



The Msunduzi Municipality

INTERNAL AUDIT UNIT

Auditing to Enhance, Protect and Promote Service Delivery

WHISTLE BLOWING POLICY

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1. DEFINITIONS

For purposes of this policy, unless the context indicates otherwise, the –

“Abuse of power” involves a public office bearer using her or his vested authority to improperly benefit another public office bearer or person or entity or to improperly discriminate against another.

“Accounting Officer” means the municipal official referred to in section 60 of the Municipal Finance Management Act, Act 56 of 2003.

“Anti-fraud and corruption strategy” means a document put together by an official of Msunduzi Municipality which detail stratagem, tactic and approach in dealing and handling matters relating to fraud and corruption which is supported by matrix of tasks and responsibilities.

“Audit Committee” means an independent advisory body established in terms of Section 166 of the Municipal Finance Management Act (MFMA) (Act No. 56 of 2003) to advise the Municipal Council, Political Office Bearers, the Accounting Officer and management staff of the municipality on matters relating to internal financial control and internal audits, risk management, and others.

“Auditor-General” means the person appointed as Auditor-General in terms of section 193 of the Constitution, and includes a person acting as Auditor-General; acting in terms of a delegation by the Auditor-General; or designated by the Auditor-General to exercise a power or perform a duty of the Auditor-General.

“Bribery” involves a promise, offering or giving of a benefit that improperly affects the actions or decisions of a council employee. A variation of this manifestation occurs where the political party or council is offered or promised or given a benefit that improperly affects the actions or decisions of a political party or council.

“Corruption” means accepting or agreeing or offering to accept any gratification from any other person whether for the benefit of himself or herself or for the benefit of another person: or giving or agreeing or offering to give to any other person any gratification whether for the benefit of that other person or the benefit of another party in order to act personally or by influencing another person so to act in a manner that amount to the illegal, dishonest, unauthorized, incomplete or biased; or 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 that amounts to the abuse of a position of authority; a breach of trust; or the violation of a legal duty or a set of rules designed to achieve an unjustified result; or that amounts to any other unauthorized or improper inducement to do or not to do anything.

“Council” means the Msunduzi Municipality Council;

“Councillor” means a member of Msunduzi Council.

“Disclosure” means any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of the following:

- (a) that a criminal offence has been committed, is being committed or is likely to be committed;
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) that the health or safety of an individual has been is being or is likely to be endangered;
- (e) that the environment has been, id being or is likely to be damaged;
- (f) unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair discrimination Act 2000 (Act 4 of 2000); or
- (g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed.

“Employee” means -

- (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration;
- (b) any other person who in any manner assists in carrying or conducting the business of an employer;

“Employer” means any person –

- (a) who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or
- (b) who permits any other person in any manner to assist in the carrying on or conducting of his, her or its business, including any person acting on behalf of or on the authority of such employer;

“Ethics” means to standards of conduct, which indicate how a person should behave based on moral duties and virtues arising from the principle of right and wrong. Ethics therefore involve two aspects: (a) the ability to distinguish right from wrong; and (b) the commitment to do what is right.

“Extortion” involves coercing a person or entity to provide the benefit to councilor or council employee, another person or an entity in exchange for acting or failing to act in a particular manner.

“Fraud” means introducing a course of action by deceit or other dishonest conduct, involving acts or omissions of the making of false statements, orally or in writing, with the objective of obtaining money or other benefit from, or of evading a liability to another.

“Fraud and Corruption Monitoring Committee” means a committee that has been established by Accounting Officer to monitor implementation of anti-fraud and corruption policy and anti-fraud and corruption strategy and advise Council on ancillary matters thereto.

“Inherent risk” is an adverse event or action that is intrinsic to the operations of a business. The organization’s risk exposure assuming there are no controls.

“Integrity” is the quality or state of being of sound moral principle; uprightness, honesty, and sincerity; the desire to do the right thing, to profess and live up to a set of values and expectations.

“Internal audit unit” is a component within the Msunduzi Municipal Council that is established in terms of Section 165 of the MFMA;

“Internal Controls” are measures, methods, techniques, systems whether manual, electronic or otherwise, policies, procedures and processes that have been put in place by management to prevent, detect and correct a risk;

“Law Enforcement Agencies” means all forms of government that have been established to fight crime including the South African Police Services, National Prosecutions Authority, Assets Forfeiture Unit, Special Investigation Unit, and Directorate of Special Crimes commonly known as “Hawks”).

“Misconduct” has the same meaning as defined in the Labour Relations Act, of 1995 read in conjunction with the municipal policies.

“Municipal Entity” means a company, co-operative, trust, fund or any other corporate entity established in terms of any applicable national or provincial legislation and which operates under the ownership control of one or more municipalities; and includes, in the case of a company under such ownership control, any subsidiary of (hat company; or a service utility;

“Risk” threat that an event or action will adversely affect an organization's ability to achieve its objectives and to execute its strategies successfully;

“Risk Management” is a structured and systematic approach to set best course of action under uncertainty by identifying, assessing, implementing controls, monitoring and communicating risk issues in an ongoing basis.

“Risk Assessment” is a process of ascertaining the probability and impact of uncertain events or how potential events might affect the achievement of objectives;

“Risk Management Committee” means a management committee of the Msunduzi Municipality established and appointed by the Accounting Officer to assist the municipality in discharging its risk management responsibilities made up of Senior Management

“Risk appetite” is the broad based amount of risk the municipality is willing to accept in pursuit of its mission (vision)

“Risk tolerance” is the acceptable variation relative to the achievement of an objective

“Residual risk” is the remaining risk after management has taken action to alter the risks likelihood or impact

“Reasonable assurance” means that the concept RM, no matter how well designed and operated, cannot provide a guarantee regarding achievement of the municipality’s objectives because of inherent limitations of RM

“Section 57 manager is an official appointed in writing by the Council in terms of Section 57 of the Local Government: Municipal Systems Act, Act 32 of 2000, is directly accountable to the Accounting Officer;

“Risk Management Framework” is a document that incorporates, risk management policy, risk management strategy and risk management methodology;

“Strategic” is used with objectives having to do with high level goals that are aligned with and support the entity’s vision (mission)

“Risk officers” mean officers performing risk management support functions to the business units.

2. INTRODUCTION

- 2.1 When an employee or a Councilor or a member of the public realize something is not right within the municipality, they may not want to express their concerns because they feel that doing so would be disloyal to their colleagues or to the municipality and they may also hold back in fear, for example fear of harassment or even victimization. In these circumstances it may be easier to often ignore the situation than report especially when it may just be a suspicion of Ethical misconduct.
- 2.2 The Municipality (*the municipality*) is committed to its Code of Conduct and has the expectation that where its employees and stakeholders believe that either the municipality or its stakeholders aren't abiding by the Code of Conduct, they should come forward and voice a breach of the code or their concerns.
- 2.3 This policy specifically provides clarity to all municipal Employees, Councilors and Suppliers that they can without fear of victimization, subsequent discrimination or disadvantage raise breaches of the Msunduzi Municipality Code of Conduct, Municipal Structures Act, Municipal Systems Act, Municipal Finance Management Act, Supply Chain Management Regulations. The policy further encourages that rather than ignoring a situation or concern, that employees and suppliers alike use the Msunduzi Whistle-blowing Hotline to either confidentially or anonymously report the breach or concern. The party making the call can be assured that wherever practical, and subject to any legal constraints, investigations will proceed on a confidential basis.

3. PURPOSE

The Whistle Blowing Policy:

- 3.1 is intended to encourage employees, councillors and members of public to feel confident in raising breaches, concerns or disclosing of information relating to fraud

- and corruption or irregular and or criminal activity in work place in a responsible manner without fear of victimisation;
- 3.2 is to ensure the whistleblowers that they will be protected from possible reprisals or victimization if the disclosure was made in good faith;
 - 3.3 strive to create a culture which will facilitate the eradication of criminal and other irregular conduct within the municipality;
 - 3.4 provides venues and guidelines for employees, councillors and members of public to disclose information relating to fraud and corruption or irregular and or criminal activity in work place rather than overlooking a problem or blowing the whistle to inappropriate channels; and
 - 3.5 reaffirms the commitment of the municipality to the Protected Disclosures Act, Act 26 of 2000 came into effect on 16 February 2001.

4. SCOPE OF THE POLICY

- 4.1 This policy, unless certain parts thereof indicate otherwise, applies to all officials of the municipality including contract workers, interns, other temporary workers, consultants working for the municipality, Msunduzi Municipal entities and Councilors of the municipality.
- 4.2 There are existing municipal policies and procedures in place and so this policy is not a substitute policy for issues that are governed under those particular policies and procedures. It is important to note that the concerns of employee relating to their personal matters or employment contracts where they are subject to current Human Resource and Grievance policies and procedures are not covered by this policy.
- 4.3 Whistle blowing is intended to cover concerns that fall outside the scope of the grievance procedures. These concerns, although not exhaustive, are the following:-
 - (a) that a criminal offence has been committed, is being committed or is likely to be committed;
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
 - (d) that the health or safety of an individual has been, is being or is likely to be endangered;
 - (e) that the environment has been, is being or is likely to be damaged;

- (f) unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000; or
 - (g) that any matter referred to in the preceding paragraphs has been or is being or is likely to be deliberately concealed.
- 4.4 The Accounting Officer, General Managers, managers and any official on the position of authority and power whether on permanent basis or in acting position should be mindful of the municipal policies and procedures, broader Government's legislation and policies and policy principles as articulated in this document, the municipality Anti-Fraud and Corruption Policy and strategy and should regularly advise the council as to the steps they are taking to meet the aims of this policy.
- 4.5 The council therefore expects and encourages the intentions and spirit of this policy to flow to other stakeholders, specifically the following:
- (a) Employees;
 - (b) Councilors;
 - (c) Suppliers, contractors, service providers;
 - (d) Civil society in general;
 - (e) Labour;
 - (f) Media;
 - (g) Users of services/customers;
 - (h) Organized religion; and
 - (i) All other persons with the links in the municipality.

5. LEGAL MANDATE

- 5.1 Chapter 2 of the Constitution deals extensively with the Bill of Rights. The following sections under the Bill of Right are relevant to the imperative of the Constitution versus management of risks including the risk of fraud and corruption.
- 5.2 The Constitution describes one of the values of founding provisions as; Human dignity, the improvement of the quality of life of all citizens and free the potential of each person.
- 5.3 Section 195 of the Constitution, provided normative basic values and principles for public administration, including the following:
- 5.3.1 A high standard of professional ethics must be promoted and maintained.
- 5.3.2 Efficient, economic and effective use of resources must be promoted.
- 5.3.3 People's needs must be responded to, and the public must be encouraged to participate in policy-making.
- 5.3.4 Public administration must be accountable.
- 5.4 Criminal and other irregular conduct in organs of state and private bodies are detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage;
- 5.5 The accounting officer is required in terms of section 112 (1) (m) of the MFMA to ensure that supply chain management practices are fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework of municipal supply chain management, which must cover at least the following:
- (a) measures for –
- (i) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management;
- (ii) promoting ethics of officials and other role players involved in municipal supply chain management.
- (n) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by municipal councilors or municipal officials.
- 5.6 The Accounting Officer, General Managers, managers and any official on the position of authority and power whether on permanent basis or in acting position should be mindful of Section 34 of the Prevention and Combating of Corrupt

Activities Act, Act 12 of 2004 (PCCAA) which stipulates that any person in a position of authority who knows or ought reasonably to have known or suspects that another person has committed:

- (a) Corruption or
- (b) The offences of theft, fraud, extortion, forgery or uttering of a forged document;
- (c) must report such knowledge or suspicion or cause the same to be reported to a police official.

5.6.1 In terms of Section 34 (2) of the PCCAA, failure to comply with this obligation will constitute an offence. Provision is made for a sentence not exceeding 10 years in the case of a High Court, whereas a Magistrate's Court can impose a fine or a period of imprisonment not exceeding 3 years.

5.6.2 Section 34 of the PCCAA includes the following persons employed at the municipality as holding a position of authority:

- (a) The Accounting Officer or equivalent officer
- (b) Any member of management
- (c) Any person appointed in an acting or temporary capacity in any of the above mentioned positions.

5.7 The reporting duty in terms of common law principles related to the employer – employee relationship. As the employer - employee relationship includes the requirement of trust; every employee has a common law duty to report to the employer knowledge of any fact that might have a negative impact on the employer's business. The Council expects employees, stakeholders, service providers and ratepayers to report any reasonable suspicions, of whatever value, to the Council. The ultimate decision to pursue an investigation is the responsibility of the Council. The Council will weigh the evidence and decide on the appropriate

action to be taken. Failure of an employee to comply with this requirement may result in disciplinary action.

5.8 The following pieces of legislation are relevant to the prevention, detection, investigation and prosecution of alleged cases of fraud and corruption.

5.8.1 The National Prosecuting Authority Act, Act 21 of 1998.

5.8.2 The Prevention of Organized Crime Act, Act 121 of 1998.

5.8.3 The Promotion to Access to Information Act, Act 2 of 2000.

5.8.4 The Promotion of Administrative Justice Act, Act 3 of 2000.

5.8.5 The Protected Disclosure Act, Act 26 of 2000.

5.8.6 The Finance Intelligence Centre Act, Act 38 of 2001.

6. POLICY STATEMENT

6.1 The municipal Council is committed to protecting its revenue, property and information from any attempt, either by members of the public, contractors, subcontractors, agents, intermediaries, service providers or its own employees, to gain by deceit financial or other benefits. This policy is designed to protect public money and property, protect the integrity, security and reputation of the municipal Council and maintain a high level of services to the community consistent with good governance.

6.2 The municipality is furthermore committed to the strict adherence to both the letter and the spirit of the Municipal Systems Act, No 32 of 2000, the Municipal Finance Management Act, No 56 of 2003 ("MFMA") and the Prevention and Combating of Corrupt Activities Act, No 12 of 2004 (PCCAA). The municipality realizes the importance of securing sound and sustainable management of its financial affairs.

6.3 This commitment of the municipality stretches further than the mere adherence to the MFMA and encompasses the principles of "Batho Pele" and service delivery to the community, to which The municipality is committed. To this end the municipality has implemented a "Batho Pele" Policy which embodies 11 principles guiding behaviours. Of relevance to this policy are the principles of:

- (a) Openness and transparency
- (b) Redress
- (c) Responsibility
- (d) Zero Tolerance to corruption and poor service

- 6.4 The municipality reacts swiftly and appropriately when a crime is uncovered indicating our complete commitment of zero-tolerance towards white-collar crime.

7. REPORTING ALLEGATIONS OR CONCERNS

7.1 Harassment or victimisation or reprisal

The municipality acknowledges the fact that the decision to report a concern or allegation or suspicions of fraud or corruption or any other irregularity or crime can be a difficult one to make, not least because of fear of reprisal from those responsible for the irregularity. The municipality will not tolerate harassment or victimisation and will take action to protect employees, councillors or members of the public when they raise a concern in good faith. Any act of harassment or victimisation should be reported to the Accounting Officer, alternatively to the Mayor if there is a reason to believe that the Accounting Officer is involved in the act of harassment or victimization. This does not mean that if an employee is already the subject of disciplinary or other action, that action will be halted as a result of their whistle blowing.

7.2 Confidentiality

7.2.1 The municipality will do its best to protect an individual's identity when he/she raises a concern and does not want their identity to be disclosed. All concerns and breaches raised will be treated with the strictest confidence subject to any legal constraints, not to reveal the identity of the whistle-blower without their permission.

7.2.2 It must be appreciated, however, that circumstances or an investigation process may reveal the source of the information and a statement or may however dictate that any time it may be necessary for their identity to become known i.e. as they may have be called as a witness.

7.3 Anonymous Allegations

7.3.1 The municipality encourages employees, councillors or members of the public to put their names to allegations or alternatively have some kind of

how they can be contacted should clarity be need on the allegation or concern or when wanting to give feedback. Concerns expressed anonymously are difficult to investigate; nevertheless, they will be followed up with boundless bravery by the municipality.

7.3.2 It is however, necessary to highlight that investigations will be informed by application of mind which shall be influenced by among other things the following: -

- (a) Seriousness of the issue raised;
- (b) Credibility of the concern; and
- (c) Likelihood of confirming the allegation.

7.4 False Allegations

7.4.1 The Accounting Officer, General Managers and managers should discourage employees or other parties from making allegations, which are false and made with malicious intent.

7.4.2 An allegation made in good faith, but not able to be confirmed by an investigation or proved untrue, no action will be taken against the whistle-blower. If however an allegation is maliciously or mischievously made for personal gain or otherwise, appropriate disciplinary or legal action may be taken against the whistle-blower.

7.5 Reporting of Concerns

7.5.1 For some minor issues (e.g. late coming, using drugs at the work place or using drugs excessively, sleeping during working hours at the work place, etc.), employees should normally raise the concerns with their immediate supervisor. In general, however, the whistle blowing procedure is expected to be used for potentially more serious and sensitive issues (e.g. fraud, corruption, theft, performing private work during official working hours, bribery, maladministration, etc.).

7.5.2 The first step will be for the employee or councillor or member of the public to approach the Chief Audit Executive unless he/she is the subject of the complaint, in which case the Accounting Officer should be approached unless he/she is the subject of the complaint, in which case the Mayor should be informed. The Chief Audit Executive, the Accounting Officer and

the Mayor shall treat all complains or concerns or allegations to the best of their abilities in order to protect an individual's identity.

- 7.5.3 Any concerns or allegations are better raised in writing. The background and history of the concern, giving names, dates and places where possible should be set out and the reason why the individual is particularly concerned about the situation. The earlier the concern is reported, the easier it is to take action and initiate recovery procedures where necessary.
- 7.5.4 Should any individual wish to remain anonymous and prefer to use the Msunduzi Whistle- blowing Hotline toll free number he/she is free to use it.
- 7.5.5 Advice and guidance on how matters of concern may be pursued can be obtained from the Chief Audit Executive.

8. ADMINISTRATION OF THE POLICY

- 8.1 The Accounting Officer has the overall responsibility for the implementation, maintenance and operation of this policy and will be supported by Internal Audit Unit, Legal Services and Human Resource Management and all General Managers.
- 8.2 This policy will be reviewed annually or as and when the need arises. The amendment of this policy or any of the provisions thereof shall be reduced in writing and approved by Council. The Chief Audit Executive shall be responsible to facilitate the review of the policy.
- 8.3 This Whistle Blowing Policy and any amendments thereto, become effective upon approval by the Council of the Msunduzi Municipality.