
Beaufort West Municipality



Anti-Fraud and Corruption Strategy and Response Plan

2016/2017

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1. Introduction

Beaufort West is the economic, political and administrative heart of the Central Karoo. The first municipality in South Africa.

The Municipality recognizes that corruption is one of the most serious problems it faces. Corruption impacts negatively on the municipality's ability to deliver services to the community, and to promote development, which are its mandate. It destroys the trust of the community, its officials and councilors which is necessary for the effective functioning of the municipality. The South African national government has prioritized fighting corruption and building good governance, and requires, through legislation and the national anti-corruption strategy, that municipal governments do the same.

As a councillor, employee, service provider or member of public of the council, you must comply with the staff code of conduct. You must at, at all times, act with honesty and integrity.

2. Corporate Commitment

In furtherance of its strategic aims and objectives, Council strives to provide services which meet the requirements of its stakeholders in accordance with its core values. In conducting its business, it is committed to a zero tolerance towards any form of fraudulent practices ensuring that the opportunity for fraud and corruption is reduced to the lowest possible level of risk. Where there is a possibility of fraudulent practices, Council will deal with it in a firm and controlled manner.

Beaufort West municipality is committed to an effective financial misconduct strategy designed to:

- Promote standards of honest and fair conduct
- Prevent fraudulent practices
- Detect and investigate fraudulent practices
- Prosecute offenders
- Recover any losses
- Maintain strong systems of internal control

2.1 Suspect fraud or corruption?

As a councillor, employee, contractor, service provider or member of the public if you suspect that any fraudulent practices has taken or is taking place relating to the municipality you have a duty to inform the municipality. You can either do this directly or via your manager.

National Anti-Fraud Hotline **0800 701 701**

3. Definitions

Term	Definition
Assets	All tangible and intangible items belonging to the municipality. Including but not limited to infrastructure, financial, heritage, intangible, equipment, tools, stationary, non-cash-generating, data, intellectual property
Bribery	Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of a municipal employee, service provider, consultant, Councillor, committee member or any other individual functioning on behalf of the municipality.
Code of Conduct	A set of guidelines and expectations that are considered binding on any person who is employed by Beaufort West Municipality
Collusion	A conspiracy for fraudulent purposes in order to deceive others.
Concealment of material facts	Fraudulent failure to reveal information which an individual is aware of and that in good faith they should communicate.
Conflict of Interest	An undesirable situation in which an individual is in a position to receive personal benefit from actions or decisions made in their official capacity.
Conspiracy	A secret plan by a group to commit an unlawful act.
Corruption	Dishonest or fraudulent conduct by individuals in power.
Council	Beaufort West Local Municipality
Deception	An intentional act or statement intended to make people believe something that is not true
Embezzlement	The fraudulent conversion of assets from the municipality by a person who is in a position of trust.
Extortion	Obtaining something of value by the abuse of one's office or authority.

Term	Definition
False Representation	An untrue representation willfully made to deceive another to their detriment.
Favoritism	Practice of giving an unfair preferential treatment to an individual or individuals at the expense of another's.
Financial Misconduct	Means any act of financial misconduct referred to in- (a) section 171 of the Act committed by an official of a municipality; or (b) section 172 of the Act committed by an official of a municipal entity; (National Treasury, 2014)
Forgery	Falsifying or making or copying a document in order to deceive people
Fraud	Criminal deception intended to result in financial or personal gain.
Fraudulent Practice	The use of deception with the intention of obtaining an advantage, avoiding an obligation, or causing loss to the municipality. This most often occurs in the context of a relationship with a supplier, contractor, consumer, client, or colleague on an individual or organisational basis.
Fruitless and Wasteful Expenditure	Means expenditure that was made in vain and would have been avoided had reasonable care been exercised (National Treasury, 2003)
Hot Spot	Areas within the municipality where a high likelihood of potential fraudulent practices taking place exists.
Investigation Plan	Plan developed to investigate allegations of fraudulent practices either by Internal Audit or the individual appointed by the Municipal Manager.
Misappropriation	The fraudulent appropriation of funds or property entrusted to your care but actually owned by the municipality.

Term	Definition
Nepotism	Refers to individuals who misuse their influence to unfairly favor a family member in any appointments, tenders or procurement processes relating to the municipality
Red Flags	A practice or activity that indicates the possible existence of fraud, corruption, unethical practice or some other form of financial mismanagement.
Theft	A criminal offence in which the property belonging to the municipality is taken without permission.
Whistleblower(s)	The term “whistleblower” or “whistleblowers” refers to a person or persons who provides information relating to a potential violation of an unlawful or immoral activity in the workplace.

4. Anti-Fraud and Corruption Strategy

4.1 Introduction

It is accepted that the majority of individuals involved with the municipality would not contemplate fraudulent practice, there are those however that will, especially if there is a perception that they can successfully get away with it. This can be addressed by being alert to the weaknesses and possibilities that they present and by implementing policies, procedures and effective controls to act as deterrents, monitoring and reporting tools.

The original Anti-Fraud and Corruption Strategy and Fraud Response Plan was developed in December 2009 since then there have been significant changes in the municipality's maturity and capacity as well as legislation relating to fraud and the prevention thereof. These include the establishment of the Municipal Public Accounts Committee (MPAC) and the promulgation of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, therefore it has become necessary to review the document.

Beaufort West municipality is a medium institution with the possibility of misconduct leading to financial losses taking place in *all* of its operational areas. Combined with its diverse range and nature of services and activities, place the municipality at risk of losses from both internal and external role-players.

4.2 Terminology and Definition

For the purposes of this document *Fraudulent Practice* is defined as the use of deception with the intention of obtaining an advantage, avoiding an obligation, or causing loss to the municipality. This most often occurs in the context of a relationship with a supplier, contractor, consumer, client, or colleague on an individual or organisational basis.

Financial misconduct is a generic term used to describe unacceptable acts such as;

- Bribery,
- Collusion
- Concealment of material facts,

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- Conflict of Interest,
 - Conspiracy,
 - Corruption,
 - Deception,
 - Embezzlement,
 - Extortion,
 - False Representation,
 - Favoritism,
 - Forgery,
 - Fraud,
 - Fruitless and Wasteful Expenditure,
 - Misappropriation,
 - Nepotism,
 - Overtime manipulation, and
 - Theft,
- resulting in any loss of or damage to finance related assets.

4.3 Fraud Enablers

Four basic enablers need to be in place for financial misconduct such as fraud to take place. These are people, assets, intent and opportunity. Three of the enabler's people, assets and intent are largely outside of Councils continuous control therefore the primary focus to prevent financial misconduct should be around the prevention of opportunity.

4.4 Who are affected by Fraudulent Practices?

As the service delivery sphere of government, local government, close to the public and focused on the provision of services and housing to the previously disadvantaged any financial misconduct and resulting loss of resources directly impact on the poorest of the poor. In addition the negativity resulting from fraudulent practices is felt across all sectors and affects the reputation of the municipality in the municipal area, region, province, country and internationally. This impacts directly on the Council revenue streams and business opportunities not only for itself but for the public at large.

4.5 Legislation

The following legislations, policies, law enforcement role players, amongst others, deal with financial misconduct.

Acts

- The Constitution of the Republic of South Africa, Act No. 108 of 1996
- Local Government: Municipal Systems Act, No. 32 of 2000 (MSA)
- Local Government: Municipal Finance Management Act, No. 56 of 2003 (MFMA)
- Local Government: Municipal Structures Act, No. 117 of 1998
- Prevention and Combating of Corrupt Activities Act No 12 of 2004
- Prevention of Organized Crime Act No, 121 of 1998 (POCA)
- Protected Disclosures Act 26 of 2000
- Financial Intelligence Centre Act, 38 of 2001 (FICA)

Regulations

- Municipal Supply Chain Management Regulations, No 868, 2005
- Municipal Performance Regulations for Municipal Managers and Managers Directly Accountable to Municipal Managers, No. 805, 2006
- Municipal Regulations on Minimum Competency Levels, No. 493, 2007
- Local Government: Regulations on appointment and conditions of employment of senior managers, No. 21, 2014
- Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, No 425, 2014

4.6 Oversight, assurance and Law Enforcement Role Players

Council

Management

Audit Committee

Internal Audit

Municipal Public Accounts Committee (MPAC)

Auditor General of South Africa (AGSA)

South African Revenue Services (SARS);

South African Police Service (SAPS);

Public Protector;

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The National Prosecuting Authority (NPA);
Asset Forfeiture Unit;
Directorate for Priority Crime Investigations (DPCI);
National Intelligence Agency;
Special Investigation Unit;
Independent Complaints Directorate;
Various Committees established to conduct anti-corruption investigations

5. Prevention

5.1 Council Rules

The aim of internal rules and regulations is to guard the municipality's assets and interests against loss or damage as a result of fraudulent practices. Compliance with these rules is therefore regarded as a basic prerequisite in our Anti-Fraud and Corruption strategy. In order to remain effective these rules are regularly reviewed and updated where necessary.

5.2 Conduct

The municipality expects all people and organisations associated with it to be honest and fair in their dealings with Council and to lead by example.

5.3 Councillors

Councillors are required to operate within the internal rules and regulations of the Council. These include the requirement to declare at meetings and to register with the Municipal Manager potential areas of conflict between their Municipality duties and responsibilities and other areas of their personal and professional lives. Councillors are also required to operate within the various national statutes, including but not limited to the Municipal Systems Act and the Municipal Finance Management Act.

5.4 Employees

Council expects its employees to ensure that they are familiar with;

- Relevant legislation and regulations
- Council approved policies
- Council's Code of Conduct
- Procedural Manuals relevant to their duties, and

Anti-Fraud and Corruption Strategy

Employees must comply with Councils policy regarding the receipt of any gifts or hospitality. If they are unsure as to what course of action they should take in such circumstances they should seek the advice of the Municipal Manager.

Employees should be aware that it is an offence for them to receive or give any gift, loan, fee, reward or advantage for doing, or not doing anything, or showing favor or disfavor, to any person in their official capacity. If any such allegation is made, then it is the responsibility of the employee to demonstrate that any such rewards have not been corruptly gained.

It is the responsibility of all staff to ensure that any password issued to them for use on any Council computer or telephone system is kept secure and confidential. It is the responsibility of the relevant systems administrator to ensure that passwords and access are set to the relevant level for the person involved.

Where employees are members of professional bodies, they are expected to comply with the standards of conduct relevant to that profession.

Council values its employees and considers that they have an important role to play. They are encouraged to report any concerns and provide information if they suspect any fraudulent practices are taking place or did take place.

Where employees become aware of a weakness in the municipality's processes that might lead to fraudulent practices they must bring it to the attention of their manager or inform the Performance, Internal Audit and Risk Management Department.

5.5 Directors and Manager's responsibilities

All directors and managers are responsible for the detection, prevention and investigation of fraudulent practices within their area of responsibility.

Directors and managers are expected to ensure that all employees have access to Council's policies, Code of Conduct and the relevant rules and regulations and operating procedures to ensure that they can execute their functions in the appropriate and approved manner. Where insufficient capacity exists the relevant and suitable training must be provided.

Anti-Fraud and Corruption Strategy

If anyone breaches Council's policies, Code of Conduct or the relevant rules and regulations or operating procedure, the Municipality may take formal action against them.

Directors and managers must ensure that suitable levels of internal controls are present in working procedures, especially in regards to financial procedures. It is important that duties are organized so that no one person can carry out a complete transaction without some form of checking process being built into the system.

5.6 Recruitment

Employees must be appointed in accordance with the Council recruitment and selection policy procedures. Written references should be obtained and should include information regarding the honesty and integrity of potential staff. Actual evidence of key qualifications claimed by prospective employees and work permits (where appropriate) should also be obtained and vetted.

5.7 Liaison with other organisations

Council will maintain and develop links with other organisations in its efforts to pursue its financial Anti-Fraud and Corruption strategy at regional, local and national level.

5.8 Reporting

As required by the MFMA regulation on Financial Misconduct Procedures and Criminal Proceedings 2014, employees are obliged to report any suspected cases of fraudulent practices to the appropriate manager, director, or if necessary, directly to the Municipal Manager. Reporting cases in this way is essential to the fraudulent practices strategy as it ensures that;

- suspected cases of fraudulent practices are investigated properly;
- all cases are dealt with by a standard process; and
- the interests of individuals and the Council are safeguarded.

A response plan has been produced to provide a framework for the Council to follow in the event of the discovery of an actual or a suspicion of fraud or irregularity. This includes the process to be followed in deciding whether or not to refer the case to the police.

Anti-Fraud and Corruption Strategy

Council acknowledges the dilemma faced by individuals who wish to report concerns that may indicate fraudulent practices. In view of this, it has established communication channels to facilitate the process. These are;

- **the National Anti-Fraud Hotline 0800 701 701**

All information received via this facility will be dealt with in a fair and confidential manner and will be investigated properly.

6. Detection and Investigation

6.1 Detection strategies

Detection of fraudulent practices may occur through oversight processes, management processes and general awareness such as;

- vigilance on the part of councillors and employees
- identification of red flags
- compliance monitoring
- risk management processes
- the Internal Audit function
- ad hoc management reviews
- financial trend analysis
- hot spot analysis
- data mining
- anonymous reports and
- the application of additional detection techniques when and where required.

6.2 Internal Audit

Internal Audit plays a key role in the prevention of fraudulent practices by its systematic examination of the Council's systems and procedures, geared to maintaining strong systems of internal control.

The scope of each Internal Audit review incorporates fraud awareness and spot checks are performed in between system reviews to test the probity of arrangements. Internal Audit is always available to provide advice regarding the prevention of financial misconduct initiatives.

Anti-Fraud and Corruption Strategy

Full and open cooperation is expected from all Directors and Managers and they are responsible for providing full and timely support and cooperation to the internal audit function in carrying out their approved engagements and preparing and implementing corrective action plans with respect to approved audit recommendations.

6.3 Audit Committee

The audit committee is required to take an active role in the prevention and deterrence of fraud throughout the municipality. The audit committee should constantly challenge management and the auditors both internal and external to ensure that the municipality has anti-fraud programs and controls in place to identify potential areas for fraud and ensure that investigations are undertaken when fraud is detected. The audit committee should take an interest in ensuring that appropriate action is taken against the perpetrators of fraud.

6.4 Municipal Public Accounts Committee (MPAC)

The MPAC plays an oversight role to ensure accountability and insure that public funds are spent correctly.

6.5 Prosecution and recovery of losses

Council will press for the prosecution of offenders and will carry out its own disciplinary procedure if necessary.

Council will aim to recover from offenders any losses that it sustains as a result of fraudulent practices.

6.6 Conclusion

Council is committed to tackling fraudulent practices and its response will be organised and effective and will be based on the principles included in this document.

Council shall regularly review its rules and procedures to ensure that its financial misconduct strategy remains effective and compliant with legislation.

7. Fraud Response Plan

7.1 Context

The Fraud Response Plan forms part of Council's overall financial misconduct strategy. It applies to all councillors and personnel be they permanent, freelance, volunteers, casual, temporary or contractors.

8. Reporting Suspected Financial Practices

8.1 Action by employees

If you become aware of a suspected fraud or irregularity, immediately make a note of all relevant details, such as **what** was said, the **date**, the **time** and the **names** of anyone involved. Report the matter immediately to either;

- your Line Manager or
- your Director or
- the Internal Auditor or
- the Council Whistleblowing facility/ National Fraud hotline

When you report your concerns, arrange to handover your notes and any evidence you have gathered to the appropriate official.

Confidentiality for all parties will be maintained at all times.

A member of staff may choose to report their concerns anonymously and such anonymity will be respected. It should be noted that, if any case is to be pursued by the police, the identity of the person reporting the details will be needed at a later date if criminal proceedings are to be pursued effectively.

A staff member must not;

- contact the suspected offender in an effort to determine facts or demand restitution
- discuss any aspects of the case with anyone outside Council (including the Press) unless specifically asked to do so by the Municipal Manager
- discuss the case with anyone within the Council unless specifically asked to do so by the Municipal Manager

Financial Misconduct Regulation

- attempt to personally conduct investigations or interviews or interview or question anyone unless asked to do so by the Municipal Manager.

8.2 Action by Managers

If you have reason to suspect fraud or corruption in your work area, you should;

- Listen to the concerns of your staff and treat every report you receive seriously and sensitively.
- Make sure that all staff concerns are given a fair hearing and reassure staff that they will not suffer because they have told you of their suspicions.
- Get as much information as possible from the member of staff, including any notes and any evidence they have that may support the allegation. Do not interfere with any evidence and make sure it is kept in a safe place.
- Do not try to carry out an investigation yourself. This may damage any other enquiry.
- Report the matter immediately to the Municipal Manager.

8.3 Whistleblower Protection

It is the responsibility of all employees to report all incidents of fraudulent practices that may come to their attention to their supervisor. Alternatively, such reports can be made by way of submitting a report through the prescribed whistle blowing mechanism. The requisite protection for whistle blowers as stipulated in the Protected Disclosure Act, No. 26 of 2000.

All reports received will be treated with the requisite confidentiality and will not be disclosed or discussed with parties other than those charged with investigation into such reports.

8.4 Malicious allegations

If an allegation is made frivolously, in bad faith, maliciously or for personal gain, disciplinary action may be taken against the person making the allegation.

8.5 Investigation Procedure

Internal Audit, or any individual appointed by the Municipal Manager, is responsible for initiating and overseeing all fraud investigations and for subsequent follow-up work to be completed. Internal Audit will interact via the Investigation Plan to ensure that all

Financial Misconduct Regulation

investigations conform to the same standard and in accordance with legislation and the Council's prosecution policy.

Investigation results will not be disclosed to or discussed with anyone other than those who have a legitimate need to know. This is to avoid damaging the reputations of persons suspected, but subsequently found innocent of wrongful conduct, and to protect the Municipality from potential civil liability.

In cases where an individual is suspected of fraud but a subsequent investigation does not substantiate it, it is important that the potential damage to the individual's reputation is minimised. Whoever originally reported the suspected fraud or irregularity will be informed that the investigation has revealed no wrongdoing.

Any necessary investigative activity will be conducted without regard to any person's relationship of the Council, position or length of service.

8.6 Conduct of Investigation

Internal Audit will conduct a preliminary investigation in accordance with the Investigation Plan.

Once the investigation has been completed, a written report will be prepared which states the facts discovered by the investigation. No statement shall be made that cannot be supported by facts.

8.7 Forensic Investigation

Where the scope of the investigation requires a specialised forensic approach an appropriately capacitated individual or company will be appointed to take over the investigation from Internal Audit and will report directly to the Municipal Manager or Council if the investigation includes the Municipal Manager.

8.8 Learn From Past Experience

Where a fraud has occurred, management will make any necessary changes to systems and procedures to ensure that similar fraudulent practices will not recur.

8.9 Disciplinary Procedure

As for other cases of misconduct, matters of alleged fraud will be dealt with under the procedure laid down in Council's Disciplinary Procedures¹.

9. Financial Misconduct Regulation

9.1 Context

The key focus areas contained in the regulations are;

1. Alleged financial misconduct (Chapter 2);
2. Reporting of allegations of financial misconduct (Chapter 2);
3. Establishment of a Disciplinary Board and its functioning (Chapter 2);
4. Investigation purpose and process (Chapter 2);
5. Criminal Proceedings (Chapter 3);
6. General (Chapter 4);

9.2 Alleged Financial Misconduct

The regulation defines financial misconduct as “any act of financial misconduct referred to in-

- (a) section 171 of the Act² committed by an official of a municipality; or
- (b) section 172 of the Act committed by an official of a municipal entity;”

The sections of the MFMA specified in the report are attached as [Annexure A](#).

Relevant Legislation

- The Municipal Finance Management Act (No 56 of 2003).
- Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings (GN R430 / GG 37699 30 May 2014).
- The Municipal Systems Act (No 32 of 2000)
- The Protected Disclosures Act 2000 (Act No. 26 of 2000)

¹ Disciplinary Procedure and Code Collective Agreement of the South African Local Government Bargaining Council

² Local Government: Municipal Finance Management Act No 56, 2003 (MFMA)

9.3 Reporting of Allegations of Financial Misconduct

The regulation prescribes to whom a person must report an allegation of financial misconduct:

- If against accounting officer (MM), chief Financial officer (Director Financial Services) or senior manager³ (Directors) the matter must be reported to Council, Provincial and National Treasury.
- If against any other official the matter must be reported to the Municipal Manager
- The allegation *must* be submitted to the municipal council within seven days or at the next sitting of Council

Allegations of financial misconduct must be treated in a confidential manner.

The regulation does not prevent individuals from laying a criminal charge with the South African Police Service against any councilor/s or official/s of the municipality or in relation to any conduct that may constitute an offence in terms of Part 2 of Chapter 15 of the MFMA.

An official against whom an allegation of financial misconduct is made must receive an opportunity to make representations as to why he/she should not be suspended within seven days of being notified of the allegation.

9.4 Establishment of a Disciplinary Board and Its Functioning

Council *must* establish a disciplinary board to investigate allegations of financial misconduct in the municipality. The following is important:

- A disciplinary board is an independent advisory body
- It has a maximum of five members
- Members must be South African citizens of good standing
- The disciplinary board may consist of-
 - The head of the internal audit unit within the municipality (*Manager: Performance, Internal Audit and Risk Management*);

³ Section 56 of the Municipal Systems Act determines a Senior Manager as “a manager directly accountable to the municipal manager.”

Financial Misconduct Regulation

- representative of an organisation performing internal audit functions for the municipality if the internal audit function is outsourced;
- one member of the Audit Committee of the municipality;
- a senior manager from the legal division in the municipality;
- a representative of the National Treasury or the Western Cape Provincial Treasury; and
- any other person as may be determined by the municipal council.

The Disciplinary Board will be made up of the following Beaufort West Municipal employees and committee members;

- Internal Audit and Risk Management,
- Official: Legal Services (Preciding officer),
- Manager: Human Resources, and
- Chairperson of Audit Committee.

External member(s) will be provided or acquired as and when needed.

9.5 Investigation Purpose and Process

9.5.1 Preliminary Investigation

If there is reasonable indication of financial misconduct Council must refer the matter within seven days to a disciplinary board to conduct a preliminary investigation

The disciplinary board must determine whether allegation is founded and make recommendation whether grounds exist to warrant a full investigation.

The preliminary investigation terminates if the disciplinary board determines the allegation is frivolous, vexatious, speculative or unfounded.

If the allegation is founded a full investigation must be conducted.

If Council does not act on recommendations by the disciplinary board, the disciplinary board may request the Western Cape Provincial Treasury or the National Treasury for assistance and a possible intervention.

Financial Misconduct Regulation

9.5.2 Full Investigation

This must be undertaken by the disciplinary board, or could be undertaken by Western Cape Provincial Treasury or the National Treasury, but only if a municipality or the designated official fails to investigate an allegation of financial misconduct or financial offence.

If the cost, seniority of the alleged transgressor and the seriousness or sensitivity of investigating the alleged financial misconduct, warrants such a step the investigation can be undertaken by;

- an individual with appropriate specialist expertise and who is not an official of the municipality; or
- an independent team of investigators appointed by Council in accordance with the applicable supply chain management prescripts.

An independent team of investigators appointed may include;

- a person, other than an official of the municipality with the appropriate specialist expertise designated by Council; or
- an official of the department responsible for local government in the relevant province, designated by the department; or
- an official of the Western Cape Provincial or National Treasury, designated by the relevant treasury.

9.5.3 Investigation of allegation of financial misconduct and submission of reports

Terms of reference for the investigation must be developed and submit to Council within seven days

After completing a full investigation, the investigator must –

- Compile a report on the investigation;
- Submit the report within 30 days⁴

⁴ Regulation 5(6)

Financial Misconduct Regulation

- Submit its report to the Executive Mayor and the Municipal Manager together with its findings and recommendations, if applicable, regarding disciplinary steps that should be taken against the alleged transgressor; and
- Immediately inform the Speaker of the submission of the report
- Submit a copy of the report to the Western Cape Provincial and the National Treasury.

The report of the investigator must be submitted (tabled) to Council at the first sitting after the report is completed.

If the report is amended and/or if the finding or recommendations are rejected reasons must be provided to the investigator within five days.

The investigator must inform Western Cape Provincial and National Treasury if the recommended disciplinary against the transgressor is not implemented. Western Cape Provincial and National Treasury may possibly intervene.

If disciplinary proceedings are recommended, Council must by resolution institute disciplinary proceedings:

- in the case of a Municipal Manager or senior manager , in accordance with the Disciplinary Codes⁵ and Procedures for Senior Managers Regulations made in terms of the Municipal Systems Act; or
- in the case of an official who is not a MM or senior manager, in accordance with the applicable collective bargaining agreement concluded in the bargaining council established for municipalities.

If found guilty the transgressor may not be re-employed for ten years in any municipality⁶.

⁵ Disciplinary code in collective agreement has a three month time limit to institute disciplinary action there is a risk that regulations timeframes could be exceeded and cause problems with disciplinary action under the disciplinary code.

⁶ Section 57A(3) of the Municipal Systems Act 32 of 2000

9.6 Criminal Proceedings

Any person may report an allegation of financial offence against;

- (a) a councillor of a municipality, to the designated official, the Minister of Finance and the MEC for finance;
- (b) the speaker of a municipality, to the mayor of the municipality;

An allegation referred to in must be dealt with in terms of the Code of Conduct for Councillors.

9.6.1 Reporting of alleged financial offence to South African Police Service

A financial offence referred in section 173 of the MFMA must be reported to SAPS. If likelihood of continued financial loss the due to the financial offence it must be reported without delay and before completion of the investigation. Where an offence is successfully prosecuted the details must be reported to National Treasury.

9.7 Allegations of financial offences not amounting to breaches of Code of Conduct for Councillors

Alleged financial offence by a councillor.

The designated official on receipt of a report of alleged financial offence by a councillor must authorise an investigation of the facts and circumstances of the alleged financial offence and give the councillor an opportunity to make, within five days, a written submission with regard to the alleged financial offence. The designated official must submit a report, within five days of completing the investigation, on the outcome of the investigation to the municipal council. The public must have access to the report.

Within five days of submitting the report to council the report must be submitted to-

- (a) the MEC for finance in the province;
- (b) the MEC for local government in the province;
- (c) Minister of Finance; and
- (d) Minister responsible for local government.

9.8 General

9.8.1 Preparation of information document on alleged financial misconduct and financial offences

The minimum information to be captured for any *alleged* financial offence is regulated and should be captured in an “information document”. The information obtained must be added to the investigation report and submitted to the relevant individuals and bodies within the regulated timeframes.

Such “minimum information” includes;

- 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;
- 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 any unauthorised, irregular or fruitless and wasteful expenditure incurred as a result of the alleged financial misconduct or financial offence in terms of section 32 of the Act.

9.8.2 Tabling of information document in municipal council

A special meeting of council must be requested to discuss the recovery of funds in terms of section 32 of the MFMA if the financial misconduct or offence *may* have a significant impact on the municipality

9.8.3 Reports on disciplinary proceedings and criminal charges

A municipality must report decisions to institute disciplinary (or not), reasons for the decision, outcome of disciplinary actions and whether charges were laid with SAPS to the relevant institutions.

Suspension and disciplinary or criminal proceedings instituted in cases of financial misconduct must be reported in annual reports.

Financial Misconduct Regulation

9.8.4 Procedures for confidential reporting financial misconduct and financial offence

Compels municipality to establish procedures for persons to report allegations of financial misconduct and financial offences. Such procedure must be made public in terms of S21 (1) (a) of the MSA.

9.8 Protection

9.8.1 Protection of officials reporting allegations of financial misconduct and financial offence

The Protected Disclosures Act 2000 (Act No. 26 of 2000) applies to an official who makes a report or disclosure against a political office-bearer, a member of the board or an official who is alleged to have committed financial misconduct or a financial offence. Section 3 “Employee making protected disclosure not to be subjected to occupational detriment

No employee may be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure.”

Annexure A: MFMA Extract

CHAPTER 15

FINANCIAL MISCONDUCT

Part 1: Disciplinary proceedings

Financial misconduct by municipal officials

171. (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

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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.

Financial misconduct by officials of municipal entities

171. (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

Financial Misconduct Regulation

- (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.

Part 2: Criminal proceedings

Offences

173. (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.

Financial Misconduct Regulation

- (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.

Financial Misconduct Regulation

- (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.

Penalties

174. A person is liable on conviction of an offence in terms of section 173 to imprisonment for a period not exceeding five years or to an appropriate fine determined in terms of applicable legislation.

Annexure B: Financial Misconduct Regulation

NATIONAL TREASURY

CORRECTION NOTICE

In Ordinary (National) Government Gazette No. 37682, of 30 May 2014, Government Notice

No. 425 is hereby withdrawn and replaced with the following:

No. R. 430

30 May 2014

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

MUNICIPAL REGULATIONS ON FINANCIAL MISCONDUCT PROCEDURES
AND CRIMINAL PROCEEDINGS

The Minister of Finance has, in terms of sections 168 and 175, of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and acting with the concurrence of the Minister of Cooperative Governance and Traditional Affairs, made the regulations as set out in the Schedule.

SCHEDULE

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CHAPTER 1

INTERPRETATION

Definitions

1. In these Regulations, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, unless the context indicates otherwise, and-

"**Act**" means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

"**designated official**" means the official identified in a municipality or municipal entity to receive reports of allegations of financial offences against councillors or members of the board of directors of municipal entities;

"**disciplinary board**" means a disciplinary board established in terms of regulation 4(1) or a disciplinary board of a district municipality or provincial structure referred to in regulation 4(8);

"**financial misconduct**" means any act of financial misconduct referred to in-

- (a) section 171 of the Act committed by an official of a municipality; or
- (b) section 172 of the Act committed by an official of a municipal entity;

"**financial offence**" means any offence referred to in section 173 of the Act committed by-

- (a) an official of a municipality or municipal entity;
- (b) a councillor of a municipality;
- (c) a member of the board of directors of a municipal entity; or
- (d) any other person;

"**investigator**" means the board, treasury, person or team conducting a full investigation in terms of regulation 5(4).

CHAPTER 2
FINANCIAL MISCONDUCT PROCEDURES

Application of Chapter

2. This Chapter applies to alleged financial misconduct.

Reporting of allegations of financial misconduct

3. (1) Any person must report an allegation of financial misconduct against-
- (a) the accounting officer, a senior manager or the chief financial officer of a municipality, to the municipal council of the municipality, the provincial treasury and the national treasury;
 - (b) an official of a municipality other than its accounting officer, to that accounting officer;
 - (c) the accounting officer of a municipal entity, to the chairperson of the board of directors, the mayor and the accounting officer of the entity's parent municipality;
 - (d) an official of a municipal entity other than its accounting officer, to that
 - (e) accounting officer.

(2) The mayor, the accounting officer or chairperson of the board of directors, as the case may be, must table an allegation referred to in subregulation (1) before the municipal council or, board of directors in the case of municipal entities, not later than seven days after receipt thereof or at the next sitting of the council or the board of directors.

(3) The person to whom an allegation of financial misconduct has been reported in terms of sub-regulation (1) must ensure that the report is treated in a confidential manner.

- (f) (4) This regulation must not be read as preventing a person from laying a
- (g) criminal charge with the South African Police Service against any councillor,
- (h) member of the board of directors of a municipal entity, or official of a
- (i) municipality or municipal entity in relation to any conduct that may constitute
- (j) an offence in terms of Part 2 of Chapter 15 of the Act.
- (k) (5) An official against whom an allegation of financial misconduct is made
- (l) must be given an opportunity to make written representation to the

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- (m) municipality or municipal entity as to why he or she should not be suspended,
- (n) within seven days of being notified of the allegation.

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