section 79 or 106.
- councillors and members of boards of directors of a municipal entities.

In terms of Section 174 of the MFMA, any person convicted of an offence specified in Section 173, is liable to imprisonment for a period not exceeding five years or to an appropriate fine determined in terms of the applicable legislation.

PRECCA

As mentioned, PRECCA, amongst other things, creates a general offence of corruption but it has, in addition, some important specific provisions related to, inter alia:

- the rigging of tenders
- intimidation, persuasion, or coercion of witnesses
- interference with, or hindering or obstructing the investigation of an offence.
- a duty, on the part of persons in “positions of authority” who are aware of, or ought reasonably to have known or suspected that any other person has committed an offence in terms of PRECCA or the offences of theft and/or fraud and/or extortion and/or forgery and/or uttering a forged document, to report such knowledge or cause such knowledge or suspicion to be reported to the Hawks.

The penalties for contraventions of PRECCA are set out in Section 26 and apply, not just to the actual offenders, but also to anyone who has abetted, induced, instigated, instructed, commanded counselled or procured the offender to commit or attempt to commit the offence. These include (depending on the offence) the following:

- a fine of R250,000 and, possibly, a further fine equal to 5 times the value of the gratification involved in the offence.
- imprisonment for 10 years.
- imprisonment for 18 years
- life imprisonment

10.8. TABLE OF SOME SALIENT OFFENCES AND PENALTIES¹

WHO	SIMPLE SUMMARY OF OFFENCES	PENALTY
AO Muni. And AO of Entity	<p>Deliberately or in a grossly negligent way:</p> <ul style="list-style-type: none"> contravenes provisions enumerated in S173 (1) or S173 (2) of the MFMA – (whichever applies) fails to take reasonable steps re SCM policy fails to take reasonable steps to prevent UIFWe fails to take reasonable steps to prevent “corruptive practices”. <p>Deliberately:</p> <ul style="list-style-type: none"> misleads or withholds information from the AGSA (or, if applicable, the parent municipality) Re: bank accounts or income provides false or misleading information in any document submitted to the AGSA, NT or any other organ of state 	Up to 5yrs in prison or fine
Snr Manager: Municipality or Entity	Deliberately or in a grossly negligent way contravenes or fails to comply with the condition of a power or duty delegated in terms of Section 79 or 106	
Councillor	Deliberately influences or attempts to influence the AO, CFO, senior manager or any other official to contravene the MFMA or interferes with financial management responsibilities of the AO or CFO and/or interferes in the management of operational activities of the municipality or entity as the case may be.	
Councillor, official or director municipality or entity	Contravenes the provisions set out in Section 173 (5) of the MFMA or commit any of the prescribed acts (in summary, impeding the AO; giving false information in relation to investment or statutory information).	
Everyone PRECCA	See summary above.	Up to life imprisonment

¹ NB the applicable sections are explicit in imposing a duty on the AOs to take all reasonable steps to ensure that disciplinary and, where appropriate, criminal proceedings, are instituted against any official who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15.

11. Roles and Responsibilities

Accounting Officer (AO) /Municipal Manager- (MM)

In terms of the MFMA, the MM / AO must lead the municipality and take final responsibility for prudent financial management, which includes proper implementation of CMA. In addition to the responsibilities of the MM as determined Systems/Structures/MFM Acts9, following the recommendations (amongst others) of the COGTA Municipal Integrity Management Framework, the MM shall:

- Ensure that the municipality has a strong programme to promote CMA and fight corruption.
- Allocate sufficient resources for implementing the CMA requirements; and
- Enable successful implementation of the Consequence Management Framework, which enablement should form part of the MM/Accounting Officer's performance contract.
- Ensure that competent employees with high standards of personal integrity are appointed and promoted and minimum competency requirements as set out in the Municipal Systems Act: Regulations on Appointment and Conditions of Employment of Senior Managers. Pre-employment screening should be conducted for all new appointments to verify at least the following: Qualifications; Previous employment; Disciplinary record; Criminal record; Credit record; Any outstanding investigations or disciplinary matters at previous employers. Municipalities must consult the record on dismissed employees kept by the Minister and must abide by the prescribed periods.
- Ensure all suppliers are screened against the municipality's financial declaration database, CIPC database, National Treasury's register for tender defaulters and the List of Restricted Suppliers, and with the South African Revenue Service to ensure that their tax matters are in order.

Chief Financial Officer (CFO)

The CFO's statutory responsibilities are explicitly spelt out in Section 81 of the MFMA. In terms of the Act, she is administratively in charge of the budget and treasury office; must advise the AO on exercising powers and duties assigned to the AO in terms of the Act; must assist the AO in the administration of the municipality's bank accounts and in preparation and implementation of the municipality's budget; advise senior managers and senior officials in the exercise of powers and duties assigned to them in terms of Section 78 or delegated to them in terms of Section 79; perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may in terms of Section 79 be delegated by the AO to her.

The CFO is thus well placed to play a powerful role in the formulation and implementation of CMA. She should be pro-active in submitting any information about any non-compliance with the MFMA (or other financial wrongdoing) to the appropriate receiving party. If disciplinary proceedings result, those proceedings must be conducted in terms of the applicable agreement or regulations. In the case of the top management of the municipality (the AO, CFO and senior managers referred to in Section 77 of the Act) they are subject to the Disciplinary Regulations for Senior Managers promulgated in terms of the Systems Act. All other officials are subject to the Disciplinary Procedure Collective Agreement concluded under the auspices of SALGA.¹⁰ In the case of a councillor, (regarding conduct which does not constitute a contravention of the Code of Conduct for Councillors) the report must be made to the designated official. Sometimes, the CFO might be the "designated official" in terms of delegations of that municipality's written delegations. CFOs should be proactive wherever relevant in budgeting for specialist investigative resources to be put at the disposal of municipal Disciplinary Boards.

Human Resources (HR)

The role the Human Resources department (HR) is pivotal in CMA. One of its core functions is to ensure the proper application of discipline within the organisation. This means ensuring that disciplinary processes are actually instituted, that the correct legal and procedural processes prevail and that cases are concluded expeditiously.

HR plays an even more fundamental role in terms of ensuring that recruitment and selection is properly done in terms of the Systems Act and in accordance with professional best practice. Moreover, HR must play a role in ensuring that where disciplinary infractions are established, appropriate reports are made to ensure that the culprits' details are captured in the database to prevent them being re-employed by the municipality for the applicable period.

The Head of Human Resources should assist the Disciplinary Board and HR should supply them with all relevant information applicable to cases; they should also play a leading role in ongoing education of all staff about the CMA Framework and its operations. Finally, it is important that the CMA Framework should be effectively communicated to all officials (especially, new hires) and HR is well placed to, and should drive this process, in collaboration with, and subject to the authority of the MM.

Disciplinary Boards (DB)

The Municipal Disciplinary Board (DB) is crucial to municipal CMA. If they have not already done so, municipalities should act urgently to establish a DB and, if there is one in place but it is dormant, ensure that it is activated. DBs should not exist merely "for compliance purposes" but must be active.

Some guidance on the action steps for the formation of DBs appears in Appendix 2 "Checklist for Putting Disciplinary Board in Place". The DB is a body, the primary task of which is to assist the municipality with the investigation of allegations of financial misconduct and, based on the outcomes of its investigation, make recommendations on appropriate steps to be taken regarding disciplinary proceedings, criminal charges¹³, and/or any other relevant steps that may need to be taken; and monitor the execution of steps taken against an implicated person.

The DBs must remain open to all avenues of reporting of cases of financial misconduct, although obviously it is also one of their duties to screen out false allegations (i.e. allegations which are "... frivolous, vexatious, speculative, or obviously unfounded..."). There is a heavy responsibility upon the DB to have legally valid grounds for recommending a full investigation, or the termination of, an investigation. In relation to CMA, the specific purpose of the Disciplinary Board is as set out in Regulations 4 (1) and (2) of the Financial Misconduct Regulations, namely, to investigate allegations of financial misconduct in the municipality or municipal entity and to act as an independent advisory body which assists council or the Board of Directors with the investigation of allegations of financial misconduct and provides recommendations on appropriate action to be taken.

These Boards may need to be shared with District Municipalities and/or require some augmentation, at least in respect of secretariat capacity if they are to be effective, given the likelihood of substantially increased workloads.

MPACs – Municipal Public Accounts Committees

The MPAC should not be involved in municipal CMA except insofar as it may supply DBs with information on possible cases for investigation, and follow-up where recovery of funds is recommended. CMA should be a standing item on the agenda of MPAC meetings to facilitate these roles.

Mayor

The Mayor should provide a model of personal, financial ethical behaviour and should have a history of such behaviour. The Mayor should focus on fellow councillors and as per the COGTA Municipal Integrity Management Framework, the Mayor in Municipalities should ensure that conflicts of interest are pro-actively managed.

A conflict-of-interest policy needs to be developed which deals with:

- Declaration of interests or Disclosure of interests
- Gifts
- External remunerative work

The Mayor should ensure that supporting systems and processes are developed for declarations of interest (in line with Sec. 7 of the Code of Conduct for Municipal Councillors, and Ss 5 and 5A of the Code of Conduct for Municipal Staff Members). The Speaker should assist the Mayor in checking the declarations for potential conflicts of interest during procurement processes. Declarations should ideally be in electronic format to allow for accessibility of information.

The Speaker and Council

In terms of the Municipal Structures Amendment Act 3 of 2021, the Speaker must ensure compliance with the Code of Conduct for Councillors and if the Speaker is of the opinion (based on a reasonable suspicion) that a breach has occurred, must do the following: first, authorise an investigation; second, give the councillor a reasonable opportunity to reply in writing to the allegations and finally, (and only after doing those two things), report the matter to council. The Speaker should report infringements of the MFMA not amounting to a breach of that code to the designated official. All councillors should immediately and separately report to the Speaker and Mayor all information they have about departures from the MFMA by other councillors including by the Speaker.

Officials

All officials should report all information they have about financial misconduct in terms of the MFMA by other official/s in line with the policy for confidential reporting of allegations of financial misconduct as required by the Financial Misconduct Regulations and the Code of Conduct for Municipal Officials¹⁶. The recipient of the information must ensure that the allegation is processed consistent with the reporting framework in the Financial Misconduct Regulations.

It must be emphasised that it is a criminal offence in terms of PRECCA for an official, in a position of authority (as contemplated in the Act) and who is (or ought reasonably to be) aware of financial wrongdoing within the municipality not to report this to the relevant authorities.

12. Appeals and Grievance procedure.

Appeals and grievances arising from the implementation of this policy shall be done in compliance with the local government prescripts.

13. Monitoring and Evaluation

- Office of the City Manager shall be responsible for advising on the implementation of this policy.
- Quarterly reports shall be developed on the implementation of the policy.
- A Monthly submission will be made to National Treasury as per attached Matrix, refer to Annexure A – containing all information related to financial misconduct.

14. Policy Review

This policy shall be reviewed annually, and the review shall be approved by Council.

15. Date of Implementation

This policy shall be implemented after it has been approved by Council.

16. Annexure A – Reporting Matrix

INSE RT THE TIME FRAME FOR REPORTING	DATA BASE ON THE DISCIPLINARY CASES FOR SENIOR MANAGERS AND OTHER EMPLOYEES OF THE MUNICIPALITY		Identify Document	Post designation	Is this person a senior manager? (Either S54 A or S56)	Nature of misconduct	In cases of financial misconduct was the misconduct reported to SAPS as per Reg 8(4) of the Disciplinary Regs?	Current status of case	If the case is withdrawn kindly provide reasons	Date on which misconduct was reported (YYY-MM-DD)	Date allegation was brought to Municipal Council or Municipal Manager (YYY-MM-DD)	Has an investigation been appointed?	If yes, please indicate date of investigation appointed (YYY-MM-DD)	Date investigated - what was the date of suspension? (YYY-MM-DD)	If suspended - what are the conditions of the suspension	Was the employee given the opportunity to make written representation?	In the case of a Senior Manager, was the Minister and MEC informed in writing of such suspension and reasons thereof?	Has a presiding officer been appointed?	When did the disciplinary hearing commence? (YYY-MM-DD)	Status of disciplinary hearing	If finalized, date of finalisation of disciplinary hearing (YYY-MM-DD)	Sanction	If case referred for arbitration, please provide details/reasons	If referred to arbitration, what date was it referred? (YYY-MM-DD)	Please provide information on the appeal or dispute resolution process	Appeal judgment	Final reinstatement, resignation or dismissal date (YYYY-MM-DD)	Please indicate if the staff member resigned or their contract was terminated prior to finalisation of case
Province	Municipality	Name & Surname																										

NB: DETAILS OF THE INCUMBENTS MUST BE INSERTED HEREIN AND REPORTED TO NT ON A MONTHLY BASIS