

# **CENTRAL KAROO DISTRICT MUNICIPALITY**

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## **ANTI-CORRUPTION AND FRAUD POLICY PREVENTION**

*(Approved by Special Council Meeting - 29 May 2009)*

### **1. INTRODUCTION**

This anti-corruption policy serves as a protection to the municipality against any acts of fraud, corruption and theft. It is mainly aimed at creating a proactive fraud intolerant culture within the municipality in order to protect the municipality. It serves as a defence and reactive mechanism that can be used to counter or to defend the municipality against any acts of fraud and corruption. The implementation of this policy is intended to reduce the losses that the municipality may suffer due to the occurrence of fraud, corruption and theft. By creating an environment of fraud awareness and guidelines that should be followed by the municipality where fraud or corruption has been detected. It also commits the municipality to detecting, and investigating and prosecuting individuals who are alleged to be involved in acts of fraud, corruption and theft within the Central Karoo District Municipality.

This policy should apply to all members of staff and councillors of the Municipality and this can only be achieved by rolling out the policy to these stakeholders. The policy not only encourages staff members to report acts of fraud, corruption and theft within the municipality, it also serves as a guide to staff members on how to report acts of fraud when they occur. In order to contextualise these policy, the roles of employees, councillors and managers has been outlined and hopefully this will assist the said councillors and employees to identify possible shortcomings in their day to day duties and also what roles they are playing in ensuring the success in the implementation of the Central Karoo Anti- Corruption Strategy and fraud prevention Policy. The policy is also designed to promote ethical and professional behaviour from these critical municipal stakeholders. Although this policy is entitled as a fraud prevention and anti corruption, it is also designed to deal with acts of misconduct, that may not necessarily amount to fraudulent or corrupt conduct hence mismanagement, irregularities, reckless and negligent behaviour are to be prevented, detected, investigated and where applicable disciplined in terms of this policy.

## **2. OBJECTIVES**

- ✓ Early detection of fraud can be achieved hence minimizing financial losses to the municipality
- ✓ The municipality has a effective policy to manage and detect fraud and corruption
- ✓ The municipality's policies are aligned to legislation and are therefore legitimate
- ✓ All staff members and councillors are familiarised with the anti-corruption and fraud prevention policy that they must abide by at all times.
- ✓ The municipality must adopt a zero tolerance approach against individuals who are not abiding by their codes of conduct and who commit acts of fraud and corruption.

## **3. CUSTODIANS OF THE POLICY**

The Municipal Manager is responsible for educating management, employees and councillors about the importance of the policies and procedures in respect of the prevention and detection of fraud and corruption within the municipality. All councillors, managers and employees need to apply effort and commitment in maintaining the values and principles within Central Karoo District Municipality by supporting the measures to prevent and combat fraud and corruption. The Municipal Manager must ensure as part of a broader education campaign that all stakeholders are responsible for preventing and detecting fraud and implementing effective internal control systems. The Municipal Manager must appoint a 'committee', which is made up of senior managers and any other committed individuals, preferably senior manager of each department to monitor the compliance and implementation of the policy. This committee shall also champion and promote the implementation of fraud prevention and detection strategies in the municipality as a whole. These champions shall also report developments in their respective departments in connection with fraud prevention and detection to the municipal manager from time to time and shall also promote a culture of openness and constructive engagement with all stakeholders in the implementation of an anti-corruption policy under the leadership and direction of the municipal manager. This can be achieved by ensuring that there are mechanisms in place within the municipality, to assess the risk of fraud regularly, to promote good ethics, ensuring that, a system of controls and checks and balances exists especially within the accounting department and practices of the municipality and to educate employees about fraud and corruption prevention and detection.

The Municipality shall encourage the managers to promote integrity, honesty, loyalty, transparency, accountability and good leadership qualities amongst the staff member, thus enhancing the image and the credibility of the municipality in the eyes of the public.

The staff members have a responsibility to report acts of fraud and suspected corruption.

The Municipal Manager shall be responsible for ensuring that all staff members are familiar with their roles with regards to abiding by the Code of Conduct. The mayor and the councillors should be expected to also abide by their Code of Conduct.

#### **4. ROLE OF MANAGEMENT**

In terms of the Municipal Finance Management Act, the role of the Municipal Manager is to ensure that the systems of financial management and internal controls are diligently carried out, effectively, efficiently and transparently as well as to safeguard the municipal assets against unauthorized, irregular or fruitless and wasteful expenditure.

Where the Municipality intends to procure goods or services from suppliers or service providers, section 217 of the Constitution stipulates that when an organ of the state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

It is in this instance where conflicts of interest may arise resulting in a manager deviating from his/her duties. In terms of the Municipal Systems Act 2000 and the Municipal Finance Management Act, it is stipulated that the Managers of the Municipality are expected to act in good faith on behalf of, and in the best interest of the Municipality.

#### **5. THE ROLE OF COUNCILLORS**

Municipal Councillors act as intermediaries between the municipality and the community. The Municipality consists of a number of councillors determined by the MEC for Local Government whether the said municipality is a Metropolitan, District or a Local Government Municipality.

In term of Sec 19 of the Municipal Structure's Act, the municipal council must strive to achieve its objectives as laid out in Sec 152(1) of the Constitution. The Constitution is the supreme law of the Republic of South Africa and it provides that Local Government must

- provide democratic and accountable government for local communities;
- to ensure the provision of services to communities in a sustainable manner;
- to promote social and economic development;
- to promote a safe and healthy environment; and
- to encourage the involvement of communities and community organisations in the matters of local government.

In encouraging the involvement of communities and community organisations in the matters of local government, Sec 19(2) of the Local Government: Municipal Structures Act, the municipal council must annually review

- the needs of the community;
- its priorities to meet those needs;
- its process for involving the community;
- its organisational and delivery mechanism for meeting the needs of the community; and
- its overall performance in achieving the objectives referred to in Sec 152 of the Constitution.

The municipal councillors are more involved in matters concerning the community, hence through these involvements, the point of contact between the Councilors and the members of the public give rise to the development of relationships.

This may create a room where exchanges of gifts and benefits can easily occur for personal favours and this may result in a councillor acting in a fraudulent or corrupt manner.

### 5.1. Code of Conduct

In terms of the Municipal Systems Act and the Municipal Structures Act both require that the councillor must perform the functions and his/her duties in good faith, diligently, honestly and in a transparent manner. A councillor must at all times act in the best interest and for the benefit of the municipality to ensure that the image and the credibility of the municipality is not tarnished.

It is also imperative for the municipality to remind the councillors that although they are acting as intermediaries between the municipality and the members of the public,

- A councillor cannot disclose any privileged and confidential information to external parties;
- Disclosing incorrect and misleading information to the municipality or
- A councillor who is a full time councillor may not do any other paid work except with the consent of the municipal council,
- The councillor may not be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer,

- A councillor may not use, take, acquire or benefit from property or assets owned, controlled or managed by the municipality to which that councillor has no right.

## 5.2.Declaration of interests

When elected or appointed a councillor must within 60 days declare in writing to the municipal manager, any financial interests

- shares and securities in any company;
- membership in close corporation;
- interests in any trust;
- directorships;
- partnerships;
- other financial interests in any business undertaking;
- employment and remuneration;
- interest in property;
- pension; and
- subsidiaries, grants and sponsorships by any organization.
- Gift received, nature and prescribed amount.

When there are changes in the pattern of gifts, financial interests received by Councillors, they must disclose such changes to the Municipal Council even if they may regard them as petty. This will enable the Council to determine whether the gifts can be regarded as some form of a bribe or a friendly gesture.

## **6. THE ROLE OF EMPLOYEES**

The basic values and principles governing public administration, in terms of the Constitution provides that:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.

- Public administration must be development-orientated.
- Services must be provided impartially, fairly, equitable and without bias.
- People's needs must be responded to, and the public must be encouraged to participate in policy-making.
- Public administration must be accountable.
- Transparency must be fostered by providing the public with timely, accessible and accurate information.
- Good human-resource management and career-development practices, to maximise human potential, must be cultivated.

Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

#### 6.1. Code of conduct

The municipal employees must at all times

- loyally execute the lawful policies of the municipal;
- perform the functions of office in good faith, diligently, honestly and in a transparent manner;
- act in such a way that the spirit, purport and objects of the basic values and principle governing the local public administration are promoted;
- act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and
- act impartially and treat all people, including other staff members, equally without favour or prejudice.

Each time an employee is newly appointed, they should be informed of these policies. They must familiarise themselves to the Principles contained in such legislation and Codes of Conduct, in support of the principles of responsible and transparent service delivery.

## **7. REPORTING SUSPECTED FRAUD AND CORRUPTION**

The municipality must educate staff members on the correct channel to be followed when reporting acts of fraud, corruption and theft. The municipality must encourage staff members to report acts of fraud and corruption internally within the municipality rather than externally. This can only be effective once a whistle blowing has been installed.

It is the policy of the Central Karoo Municipality to ensure that a vibrant and effective whistle-blowing policy is promoted and encouraged in the municipality and to this end the municipality undertakes on an ongoing basis to put in place whistle-blowing mechanisms that will not only enhance a culture of openness and reporting fraud and corruption, but one that will also put in place mechanisms and systems protecting the whistleblower and penalising any person or persons responsible for victimising, harassing or intimidating any actual or potential whistleblower.

Staff members must be made aware of their responsibility to report acts of fraud and corruption to the identified reporting channel of the municipality. The staff members who make such disclosures should be protected from victimisation by the Municipal Manager. Staff members who feel that they cannot report the matter to the identified reporting channel, may take advantage of the provision of the Protected Disclosures Act and report the matter to the South African Police Service, National Prosecuting Authority, Auditor General, Public Protector and other government bodies.

Reports of fraud and corruption should be dealt with confidentially. The service provider / internal operator of the reporting channel must assess the magnitude of the alleged fraud or corruption and where necessary conduct an initial investigation to establish the veracity of the allegations. This preliminary investigation will also determine in some instances whether a further investigation needs to be conducted.

Whistle Blowers should not suffer any penalty or retribution for acting in good faith in reporting suspects or actual incidents of fraud in terms of the Protection Disclosure Act. False or malicious allegation should be discouraged and such cases must be subjected to a disciplinary action or other appropriate actions. Installing hotlines can be one of the methods that can be used for whistle-blowing.

## **8. INVESTIGATIONS**

Whether the matter is investigated internally or externally the investigator must be objective, thorough and act in a way that is without prejudice to the defendant. The process must be fair to the parties involved.

Any indication of fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature will be investigated and followed up by the application of all remedies available within the full extent of the law.

An investigation may result in the search of the accused person or residence, subject however thereto that such searches are conducted in strict accordance with any legislation applicable thereto (e.g. the Criminal Procedure Act), with due regard to fundamental human rights as enshrined in the Constitution, for reasons that will suit the public interest and in terms of a court order.

An investigation may require the search of an official's office furniture, computer, files and lockers in the workplace. A search of this kind may only be permitted-

- When there are reasonable grounds for suspecting that the search will turn up evidence that the employee is guilty of fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature;
- When the search is necessary for a non-investigatory work related purpose (for example, when an employee is suddenly unavailable and information is required off the employees computer);
- Where the measures adopted are reasonable in relation to the objectives of the search and are not excessive intrusive in right of the nature of the misconduct. Searches should be related to the alleged misconduct;
- Due care should taken not to breach the Constitutional right to privacy and dignity.

The action that is taken by the municipality must comply with provisions of their Codes of Conduct and legislation which deals with established acts of fraud and corruption. The investigator who establishes that the fraud or corrupt act has occurred must recommend the appropriate action that must be taken.

Where the accused if is found guilty after the completion of the investigation the following should be considered:

- Taking disciplinary action within a reasonable period of time after the incident;
- Instituting civil action to recover losses;
- Initiating criminal prosecution by reporting the matter to SAPS or other relevant law enforcement agencies; and
- Any other appropriate and legal remedies available.



## **9. DISCIPLINARY ACTION**

If it has been established that the municipal employee has committed a transgression, then,

Disciplinary sanction must always follow misconduct so as to reinforce the approach that the municipality takes a firm stance against employee misconduct. The disciplinary process must be fair, just and equitable, allowing the accused to state his/her case. Any bargaining agreements in effect between the employer and the Unions must be adhered to throughout the disciplinary process. The process must be adhered to at all times. The prosecutor and the chairman of the hearing should be suitably qualified, knowledgeable and experienced to prosecute and preside. The punishment must fit the crime and must take into account the offence, the offender and the effect of the offence upon the Municipality. The initiation of disciplinary proceedings, the process and the sanctions should be consistent in their application.

## **10. CONFIDENTIALITY**

All information relating to the suspected act of fraud or corruption will be treated confidentially. Any investigation of suspected acts of fraud or corruption must not be disclosed to outsiders, except to the appropriate law enforcement authorities and anyone who has a legitimate right to the information. This is in order to protect both the whistle blower and the suspected person. No council member should be authorised to supply any information with regard to reports of fraud, covered within this policy, to the media without the express permission of the Municipal Manager.

## **11. CONTROL MEASURES**

The municipality must implement controls and checking mechanisms as prescribed in existing policies, procedures and other relevant prescriptions and systems of internal control. The Municipal Manager must as soon as possible develop and implement an Anti-Corruption Strategy for the purpose of preventing and detecting incidents of fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature. These measures must be checked on a regular basis and a culture of management involvement in ensuring that they always are adequate control measures in the municipality.

## **12. CONFLICTS OF INTERESTS AS IT RELATES TO ALL EMPLOYEES**

This may arise where a manager is not acting in good faith and not in the best interest of the municipality for personal or private gain, for example:

- A manager has a personal interest and interferes with the supply chain management system of the municipality, or
- Amends or tampers with any tender, quotation, contract or a bid after their submission with the intentions of influencing the results.
- A manager fails to disclose that he/she has received gift and or benefits from a particular supplier who is a party to a contract for the provision of goods or services to the municipality or
- Fails to disclose that he/she has personal or financial interests in a business that is a party to a contract for provisions of good or services or
- Disclosure of privileged and confidential information to the external suppliers which may potentially influence the decision to award the contract.
- A manager tries to mislead or attempts to mislead the council or any other structure in its consideration of any matter.

### **12.1. Failure to Disclose**

It is of paramount importance for the municipality to state clearly the action that will be taken against any manager who deviates from his responsibilities and fiduciary duties. It must indicate that such deviation amounts to misconduct and sanctions can be instituted.

The Municipality must indicate to the Municipal Managers that it reserves the right to check on its employees and those who do not disclose their interests whether it may be

- Directorships or Partnerships in any business entity
- Share and securities in any company
- Membership of any close corporation
- Other financial interest in any business undertaking whether he/she is a silent partner or a non-executive director
- Interest in any trust or property

- Gifts, sponsorships and grants from other organisations, even how insignificant or trifling they may appear.

The municipality may judge any offence of non-disclosure as an act of misconduct on the part of any Manager. The municipality must clearly state that the reasons behind disclosure are to cover grey areas where the manager may be uncertain whether the gift constitutes a bribe or a friendly gesture.

### **13. CONFLICTS OF INTERESTS AS IT RELATES TO COUNCILLORS**

The following are examples of Conflict of Interests:

1. Non-disclosure of any direct or indirect personal business interest that the councillor, or spouse, partner or business associate of that councillor may have without consent being given by the municipal council.
2. Non-disclosure of any direct benefit the councillor's spouse, partner business associate or close family member has acquired or stands to acquire from a contract concluded with the municipality.
3. Obtaining financial interests in the business of the municipality, without prior consent.
4. Appearing on behalf of any other person before the council or a committee for a fee or other consideration, without prior consent.
5. A councillor being party to a contract for the acquisition of goods or services for the municipality, or for performance of work other than as a councillor for the municipality, without prior consent.
6. A councillor may not interfere in the management or administration of a department of the municipal council without prior consent by council.

These conflicts of interest include personal or other business relationships between the trading partners, councillors of the municipality or other third parties may have a negative impact on the arms length principle of conducting business and/or impartiality in the awarding of a contracts or making payments in terms of the contract.

#### **13.1.Failure to Disclose**

It is of paramount importance for the municipality to state clearly that a failure to disclose will create conditions that are prone to corruption especially when that councillor has too much influence in the community which he/she serves. It must indicate that such failure to disclose amounts to misconduct and sanctions will be taken against the councillor.

The municipal council should communicate to its councillors that it will not provide any room for irregularities and any form of corrupt activities; it will apply a zero tolerance policy in rejecting fraud.

The Municipality must indicate to its council members that it reserves the right to check upon their activities when allegations have been brought forward against them.

#### **14. COMMITMENT TO FIGHT CORRUPTION AND DECLARATION OF INTENT**

The council of the municipality calls on all councillors, staff members and the community to unite in the fight against corruption in the municipality and declare its commitment to-

- Promote leadership in all sectors of society that is committed to the creation of a culture of integrity and to restore confidence in the fight against corruption.
- Foster a greater culture of transparency and accountability in the municipality.
- To Encourage whistle blowing and reporting and strengthen measures to protect all persons from victimisation where they expose corrupt and unethical practices.
- Actively support and engage in ethics training and awareness programme in the municipality.
- Uphold the values and principles of the various codes of conduct and to enforce it diligently.
- Promote, support and strengthen co-operation and co-ordination with the different agencies responsible for combating corruption.
- Support the establishment of a database for blacklisting, and the development of a mechanism for information sharing across all sectors, public and private.
- Strengthen capacity for the implementation of anti-corruption measures in the municipality.
- Assist law enforcement agencies to identify and recover assets obtained through illicit or corrupt means.
- Strengthen all oversight structures in the municipality.
- Encourage business and civil society to expose corrupt and unethical practices in the municipality.

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