

**Mogale City**

*Local Municipality*

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# **ANTI-CORRUPTION AND FRAUD POLICY OF MOGALE CITY LOCAL MUNICIPALITY**

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**PREPARED BY: OFFICE OF THE CHIEF AUDIT EXECUTIVE**

**(CORPORATE ETHICS SERVICES)**

**VERSION 4.0**

**OCTOBER 2022**

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**TABLE OF CONTENTS**

<b>Heading</b>	<b>Page</b>
<b>1. Introduction</b>	<b>1</b>
<b>2. Purpose</b>	<b>1</b>
<b>3. Objectives</b>	<b>1-2</b>
<b>4. Applicability</b>	<b>2</b>
<b>5. Scope of the policy</b>	<b>2</b>
<b>6. Policy statement</b>	<b>3</b>
<b>7. Anti-Corruption Strategy</b>	<b>3</b>
7.1 Detection	
7.2 Prevention	
7.3 Investigation	
7.4 Resolution	
<b>8. Operational Strategies</b>	<b>3-8</b>
<b>9. Confidentiality</b>	<b>8</b>
<b>10. Publication of sanctions</b>	<b>9</b>
<b>11. Communication, awareness and adherence</b>	<b>9</b>
<b>12. Custodians of the Policy</b>	<b>9</b>
<b>13. Roles and Responsibilities</b>	<b>9-10</b>
<b>14. Other related legislative framework, policies and procedures</b>	<b>11</b>
<b>15. Non-Compliance</b>	<b>11</b>
<b>16. Inconsistency with prevailing legislation and regulations</b>	<b>11</b>

## GLOSSARY OF TERMS

### Acronyms and abbreviations

<b>ACF:</b>	Anti-Corruption Framework
<b>ACFP:</b>	Anti-Corruption Policy of Mogale City Local Municipality
<b>Code:</b>	Code of Conduct for Municipal Staff Members in terms of <b>Schedule 2</b> of the Local Government: Municipal Systems Act 32 of 2000 as amended
<b>Constitution:</b>	Constitution of the Republic of South Africa, 1996 as amended
<b>Department:</b>	Different business units within the Municipality that are headed by Senior Managers that fulfil different roles to achieve common objectives of the Municipality
<b>Municipality:</b>	Mogale City Local Municipality
<b>MFMA:</b>	Local Government: Municipal Finance Management Act 56 of 2003
<b>MPAC:</b>	Municipal Public Accounts Committee
<b>NPA:</b>	National Prosecuting Authority of South Africa
<b>MSA:</b>	Local Government: Municipal Systems Act 32 of 2000 as amended
<b>Policy:</b>	Anti-Corruption and Fraud Policy of Mogale City Local Municipality
<b>SAPS:</b>	South African Police Services

### Persons

<b>Council:</b>	Municipal Council as referred to in <b>Section 157</b> of the Constitution
<b>Councillor:</b>	Member of Municipal Council as referred to in <b>Section 1</b> of the Local Government: Municipal Structures Act 117 of 1998 as amended
<b>Employee:</b>	Person(s) employed by it on permanent or contractual basis by the Municipality and who is in its payroll with the exception Councillors
<b>Senior/ Executive Manager:</b>	Senior Managers directly accountable to the Municipal Manager as contemplated in <b>Section 56</b> of the Local Government: Municipal systems Act 32 of 2000 as amended
<b>Executive Mayor:</b>	Executive Mayor elected in terms of <b>Section 55</b> of the Local Government: Municipal Structures Act 117 of 1998 as amended
<b>Investigator:</b>	Person(s) duly appointed either by the Municipal Manager or Council to conduct an investigation(s) on an allegation(s) of misconduct against an employee(s) or Councillor of the Municipality
<b>MM:</b>	Municipal Manager is the Accounting Officer as contemplated in <b>Section 60</b> of the Local Government: Municipal Finance Management Act 56 of 2003
<b>Speaker of Council:</b>	A Councillor elected in terms of <b>Section 36</b> to be the Chairperson of a Municipal Council as envisaged in <b>Section 160 (1)(b)</b> of the Constitution

## DEFINITIONS

**Corrupt** for purposes of this Policy can be defined as the unlawful and intent of having or showing a willingness to act dishonestly in return to derive an undue benefit be it money or other personal gain to oneself or for the benefit of another person(s).

### **Corruption**

**Prospective Corruption** – entails the giving of a benefit in a corrupt manner for an act (counter- performance) that must be performed in the future.

**Completed Corruption** – is the giving of a benefit in a corrupt manner for an act (counter-performance) that has already been performed.

Both offences committed by the corruptor entails that he/she gives certain benefit/s to certain people with a specific intention.

The element of the act of the offence consists of the following:

- give or offers or agrees to give;
- of any benefit of whatever nature;
- by any person;
- to any person upon whom any power has been conferred or who has been charged with any duty by virtue of any employment or the holding of any office or any relationship of agency or any law; or
- to anyone else.

**Fraud** is a common law offense, which can be defined as follows:

*"Fraud is a misrepresentation of a matter of fact—whether by words, conduct, misleading allegations, or by concealment of what should have been disclosed—that deceives and is intended to deceive another individual so that the individual act upon it to her or his legal detriment".*

Fraud must be proved by showing that the defendant's actions involved five separate elements:

- (i) a false statement of a material fact;
- (ii) knowledge on the part of the defendant that the statement is untrue;
- (iii) intent on the part of the defendant to deceive the alleged victim;
- (iv) justifiable reliance by the alleged victim on the statement; and
- (v) injury to the alleged victim as a result.

Silence or failure to disclose the true facts may amount to fraud; if there is a duty to disclose.

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**The term fraud includes but is not limited to any:**

- Dishonest, illegal or fraudulent acts involving Council's property;
- Illegal or fraudulent acts involving Council assets;
- Any act aimed at circumvention of Council policies or procedures;
- Acceptance or solicitation of any gift, favour or service that might reasonably tend to influence the employee in the discharge of his official duties;
- Gaining of personal advantage from any actions/business related to the Council or misrepresenting the Council;
- Destruction or disappearance of records, furniture, fixtures or equipment where theft is suspected.

**Theft** – consists of the unlawful and intentional appropriation/ removal, with the intent to steal of any Council assets which is capable of being stolen.

**The term theft includes but is not limited to any:**

- Misappropriation of funds, supplies, equipment or any other assets (e.g. vehicles, computers) for personal gain;
- Theft of Council time (i.e. arriving late for work or leaving the working station early during official working hours without authorization/approval from management)

**Theft by false pretence**

*"Theft by false pretence is misrepresentation of material past or present facts, known by the offender to be false with intention to deceive a victim into passing title of possession to the offender".* A false representation can be a verbal, written, or implied statement. For example, if a statement suggests that the wrongdoer has the authority, power, or ability to perform what is represented, but the wrongdoer does not have that authority, power, or ability, the implication is a false representation.

**Extortion**

*"Extortion is illicit appropriation of money or property from another person by wrongful use of actual or threatened force, violence, or fear, or under shade of official right".*

Under the Common Law, extortion is a misdemeanour consisting of an unlawful taking of money by a government officer. It is an oppressive misuse of the power with which the law clothes a public official. Most jurisdictions have statutes governing extortion that broaden the common-law definition. Under such statutes, any person who takes money or property from another by means of illegal compulsion may be guilty of the offense.

When used in this sense, extortion is synonymous with blackmail, which is extortion by a private person. In addition, under some statutes a corporation may be liable for extortion.

**Forgery** – the unlawful and intentional falsification of a document or written instrument with the intent to defraud, which is calculated to cause prejudice or potential prejudice to another.

**The term forgery includes but is not limited to any:**

- Forgery or alteration of cheques, drafts, promissory notes and securities;
- Forgery or alteration of employee benefits or salary related items such as time, cards, billings, claims, assignments, personnel documentation etc;
- Forgery or alteration by employees or consumer related items such as services rendered, services charged and other financial records.

**Collusion** is a non-competitive, secret, and sometimes illegal agreement between rivals which attempts to disrupt the market's equilibrium involving people or companies which would typically compete against one another, but who conspire to work together to gain an unfair market advantage.

**1. INTRODUCTION**

- 1.1 Misconduct be it corruption, fraud, theft, maladministration and so on, such has a potential to 'steal from the public purse' monies earmarked for service delivery thereby impeding on service delivery. ACFP serves as a protection to the Municipality against any acts of such corrupt activities and fraud.
- 1.2 The implementation of this Policy is intended to reduce the losses that the Municipality may incur due to the occurrence of corrupt activities and fraud. It also provides for measures within which the Municipality will be in a position to prevent, detect, investigate and resolve instance instances of corruption and fraud.
- 1.3 The Municipality subscribes to the principles of good corporate governance, which requires the conduct of business to be in an honest and transparent manner; which principles enjoins and guides employees behaviour when engaging with other, stakeholders or the general public. **Item 2** of the Code under General Conduct provides that:
- "A staff member of the Municipality must at all times-*
- (a) loyally execute the lawful policies of municipal council;*
  - (b) perform function of office in good faith, diligently, honestly, and in a transparent manner;*
  - (c) act in such a way that the spirit, purport and objects of section 50 are promoted;*
  - (d) act in the best interest of the Municipality and in such a way that the credibility and integrity of the Municipality are promoted*
  - (e) act impartially and treat all people, including other staff members, equally without favour or prejudice."*

**2. PURPOSE**

To provide for measures with which the Municipality seeks to curb corruption, fraud and other acts of misconduct thereby creating an enabling environment to demonstrate its commitment of zero tolerance to corruption and fraud.

**3. OBJECTIVES OF THE POLICY**

- 3.1 To instil and maintain a climate within the Municipality where all employees strive for the ultimate eradication of corruption, fraud and unethical conduct, by means of the application of the full spectrum of both pro-active and reactive measures at their disposal.



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- 3.2 To provide a firm stance of the Municipality in terms of which corrupt activities and fraud as well as the response mechanisms are in place to report, investigate and resolve incidents of corruption, fraud and unethical conduct, which can negatively impact on the Municipality's ability to fulfil its Constitutional mandate that of improving the quality of life of the local communities amongst other things.

#### 4. **APPLICABILITY OF THE POLICY**

The Policy will apply and be enforceable to all employees irregardless of their positions in the Municipality save for Senior Managers. Where allegations of misconduct are levelled against Senior Managers, such will be dealt with in accordance with the MSA Disciplinary Regulations for Senior Managers, 2010. Whereas, in the case of Councillors in terms of MSA **Schedule 1** of the Code of Conduct for Councillors. Having regard to the fact that this Policy merely makes provision for reporting allegations of fraud or corruption against Councillors to the Speaker of Council (Speaker).

#### 5. **SCOPE OF THE POLICY**

- 5.1 The Policy is 'a *means to an end*' in terms of which the behaviour of officials is regulated for purposes of curbing fraud and corruption or other forms of misconduct and provides for measures to investigate allegations of misconduct based on objective grounds. The extent to which includes the following:
- 5.1.1 All employees of the Municipality; and
  - 5.1.2 Consultants, suppliers, contractors and other providers of goods or services to the Municipality and or any other stakeholders.

#### 6. **POLICY STATEMENT**

- 6.1 The Policy seeks to regulate the conduct of employees in the execution of official duties when engaging with each other, stakeholders and the general public bearing in mind that Batho Pele Principles; which in essence provides that the Municipality is accountable to the people. Against this backdrop, the Policy has been developed in such a dynamic way that it serves as both a Policy and a Fraud Prevention Plan.
- 6.2 Appropriate prevention and detection controls are to be applied. These include the existing controls and checking mechanisms as prescribed in existing policies, procedures and other relevant legal prescripts to the activities of the Municipality, and

systems of internal controls. The efficient application of legislative framework, the Code, Circulars is one of the most important responsibility of every employee in the execution of their daily tasks and under no circumstances should there be indifference to this end.

## 7. **Anti-Corruption Strategy**

The Anti-Corruption Strategy is the means with which to effectively and efficiently combat corruption and fraud. It was informed and therefore is aligned to 4 pillars of the Local Government: Anti-Corruption Strategy 2015 in the following order:

- (i) **Prevention** – through building integrity and raising ongoing ethics awareness, Code of Conduct/ Ethics, policies etc;
- (ii) **Detection** – through management action, Internal Audit, whistle blowing etc;
- (iii) **Investigation** – through conducting investigations on allegations of misconduct; and
- (iv) **Resolution** – result in the improved internal controls, remedial action, civil recovery

## 8. **OPERATIONAL STRATEGIES**

### 8.1 **Internal controls**

Internal controls are the first line of defence against corruption and fraud. Whilst internal controls may not fully protect the Municipality against corruption and fraud, they are essential elements in the overall prevention and detection methods.

All areas of operations in the Municipality require internal controls, for example:

- Physical control (safeguarding of assets);
- Authorisation controls (approval of expenditure);
- Supervisory controls;
- Analysis of data;
- Monthly and annual financial statements;
- Monthly reconciliation of bank statements;
- Monthly reconciliation of vote accounts;
- Stock take on a regular basis;
- Asset counts;
- Computer access controls; and
- Policies and procedures.

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8.2 The Internal Audit function will be responsible for implementing the internal audit program which will incorporate steps to evaluate adherence to internal controls. Management is the first line of defence where internal controls are concerned. The principal safeguard against fraud, misstatement and irregularities is an effective system of internal control. Management is responsible for the establishment and maintenance of an effective system on internal control. Internal evaluates if the controls, which Management relies on to manage the risks down to acceptable levels, are appropriate and functioning as intended (i.e., are they adequate and effective) and develop recommendations for enhancement or improvement.

8.3 **Disclosure of interests**

All employees and political office bearers of Municipality are required to disclose their specific personal assets and business interests on an annual basis. The financial disclosure forms must be used for this purpose. Human Capital Management Division is the custodian of such forms.

8.4 **Gift Register**

8.4.1 At times members of the general public, suppliers, organisations can offer an employee a gift out of their own free will in the course of work as a token of appreciation and/ or mere generosity. Gifts in this context can be in the form of monetary value, [undue] favours, presents, gifts-in-kind and so on. Such gift irregardless of their value, received in the line of duty must be declared in the Gift Register at the CED in accordance with relevant prescripts and leading practice to this effect.

8.4.2 It must be borne in mind that when an employee solicits a gift, reward or favour this no longer qualifies as a gift by definition and can thus be regarded as gratification as contemplated in **Section 1** of Prevention and Combatting of Corrupt Activities Act 12 of 2004. The gifts offered to municipal officials have to be within threshold of **R350.00. Regulation 47(1)** of the Local Government: Municipal Finance Management Act, 2003 Municipal Supply Chain Management Regulations provides that a service provider or prospective service provider or recipient of goods disposed or to be disposed of by the Municipality may not grant or offer any official reward, gifts, favours to the value of more than **R350.00**.

## **8.5 Detection**

Detection of fraud and corruption may occur through:

- Vigilance on the part of Management and the rest of employees;
- Investigations;
- Internal Audit function;
- Ad-hoc management reviews;
- Anonymous reports of whistleblowing; and
- The application of detection techniques.

## **8.6 Internal Audit**

As part of the detection strategy, the Internal Audit plan will cover the following:

- Surprise audits: Ad-hoc audits conducted on specific business processes throughout the year;
- Planned audits: Internal Audit work is planned with a reasonable expectation of detecting significant control weaknesses in the specific areas reviewed. In performing internal audits, the possibility exists that illegal acts may have occurred which is based on reasonable assurance. If detected, Internal Audit accordingly informs Management of material control weaknesses, material non-compliance situations, material errors or irregularities, or illegal acts that they became aware of in conducting an audit.
- Analytical review:  
Techniques in analysing Municipality's management accounting reports, trends can be examined and analysed and interrogated which may be indicative of irregular conduct.

## **8.7 External audit**

Municipality acknowledges that the external audit function is an important control in the detection of fraud. The MM must ensure that due consideration is given, by the auditors, to ISA 240 *"The Auditors' Responsibility to Consider Fraud in the Audit of the Financial Statement"*.

**8.8 Forensic Investigations**

In the event the Municipality does not has internal capacity to conduct investigation due to human resource capacity constraints or specialised resources, in which case the services of external forensic investigators with reputable track records can be procured subject to the availability of budget.

**8.9 Whistle Blowing**

Corruption and fraud can be reported through the following hotlines:

- National Anti-Corruption Hotline on 0800-701-701; and
- Presidential Anti-Corruption Hotline on 17737.

**8.10 Reporting corruption and corruption – a Whistle blowing mechanism**

8.10.1 Where there are reasonable grounds for the suspicion of allegations of fraud corruption or other forms of misconduct against employees must be reported to MM, EM's or CED in addition to the provision of **Item 13** of the Code which provides that it must be reported without delay to superior or Speaker.

8.10.2 The Protected Disclosures Act, 26 of 2000 makes provision for the protection of employees who makes a disclosure that is protected in terms of this Act. Any disclosure made in good faith and in accordance with any procedure prescribed by the Municipality for reporting is considered a protected disclosure under this act. An employee making such a protected disclosure is protected from being subjected to an occupational detriment on account of having made a protected disclosure.

8.10.3 An employee who suspects or reports suspected dishonest activity or such activity which he/she has witnessed should be afforded the opportunity to remain anonymous should he/she so require. Levelling of deliberate false allegations against employees or those made with malicious intentions will not be tolerated. Where such malicious or false allegations are discovered, such an employee may be subjected to disciplinary action. The Protected Disclosure Act does not protect such individuals.

**8.11 Investigating corruption and fraud**

Dealing with suspected corruption and fraud

In the event that corrupt activities and/ or fraud is detected or suspected on objective grounds, in which case the investigations will be conduct on the strength of the

written mandate either from MM or Council and investigated after which the investigation report will be issued communicating the outcomes.

#### **8.12 Investigation process**

8.12.1 All investigation amongst other things must be conducted in accordance with the approved Investigation Process Flow of the Municipality which serves as Addendum A1 to this Policy, which clearly sets out the standard processes in terms of which investigation will be conducted from a moment an allegation is received to a point where a final investigation report is issued to the Municipal Manager or Council for consideration.

8.12.2 Investigations should be undertaken by a person(s) who is duly appointed in writing. CED, Employee Relations Management Section, an external service provider or a law enforcement agency or any other person may also be appointed to conduct an investigation at the discretion of the MM or Council. All investigations performed and evidence obtained will be in accordance with acceptable practices and legal requirements. Independence and objectivity of investigations are paramount.

8.12.3 Any investigation conducted must be concluded by the issuance of a Final Investigation Report by the person(s) appointed to conduct such investigation(s). Investigations may involve one or more of the following activities: The protection of employees, who disclose protected information under the Protection of Disclosure Act, will be paramount. The use of other law enforcement agencies such as SAPS, NPA and so on may also be solicited where deemed appropriate.

#### **8.13 Disciplinary proceedings**

The disciplinary process may be instituted pursuant to the implementation of recommendations under circumstances where wrongdoing has been uncovered during the course of the investigation. To the extent necessary to correct the wrongful conduct and to deter other employees from engaging in the same or any other wrongful conduct. The process must be carried out in accordance with the South African Local Government Bargaining Council Disciplinary Code - Collective Agreement and/ or Labour Relations Act 66 of 1995 as amended, amongst others.

**8.14 Prosecution**

Should investigations uncover evidence of fraud or corruption in respect of an allegation or series of allegations, Municipality will review the facts at hand to determine whether the matter is one that ought to be reported to the relevant law enforcement agency for investigation and possible prosecution. Such reports must be submitted to SAPS in accordance with the requirements of all applicable acts. Municipality will give its full co-operation to any such law enforcement agency including the provision of reports compiled in respect of investigations conducted.

**8.15 Recovery action**

Where there is clear evidence of corrupt activities and fraud and there has been a financial loss to the Municipality, recovery action, criminal, civil or administrative, will be instituted to recover any such losses. In respect of civil recoveries, costs involved will be determined to ensure that the cost of recovery is financially beneficial.

**8.16 Internal control review after discovery of corruption and fraud**

In each instance where corrupt activities and fraud is detected, Line Management will reassess the adequacy of the current internal control environment (particularly those controls directly impacting on the corrupt/fraudulent incident) to consider the need for improvements. The responsibility for ensuring that the internal control environment is re-assessed and for ensuring that the recommendations arising out of this assessment are implemented will lie with the MM.

**9. CONFIDENTIALITY**

All information gathered during investigation will be treated confidentially at all times. This is important in order to avoid compromising the investigation and therefore such information will be handled by way of applying 'need- to- now principle' and under no circumstances can such information be disclosed to unauthorised persons at any given stage.

**10. PUBLICATION OF SANCTIONS**

The Municipality ought not only combat fraud and corruption and other acts of misconduct, but it must also be seen to be doing so. This said, the Employee Relations Section ought to publish annual statistics on sanctions imposed during disciplinary hearings emanating from investigation conducted thereby demonstrating

the Municipalities commitment to zero tolerance to corruption and fraud. Such publication should deter employees to willfully engage misconduct and will therefore build trust and confidence both to employees and the public.

**11. COMMUNICATION, AWARENESS AND ADHERENCE**

Once approved the Policy will be communicated to employees so that they can be aware of it and familiarise themselves with it. It is therefore, the responsibility of Managers to ensure that all employees within their areas of aware of it but it remains the responsibility of employees to familiarise themselves with it. Managers should further ensure that there is adherence to the Policy. The Policy will be placed on the Municipality's website, Intranet in order to make it easily accessible the extent which will include all stakeholders and members of the general public thereby demonstrating the Municipality's attitude and commitment towards corruption and fraud in the workplace. In addition, CED will endeavour to have excerpts of the Policy published and communicated to employees on a continuous basis by means of internal communication avenues.

**12. CUSTODIANS OF THE POLICY**

The Chief Audit Executive and the Manger: Corporate Ethics should ensure that the Policy is reviewed at least once every second year and duly revised at any given time should such a need arise; after which it must be presented to Council for approval.

**13. ROLES AND RESPONSIBILITIES**

In order to give effect to the Policy, it is imperative that the key roles and responsibilities of the relevant stakeholders are clearly defined and outlined. These are set out below:

**Council**

<b>Roles and responsibilities</b>	<b>Responsible Person</b>	<b>Frequency</b>
Council will be responsible for the approval and adoption of the Policy	Council	As and when the Policy is revised and presented to Council for approval



**Executive Management Committee**

Roles and responsibilities	Responsible Person	Frequency
<p>The MM and the Executive Managers are responsible for:</p> <ul style="list-style-type: none"> <li>▪ Ensure that the Policy is implemented and adhered to at all times by all employees within their areas of responsibilities as to the extent contemplated in <b>Item 2</b> of the Code which provides that employees must at all times loyally executive the lawful policies of Municipal Council.</li> <li>▪ Ensure that instances of fraud and corruption once detected are duly investigated and if the situation warrants corrective measures to be taken, such be done consistently;</li> <li>▪ Implementation of recommendations and remedial action emanating from investigation are duly implemented to curb the recurrence and prevent further so to prevent and discourage employees from deliberate engaging in misconduct;</li> <li>▪ Supporting all Anti-Corruption initiatives that will be taking place the extent to which include encouraging employees to attend such trainings, workshop, presentation and so on relating to the Policy;</li> <li>▪ Integrating the ACFP in the day-to-day activities of the municipality;</li> <li>▪ Dealing with corruption and fraud in terms of the Municipality's Disciplinary Procedure and Code of Conduct; and</li> <li>▪ Reporting criminal offences in the form of fraud corruption or theft once uncovered and sanctioned by the MM to the SAPS or any other relevant law enforcement agency.</li> </ul>	EXCO Members	Continually

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14. **OTHER RELATED LEGISLATIVE FRAMEWORK, POLICIES AND PROCEDURES**

In order to derive maximum benefit from this Policy, amongst others it should be read in conjunction with the following:

- Constitution of the Republic of South Africa, 1996 as amended;
- Prevention and Combatting of Corrupt Activities 12 of 2004;
- Local Government: Municipal Integrity Management Framework, & Local Government: Anti-Corruption Strategy, 2016;
- Labour Relations Act 66 of 1995 as amended;
- Local Government: Municipal Systems Act 32 of 2000 as amended;
- Local Government: Municipal Finance Management Act 56 of 2003;
- Local Government: MSA Disciplinary Regulations for Senior Managers, 2010 as amended;
- Code of Conduct for Municipal Staff Members in terms of Schedule 2 of MSA;
- SALGB Collective Agreement (whichever version that will be applicable at the time); and
- Approved Investigation Prices Flow of Mogale City Local Municipality (whichever version that will be applicable at the time).

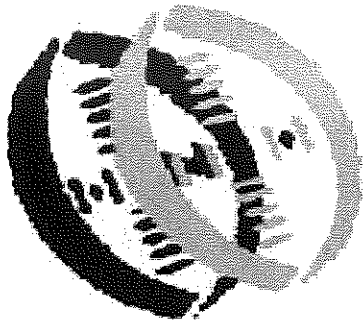
15 **NON-COMPLIANCE**

15.1 Non-compliance with this Policy may constitute misconduct in the context of the Municipality necessitating corrective steps to be taken against the transgressor in accordance with applicable provisions to that effect.

15.2 Similarly, the conduct where any official of the Municipality regardless of their position and/ or trade union affiliation, who threatens the appointed Investigator, deliberately interferes, unduly delays and/ or hinders the investigation process even an attempt of such amounts to the violation of this Policy and may necessitate corrective measures to be taken against the transgressor if wrongdoing is uncovered.

16 **INCONSISTENCY WITH PREVAILING LEGISLATION AND REGULATIONS**

In the event any portion of this Policy is inconsistent with any piece of prevailing legislation or regulation now or in future, in which case that piece of legislation or regulation will prevail to the extent of the inconsistency.



# **Mogale City**

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## ***Local Municipality***

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### **INVESTIGATION PROCESS FLOW OF MOGALE CITY LOCAL MUNICIPALITY**

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### **ADDENDUM A1**

**PREPARED BY: OFFICE OF THE CHIEF AUDIT EXECUTIVE**

**(CORPORATE ETHICS SERVICES)**

**VERSION 4.0**

**OCTOBER 2022**

**TABLE OF CONTENTS**

		<b>Page</b>
1.	Purpose	<b>1</b>
2.	Background	<b>1</b>
3.	Jurisdiction and Powers of the CES	<b>2</b>
4.	Impartiality	<b>2</b>
5.	Procedures for reporting	<b>3</b>
6.	Evaluation and allocation	<b>3</b>
7.	Investigation	<b>3</b>
8.	8.1 Investigation Approach	<b>4</b>
	8.1.1 Investigation Plan	<b>4</b>
	8.1.2 Evidence gathering	<b>4</b>
	8.1.3 Investigation Diary	<b>4</b>
	8.1.4 Investigation Interviews	<b>4</b>
	8.1.5 Statements and Affidavits	<b>5</b>
9.	Report writing	<b>5</b>
10.	Resolution and Recommendations of reported incidents	<b>5</b>
11.	Recovery Process	<b>5</b>
12.	Confidentiality	<b>6</b>
13.	Conclusion	<b>6</b>

## 1. Purpose

Investigation Process Flow of Mogale City Local Municipality (IPF) has been developed to give a practical effect to the Anti-Corruption and Fraud Policy of Mogale City Local Municipality, by way of setting out step- by- step process in terms of which allegations of misconduct against employees are to be investigated.

## 2. Background

2.1 Whereas **Section 67(1)(i)** of the Local Government: Municipal Systems Acts 32 of 2000 as amended (MSA) provides for investigation on allegations of misconduct and complaints against staff. Considering the above provision, Corporate Ethics Services (CES) has been entrusted with the responsible to conduct internal investigations in the Municipality. Against this backdrop, to carry out this function optimally and consistently, the IPF ought to be developed to guide the consistent investigation process; whilst ensuring that the rights of persons involved in the investigation are not violated.

2.2 In addition, IPF aims to ensure that the methodologies and techniques used in conducting investigations are not legally and procedurally flawed. The process of conducting investigations commences upon the receipt of the mandate to investigate until the Investigation Report has been issued out. Adherence to the guidelines set out in the IPF will ensure consistency, fairness, accountability, transparency, efficiency, and effective process in conducting investigations. Below is Figure 1: An illustration of the Investigation Process Flow:

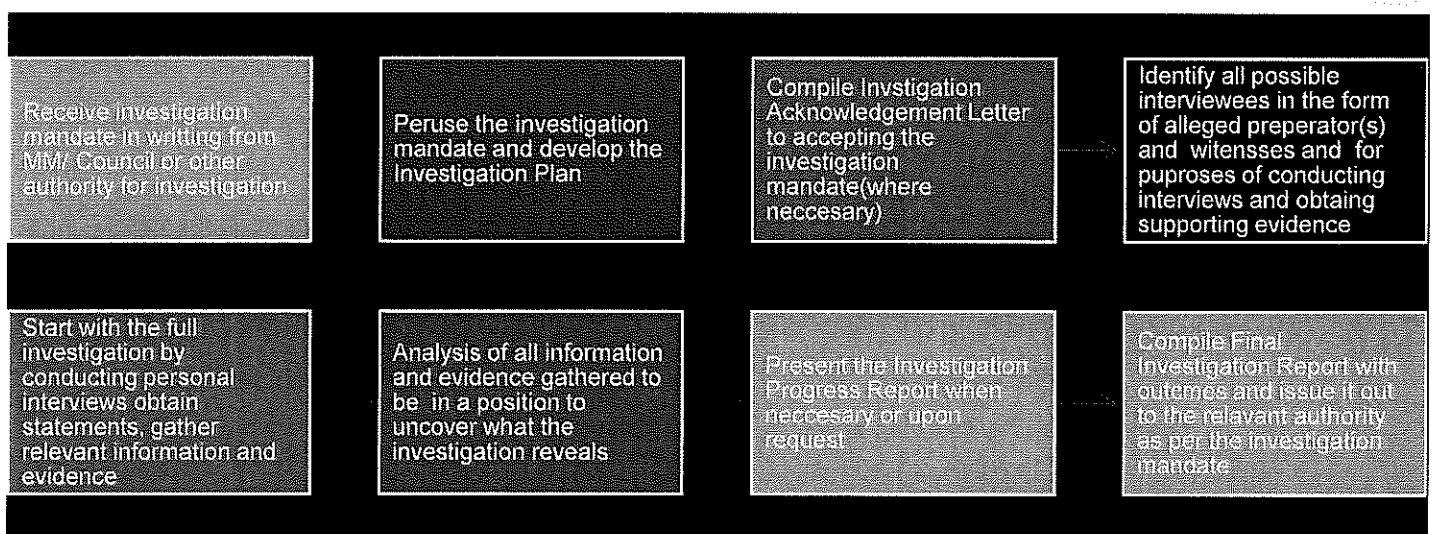


Figure 1: Illustration of the Investigation Process Flow as it relates to allegations of misconduct against employees

**3. Jurisdiction and powers of the CES**

- 3.1 The CES shall carry out its functions and exercise its powers within the confines of the Municipality only, with the exception:
- (i) Where the leads of a matter in pursuance overlaps to the dominion of another Municipality or external stakeholders; and
  - (ii) Upon receiving a mandate from the MM to investigate a matter in another Municipality.
- 3.2 Investigator(s) shall have free and unrestricted access to all Municipality records and premises, whether owned or rented. Similarly, shall have the access to examine, copy and/or remove all or any portion of the content of files, desks, cabinets, computers and other storage facilities on the premises within the confines of the law.
- 3.3 Ordinarily, CES does not have powers to investigate allegations of misconduct against the MM, Senior Managers or Councillors let alone members of the public. All matters reported to the CES involving Councillors will be referred to the Speaker of Council, those involving Senior Managers to the MM and those involving the MM to the Speaker/ Executive Mayor. Having due consideration to the provisions of **Regulation 4 & 5** of the Local Government: Municipal Systems Act Regulations - Disciplinary Procedures for Senior Managers, 2010 and **Schedule 1** of Code of Conduct for Councillors in terms of MSA.

**4. Impartiality**

The CES shall carry out its functions:

- (i) Independent of any kind of interference or meddling projected to accomplish unjust and unmerited results;
- (ii) Within the confines of the law when pursuing the leads in resolving the complaint;
- (iii) Devoid of undesirable intervention by Senior Managers, Managers and/or Supervisors, Trade Union Representatives within the respective Departments;
- (iv) By recusing themselves if assigned to investigate a matter where there is conflict of interest; and
- (v) With the highest order of respect but without fear or favour and shall treat everyone equal before the law irrespective of each individual's positions in the Municipality.

**5. Procedures for reporting**

5.1 Allegations of misconduct against an employee can be reported in person or anonymously to CES/ a superior, MM or Speaker of Council, by any member of the public, service provider, employees of the Municipality, Councillor, or through the National/ Provincial Anti-Corruption Hotline.

5.2 Upon receipt of such information, a preliminary investigation will be conducted to determine if the allegation has substance and warrants to be investigated. All the allegations of misconduct against employees that are reported to the CES will be recorded in the Case Management Register and each one allocated a Reference Number. All complaints implicating or laid against any employee within the CES or Internal Audit Services must not be reported to CES to ensue objectivity.

**6. Evaluation and allocation**

Once an allegation warrants to be investigated approval from the relevant authority will be sought and once granted the investigation will be conducted. Where necessary CES subsequently acknowledge the receipt thereof in writing and indicate acceptance of the investigation mandate.

**7. Investigation**

7.1 For our purpose, investigation is defined as the systematic search for the truth on allegations of misconduct as it relates to employees. Leading investigation practices indicate that investigations should incorporate the investigation multidisciplinary approach. Multidisciplinary approach in this context means expert role players individually or collectively form part of the investigation process by giving support to the investigation process in their field of expertise.

7.2 The investigation process also incorporates different investigation methods and techniques, which may include but is not limited to: Conducting interviews, identification of physical evidence, alleged perpetrators, witnesses and to use intelligence services to get information. In terms of **Chapter 4** of the Minimum Information Security Standards commonly known as MISS, confidential document must be kept under lock and key when not in use. As such, the documents relating to the investigations fall within the above-mentioned category and therefore will be kept under lock and key.

**8. Investigation approach**

8.1 The following are the steps that must be taken by the Investigator once a matter has been allocated to him/ her:

**8.1.1 Investigation Plan**

Prior to the commencement of the investigation, the Investigator must prepare a detailed Investigation Plan aligned to the matter being investigated. It is imperative that the plan be drafted prior to the commencement of the investigation so that he/she must progress effectively by adhering to the plan and concluding the investigation timely.

**8.1.2 Evidence gathering**

The Investigator must gather all relevant evidence relating to the investigation at hand. All the original documentary evidence gathered by the Investigator must be locked in a cabinet.

**8.1.3 The Investigation Diary**

The Investigator may use the investigation diary to record all activities relating to the investigation at hand which diary is kept up to date. The latter can also assist in compiling accurate timelines during report writing, and to indicate the activities that took place in a chronological order during the investigation process.

**8.1.4 Investigation Interviews**

Interview is a useful tool in gathering information in any investigation. The purpose of conducting interviews is to gather information about the alleged misconduct. The Investigator must at all times inform the interviewee of the reason(s) for conducting the to the minimum extent necessary without discussing/ disclosing information that might compromise the investigation. Interviews may be recorded by means of any device that is capable of recording. The Bill of Rights as envisaged in the Constitution of the Republic of South Africa, 1996 as amended must always be borne in mind when conducting investigations and investigations interviews:

- (i) Informing the interviewee about the right to remain silent and not to answer questions put to him/ her;
- (ii) Treating the interviewee(s) with respect and dignity; and
- (iii) Acting within confines of the law throughout the interview is key.



**8.1.5 Statements and affidavits**

Statement must be made freely, voluntarily and without undue influence, therefore no person will be forced to make a statement against their will. Similarly, interviewee have a right and therefore at liberty to choose to make a statement to the Investigator, in the company of a fellow colleague or a Trade Union Representative (stakeholder to the Municipality) as contemplated in the South African Local Government Bargaining Council - Disciplinary Procedure Collective Agreement. Interviews may be recorded by means of any device that is capable of recording. If a complainant or witness to an alleged misconduct is not an employee, the Investigator will instead prepare an affidavit and subsequently commission on condition the latter enjoys the status of the *ex officio* commissioner of oath otherwise by the South African Police Services Police.

**9. Report writing**

Once an investigation has been concluded, the Investigation Report with outcomes will be compiled and presented to the relevant authority for consideration and implementation. The Senior Manager of the Department concerned is responsible to ensure that recommendations emanating from investigations are implemented to the letter within 30 days and report back both to the MM and CES with proof thereof.

**10. Resolution and recommendations of reported incidents**

In the event an investigation has revealed that an employee has committed corruption, fraud, theft, or any misconducted, the following may be recommended by CES:

- (i) Taking disciplinary action against the employee(s) concerned;
- (ii) Instituting recovery of financial losses;
- (iii) Initiating criminal investigation process by reporting the matter to the appropriate law enforcement agencies;
- (iv) Identifying internal controls to be improved; and
- (v) Any other appropriate corrective action available in the Municipality.

**11. Recovery process**

**Item 4** of the Code of Conduct for Municipal Staff Members in terms of MSA provides that no employee may use his/ her position as an employee for personal gain or to unduly benefits another person. Therefore, if the investigation reveal that the Municipality has lost money as a result of theft, fraud, embezzlement etc, in which case the Municipality must recover such money from any person who so unduly benefited.

12. **Confidentiality**

CES will treat all information that it collects or receives as confidential and privileged and treat it in accordance with the *need-to-know principle*. Therefore, investigations will not be disclosed and/ or discussed with anyone save with those who have a legitimate right to know.

13. **Conclusion**

The IPF comprehensively underscores the importance of having a step-by-step investigation process to ensure consistency and to avoid a situation where processes are developed on the go which may result in violation of persons rights.