

ANTI-CORRUPTION AND FRAUD PREVENTION POLICY



KAAP AGULHAS MUNISIPALITEIT
CAPE AGULHAS MUNICIPALITY
U MASIPALA WASECAPE AGULHAS

RESOLUTION 236/2022

2022-2023

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1. BACKGROUND

Cape Agulhas subscribes to the principles of good corporate governance, which require that business be conducted in an honest, ethical and transparent fashion.

To this end, the Municipality is committed to fighting fraudulent and corruptive behaviour at all levels within the organisation.

2. PURPOSE

The purpose of this policy is to establish boundaries for acceptable behaviour and guidelines for the application of the fraud prevention plan.

3. DEFINITIONS

3.1 “Accounting Officer” means the Municipal Manager, who is appointed as the head of administration and accounting officer in terms of Section 55 of the Local Government: Municipal Systems Act 2000 (Act no. 32 of 2000)

3.2 “Fraud and Corruption” includes, but is not limited to the following legal definitions:

3.2.1 Fraud, i.e. the unlawful and intentional making of a misrepresentation resulting in actual or potential prejudice to another;

3.3.2 Corruption: Means "Any person who, directly or indirectly 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; 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 is guilty of the offence of corruption" (National Treasury)

3.3.3 Theft, i.e. the unlawful and intentional misappropriation of another's property or property which is in his/her lawful possession, with the intention to deprive the owner of its rights permanently;

3.3.4 Offences in respect of corrupt activities as defined in the Prevention and Combating of Corrupt Activities Act, 2004, i.e.:

3.3.4.1 The general offence of corruption which could be summarised as directly or indirectly accepting or agreeing to accept any gratification from another person; giving or agreeing to give any other person any gratification in order to influence that person directly or indirectly to exercise his powers, duties or legal obligations in a manner which is/amounts to:

- Illegal, dishonest, unauthorised, incomplete, or biased;
- Misuse or selling of information or material acquired;
- Abuse of position of authority;
- Breach of trust;
- Violation of a legal duty or set of rules;
- Designed to achieve an unjustified result; and
- Any other unauthorised or improper inducement to do or not to do anything

3.3.4.2 Corrupt activities in relation to:

- Public officials;
- Foreign public officials;
- Agents;
- Judicial officers;
- Members of the prosecuting authority;
- Unauthorised gratification received or offered by or to a party with an employment relationship;
- Witnesses and evidential material during certain proceedings;
- Contracts;
- Procuring and withdrawal of tenders;
- Auctions;
- Sporting events; and
- Gambling games or games of chance;

3.3.4.3 Conflicts of interests and other unacceptable conduct, for example:

- Acquisition of private interests in contract, agreement in or investment in public body;
- Unacceptable conduct relating to witnesses; and
- Intentional interference with, hindering or obstruction of investigation of offence;

3.3.4.4 Other offences relating to corrupt activities:

- Accessory to or after an offence;
- Attempt, conspiracy and inducing another person to commit offence; and
- Failure to report corrupt transactions;

3.3.5 Irregularities relating to the following:

3.3.5.1 Systems issues: where a process/system exists which is prone to abuse by employees, the public or other stakeholders, for example:

- 3.3.5.1.1** HR – Employment Practices: (Refer to all HR Policies)
 - Inadequate vetting of employees;
- 3.3.5.1.2** Procurement: (Refer to all Financial policies governing all procurement processes of CAM)
 - Non-compliance to tender procedures;
 - Procurement fraud, for example collusion between employees and suppliers;
 - Fraudulent information submitted by suppliers when tendering for work;
- 3.3.5.1.3** Financial Systems and Control: (Refer to all Finance policies of CAM)
 - Theft of blank cheques;
 - Deliberate non-compliance to policies and procedures;
 - Abuse of the system of overtime;
 - Abuse of the system of travel claims;
 - Fraudulent payment certificates submitted for payment;
 - Non-compliance to delegated authority limits.

3.3.5.2 Financial issues: i.e. where individuals or entities have fraudulently obtained money from Cape Agulhas, for example:

- 3.3.5.2.1** HR – Employment Practices: (Refer to all HR policies of CAM)
 - Ghost employees;
 - Irregular appointment of staff for undue benefits;
- 3.3.5.2.2** Procurement: (Refer to all Financial Policies of CAM)
 - Suppliers invoicing for work not done;
 - Contractors “fronting”.
- 3.3.5.2.3** Financial Systems and Control: (Refer to all Financial policies of CAM)
 - Theft, for example petty cash amongst others;
 - Fraudulent cashing of cheques;
 - Fraudulent travel claims by employees;

3.3.5.3 Equipment and resource issues: i.e. where Cape Agulhas's equipment is utilised for personal benefit or stolen, for example:

- 3.3.5.3.1** Financial Systems and Control: (Refer to all related finance/assets policies of CAM)
 - Theft of assets;
 - Abuse of assets;
 - Deliberate destruction of property; and

- Use of the Municipality resources and equipment for private gain.

3.3.6 Other issues: i.e. activities undertaken by employees of Cape Agulhas which may be against policies or fall below established ethical standards, for example:

3.3.6.1 Conflict of interest;

3.3.6.2 Favouritism; and

3.3.6.3 Non-disclosure of private work

3.4 “**Municipality**” means the Cape Agulhas Municipality.

3.5 “**Manager**” shall mean all the middle management of the various directorates not directly reporting to the municipal manager.

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

3.7 “**Irregular Expenditure**”, in relation to a municipality or municipal entity, means-

3.7.1 expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;

3.7.2 expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;

3.7.3 expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or

3.7.4 expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality’s by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a municipality which falls within the definition of “unauthorised expenditure”

3.8 “**unauthorised expenditure**”, in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3) of the MFMA, and includes—

- 3.8.1 overspending of the total amount appropriated in the municipality's approved budget;
- 3.8.2 overspending of the total amount appropriated for a vote in the approved budget;
- 3.8.3 expenditure from a vote unrelated to the department or functional area covered by the vote;
- 3.8.4 expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
- 3.8.5 spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of "allocation" of the MFMA otherwise than in accordance with any conditions of the allocation; or
- 3.8.6 a grant by the municipality otherwise than in accordance with this Act;

3.9 "Maladministration in public administration" -means—

- 3.9.1 conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an, unauthorized, irregular, fruitless and wasteful expenditure use of public money or substantial mismanagement of public resources; or
- 3.9.2 conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- 3.9.3 includes conduct resulting from impropriety, incompetence or negligence; and
- 3.9.4 is to be assessed having regard to relevant statutory provisions and administrative instructions and directions

4. LEGISLATIVE CONTEXT OF THE POLICY

The policy aims to give effect to the requirements and stipulations of –

- Constitution of the Republic of South Africa (No. 108 of 1996)
- Local Government: Municipal Finance Management Act (No. 56 of 2003)
- Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (No. 430 of 2014)
- Local Government: Municipal Structures Act (No. 32 of 2000)
- Code of Conduct for Councillors in terms of Schedule 1 of the Municipal Structures Act (No. 32 of 2000)
- Code of Conduct for Municipal Staff Members in terms of Schedule 2 of the Municipal Structures Act (No. 32 of 2000)

- Cape Agulhas Municipality Code of Ethics
- Prevention and Combating of Corrupt Activities Act (No. 12 Of 2004)
- Protected Disclosures Act (No. 26 of 2000)
- Labour Relations Act (No. 66 of 1995)

5. SCOPE OF THE POLICY

This policy applies to all corruption, fraud, theft, financial misconduct and maladministration or suspected irregularities of this nature involving the following persons or entities:

- 5.1 all members of the Council of the Municipality;
- 5.2 all employees of the Municipality; all government institutions who interact with the Municipality; all suppliers of the Municipality; and
- 5.3 all members of the public who interact with the Municipality.

6. POLICY STANCE

It is the policy of the Municipality that:

- 6.1 corruption, fraud, theft, maladministration or any other dishonest activities of a similar nature will not be tolerated;
- 6.2 such activities will be investigated and followed up by the application of all remedies available within the full extent of the law;
- 6.3 all managers are responsible for the detection, prevention and investigation of all corruption, fraud, theft and maladministration;
- 6.4 all employees are responsible for reporting suspected fraudulent and corruptive activities;
- 6.5 appropriate prevention and detection controls will be rigorously applied, and to that end, the provisions of the Municipal Finance Management Act and regulations issued there under will be strictly observed;
- 6.6 the Municipality will take appropriate legal action to recover losses or damages arising from fraud, corruption, theft or maladministration.

7. ACTIONS CONSTITUTING CORRUPTION, FRAUD, THEFT AND MALADMINISTRATION

Offences constituting deliberate corruption, fraud, theft and maladministration collectively refer to, but are not limited to:

- 7.1 any dishonest, fraudulent or corrupt act;
- 7.2 theft of funds, supplies, or other assets;
- 7.3 maladministration or financial misconduct in handling or reporting of money, financial transactions or other assets;
- 7.4 making a profit from insider knowledge;
- 7.5 disclosing confidential or proprietary information to outside parties;

- 7.6 irregularly accepting, requesting, offering or giving anything of material value to or from contractors, suppliers or other persons providing services/goods to the Municipality;
- 7.7 irregular destruction, removal or abuse of records, furniture and equipment;
- 7.8 use of the municipality's assets for personal gain;
- 7.9 any similar or related irregularity;
- 7.10 deliberately omitting or refusing to report or act upon reports of any such irregular or dishonest conduct; and
- 7.11 unauthorized, irregular, fruitless and wasteful expenditure.

8. PROTECTION OF WHISTLE BLOWERS

- 8.1 The Protected Disclosures Act, 2000, protects whistle blowers. No employee will be subjected to any occupational detriment by the municipality on account, or partly on account of having made a protected disclosure.
- 8.2 An employee or councilor who suspects or reports suspected dishonest activity or any such activity that he or she has witnessed or of which he or she has knowledge, may remain anonymous should he or she so require, subject, however, to the laws and procedures relating to the investigation of offences by the SA Police Service and the giving of evidence.
- 8.3 The malicious making of any false allegations by any employee or councilor shall constitute a serious disciplinary infraction.

9. RESPONSIBILITY FOR CONDUCTING INVESTIGATIONS

- 9.1 The responsibility for conducting investigations relating to corruption lies with the Accounting Officer, who may delegate such responsibility, whether generally or in specific cases, to such manager or managers of the municipality as he may consider appropriate.
- 9.2 The assistance of the following may be sought for purposes of carrying out any such investigation:
 - 9.2.1 External and internal Audit Services;
 - 9.2.2 Chief Risk Officer
 - 9.2.3 External investigating agencies, for example the South African Police Services, where matters fall within their mandate;
 - 9.2.4 External consultants, for example Forensic Accounting consultants;
 - 9.2.5 Office of the National Director of Public Prosecutions;
 - 9.2.6 Special Investigating Units established under any law;
 - 9.2.7 The Public Protector
 - 9.2.8 Any other authority as determined by Council
- 9.3 The municipality will make all evidence collected during the course of an investigation available to law enforcement agencies and will pursue the prosecution of all parties involved in criminal activities.

10. REPORTING PROCEDURES AND RESOLUTION OF REPORTED INCIDENTS

- 10.1 It is the responsibility of all persons mentioned in paragraph 5 above to report all incidents of corruption, fraud, theft and maladministration. Whilst verbal reports are acceptable, written reports should be encouraged.
- 10.2 All alleged and confirmed cases of fraudulent incidents, corrupt acts and unethical behavior must be reported and recorded in a formal Fraud and Risk Management Committee meeting. (The incident will then be reviewed by means of a thorough risk assessment in 9.2 to identify process deficiencies / weaknesses in order to strengthen internal control environment and prevent re-occurrence).
- 10.3 In the case of an employee, such employee must report any such incident to his or her manager; provide that if such employee suspects his/her manager to be involved or fears victimization, the matter should be reported to such manager's superior, with final recourse to the Accounting Officer. Incidents involving the Accounting Officer must be reported to the Mayor.

In the case of a councillor, the councillor must report the matter directly to the Speaker. If the Speaker is implicated, the councillor must report the matter to the Mayor.

Members of the public may report incidents to the relevant Manager or Director, the Municipal Manager, Mayor, Speaker or their Ward Committee.

- 10.4 It is the responsibility of the Managers to report and/or escalate all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to the Accounting Officer. Such reporting by managers must be made as follows:
- Verbally, immediately after discovery or receiving a report of the incident in question;
 - A detailed written report within five working days after the discovery or reporting of such an incident.
- 10.5 It is the responsibility of the Accounting Officer to report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to the National and Provincial Treasury.
- 10.6 The Accounting Officer must assess the incident against the requirements of Section 34 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004) and Section 10 of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (No. 37699), that stipulates which cases of corruption, fraud, theft and other financial offences must be reported to the South African Police Service.

- 10.7 Where a staff member is alleged to have committed an act of fraud, corruption, theft, or maladministration the Accounting Officer must institute disciplinary proceedings, within a reasonable period, in terms of the disciplinary code of the Municipality and/or Labour Regulations Act.
- 10.8 As soon as a disciplinary hearing on a charge concerning any matter contemplated in par 7 is completed, the outcome must be reported to the Accounting Officer. Such report shall deal with the following:
- 10.8.1 The name and position of the staff member against whom proceedings are instituted;
 - 10.8.2 The disciplinary charges, indicating the misconduct the staff member is alleged to have committed;
 - 10.8.3 The findings of the disciplinary hearing;
 - 10.8.4 Any sanction imposed on the staff member; and
 - 10.8.5 Any further action to be taken against the staff member, including criminal charges or civil proceedings.
- 10.9 The Accounting Officer is also required to ensure that losses or damages suffered by the municipality as a result of an act committed or omitted by an staff member and/or external parties must be recovered from such a staff member and/or external parties if they is liable in law.

11. HARASSMENT OR VICTIMISATION

The Municipality will not tolerate harassment or victimisation of any person who reports any incident of fraud, corruption theft or mal-administration and will take action to protect staff when they report incidents in good faith. Any act of harassment or victimisation should be reported to the Head of Department. The Head of Department should escalate the matter to the Accounting Officer.

12. CONFIDENTIALITY

- 12.1 All information relating to irregularities that is received and investigated will be treated confidentially. Investigations will be handled in a confidential manner and will not be disclosed or discussed with any other person(s) other than those who have a legitimate right to such information. This is important in order to avoid harming the reputations of suspected persons who are subsequently found not guilty of wrongful conduct.
- 12.2 No person is authorized to supply any information with regard to the issues covered within this policy to the media without the express permission of the Accounting Officer.

13. ANONYMOUS ALLEGATIONS

13.1 The Municipality shall encourage staff and public to put their names to allegations. Concerns expressed anonymously are difficult to investigate; nevertheless they will be followed up at the discretion of the Accounting Officer. The discretion of the Accounting Officer will be applied by taking into account the following:

- seriousness of the issue raised;
- credibility of the concern; and
- likelihood of confirming the allegation.

14. APPLICATION OF PREVENTION CONTROLS AND DETECTION MECHANISMS

14.1 In all instances where incidents of fraud, corruption, theft, maladministration and other similar irregularities of this nature take place, all Managers are required to immediately review the controls which have been breached in order to prevent similar irregularities from taking place in future, within a reasonable period after the occurrence of the initial incident. Subsequently, fraud and corruption risk identification forms part of the risk assessment facilitated by the Risk Management Unit on an annual basis.

15. TRAINING, EDUCATION AND AWARENESS

15.1 In order for the Policy to be sustainable, it must be supported by a structured education, communication and awareness programme.

15.2 It is the responsibility of all heads of departments and managers to ensure that all staff, are made aware of and receive appropriate training and education with regard to this Policy.

16. ADMINISTRATION

16.1 The custodian of this policy is the Municipal Council who is supported in its implementation by the Accounting Officer and all Heads of Department.

16.2 The Fraud and Risk Management Committee (FARMCO) will be responsible for direct oversight in respect of the administration, revision and interpretation of the Policy. FARMCO will in turn give assurance reports to the Audit and Performance Audit Committee and Council on the effective execution of this Policy.

17. RELATED POLICIES

The following documents are related to this policy:

- Cape Agulhas Municipality Anti-Corruption and Fraud Prevention Strategy
- Cape Agulhas Municipality Anti-Corruption and Fraud Prevention Plan

- All other related Laws, Regulations Policies and Procedures
- Cape Agulhas Municipality Code of Ethics

18. REVIEW

18.1 This policy will be reviewed at least annually and updated if needed.

19. EFFECTIVE DATE

This policy shall come into effect on 1 July 2022.

STATUS	FARMCO APPROVAL AND REVIEW	COUNCIL APPROVAL	RESOLUTION NUMBER
First approval	16 May 2017	26 September 2017	199/2017
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Municipal Manager