



# **DRAFT ETHICS POLICY FOR KAI ! GARIB MUNICIPALITY**

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## **ETHICS POLICY**

### **INTRODUCTION**

At ZF Mgcawu District Municipality we believe that honesty and integrity are important values, not only in business, but also in life generally. We all want to work with people we trust and we all want people to show their trust in the organisation and each other. We are committed to stopping dishonest behaviour in the workplace. We wish to foster an environment where fraudulent & criminal activity is discouraged. In terms of the Constitution of the Republic of South Africa, the Municipal Systems Act and the Local Government Municipal Finance Management Act; authorities are to provide, amongst other things, accountable government and to ensure the provision of services to communities in a sustainable manner. Exco and Senior Management of the ZF Mgcawu District Municipality take this responsibility seriously and realise that accountability and the sustainable provision of services is dependent on effective management of all risks, including fraud. Statistics show that staff of victim organisations perpetrates 80% of reported fraud and an estimated 6% of revenue is lost annually due to fraud. As such fraud is regarded as a serious risk that must be combated using the most up to date and effective techniques. Organisations must not only be able to respond effectively in instances where fraud has been perpetrated but must make every effort to prevent fraud occurring. The need exists to provide assistance and guidance to employees with regard to the spirit in which employees should perform their duties and what should be done to prevent fraud. This Fraud Ethics Policy has been implemented in order to stress:

- The need for all to demonstrate the highest standard of personal and corporate ethics,
- The need for compliance with all laws and regulations,
- That ZFM values integrity and effort, not merely financial performance, in all dealings with staff, the public and suppliers,
- The desire to be open and honest in all internal and external dealings,
- That the policy applies consistently to all staff, whatever their level.

### **BASIC PRINCIPLES**

Although the Fraud Ethics policy was drafted to be as comprehensive as possible it should not be regarded as an exhaustive set of rules regulating standards of conduct. Staffs are under a duty to ensure that their conduct conforms to the basic values and principles governing Local Government Administration and that the norms and standards prescribed in the aforementioned legislation, and the code of conduct, are adhered to. The chief purpose of the Fraud Ethics policy is a positive one; namely,

to promote an ethical and moral environment. Notwithstanding this, it is also recognised that a failure to punish unethical, irregular or criminal conduct is a strong contributor to continued fraud within ZFM. Exco and Senior Management accordingly confirm their commitment to pursuing both disciplinary and criminal action in all appropriate circumstances.

## **FOCUS OF THE ETHICS POLICY**

The focus of the Fraud Ethics policy is the prevention and combating of all forms of:

- Dishonesty;
- Statutory offences;
- Common-law offences;
- Criminal offences;
- Unethical conduct;
- Corrupt practices.

For the purposes of this document, collective reference is made to the above-mentioned as unlawful conduct.

## **POLICY REGARDING UNLAWFUL CONDUCT**

ZFM will not tolerate any unethical or unlawful conduct and, in accordance with criminal, civil and labour law, will hold liable those involved. The same applies to persons who are aware of such unethical or unlawful conduct and who fail to report it or to act against it. This policy also applies to all employees, consultants and contractors. ZFM will not do business with or enter into a relationship with any individual or institution involved in unlawful or unethical conduct or who can be directly associated with it. Persons or organisations guilty of unlawful conduct, in relation to their dealings with ZFM, will be prosecuted criminally at all times, irrespective of whether ZFM has suffered losses.

## **DEFINITION OF FRAUD**

Whilst there is no single offence that can be called “fraud”, it is usually taken to be “theft” - the removal of assets to which the fraudster is not entitled or “massaging” or falsifying results or documents to create a false impression. Fraud is properly defined as “unlawfully making, with the intent to defraud, a misrepresentation which causes actual prejudice or which is potentially prejudicial to another”. In a

Public Sector environment care must be taken to differentiate between fraud and acting beyond ones powers or delegated authority (“Ultra Vires”), in order to achieve a particular result. Quite often, in the latter situation, a charge of fraud can be laid for misrepresentations made to management to disguise such actions. Action may also be taken for breaches of controls set to avoid such activity, for example authority limits being ignored.

## **DEFINITION OF CORRUPTION**

Corruption is any conduct or behaviour when a person accepts, agrees or offers any gratification for him/herself or for another person where the purpose is to act dishonestly or illegally. Such behaviour also includes the misuse of material or information, abusing a position of authority or a breach of trust or violation of duty.

## **TYPES OF OFFENCES CONSTITUTING FRAUD, CORRUPTION OR UNETHICAL BEHAVIOUR**

The crime of fraud manifests itself in many forms and it is virtually impossible to make a comprehensive list of all actions that may constitute fraud. Old and established methods of committing fraud are continuously improved upon. Essentially, fraud requires some sort of deceptive act, which harms another party. It is this deception that makes the discovery of fraud far more difficult than the discovery of errors. In order to provide guidance and clarity with respect to types of actions or conduct that could be regarded as constituting fraud various principles and types of fraud are discussed below.

### ***Theft***

Any business asset can be stolen, by staff or third parties, or by staff and third parties acting in collusion. As with false accounting, there are common patterns, although the exact nature varies according to the asset being misappropriated and the identity of the perpetrator. Types of theft could include:

- Direct theft of cash or any asset of the business.
- Theft of stock, commonly known as stock shrinkage.
- The theft of intellectual property.

### ***False expense (S&T) claims***

Any claims for expenses not actually incurred or not incurred whilst performing official duties can be regarded as fraudulent. Claims must be made strictly in terms of accepted policy and it is taken that all persons who claim S&T are aware of the policy governing these claims. Any claim, which is contrary to the policy, could be regarded as fraud.

### ***False overtime claims***

All claims for overtime must be based on time actually worked. Where overtime is claimed, but not worked, it is a fraudulent act. Overtime must be approved in terms of policy and all staff are regarded as being aware of the policy.

### ***Personal use of municipal assets***

All assets of ZFM are to be used only for the benefit of the municipality and in terms of accepted policy.

### ***Forgery or alteration of any document***

Falsifying documents in any form is a misrepresentation of the true facts and can accordingly be regarded as fraud.

### ***Destruction or removal of records***

Although not necessarily fraud, destruction or removal of documents may be regarded as an effort to hide or cover up other irregular conduct. This conduct is accordingly regarded in a serious light.

### ***Disclosing confidential information to outside parties without authority***

Irresponsible disclosure of confidential information may expose ZFM to risk. Disclosure of confidential information may also lead to ZFM suffering a loss as a result of unfair business practises or advantage given to suppliers. Employees have a duty of confidentiality to the Municipality. Information received in the course of employment must not be disclosed to persons outside the Municipality. Information received must not be used for an employee's own benefit or the benefit of others.

### ***Kickbacks or Illegal gratuities***

Receiving kickbacks or commission from a supplier as a "reward" for awarding the contract to that supplier. These are particularly difficult to detect, since the kickback is paid direct from the supplier to the employee and does not go through the company's books.

### ***Conflicts of interest***

Personal interests in outside organisations should be avoided. Employees may not act as a director, officer, employee or partner of any other organisation outside the municipality.

Relationships with parties of another organisation should be fully disclosed in writing to management who should then ensure that the individual is not involved in any activity in the area of the conflict of interest.

If employees find themselves in a position where there is a conflict of interest, the conflict must be disclosed immediately. All potential conflicts must be reported and recorded by the employee in the Disclosure Register, which has been created and which is kept at Human Resources Section. The Deputy Municipal Manager and General Manager: Corporate Services will review this register on a quarterly basis.

The onus with respect to such disclosure rests solely with the employee. A failure to comply is regarded as a dismissible offence.

### ***Gifts and entertainment***

The acceptance of inappropriate gifts or entertainment from suppliers or any other party is unethical and may, in certain circumstances, constitute fraud. Discretion and common sense must be used if and when accepting modest gifts. The Municipality's policy, as reflected in the various codes of conduct, regarding the receipt of gifts and entertainment is as follows:

1. A councillor must within 60 days declare in writing to the municipal manager gifts received by a councillor above a prescribed amount R350.
2. A councillor may not request, solicit or accept any reward, gift or favour for:
  - (a) Voting or not voting in a particular manner on any matter before the municipal council or before a committee of which that councillor is a member; (b) Persuading the council or any committee in regard to the exercise of any power, function or duty; (c) Making a representation to the council or any committee of the council; or
  - (d) Disclosing privileged or confidential information.
3. A staff member of a municipality may not request, solicit or accept any reward, gift or favour for:
  - (a) Persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty; (b) Making a representation to the council, or any structure or functionary of the council;
  - (c) Disclosing any privileged or confidential information; or
  - (d) Doing or not doing anything within that staff member's powers or duties

4. Material gifts with a monetary value exceeding R350 may not be accepted unless with the express consent of Senior Management.

All gifts received must be reported and recorded by the employee in the Disclosure Register, which has been created and which is kept at Human Resources Section. The Deputy Municipal Manager and General Manager: Corporate Services will review this register on a quarterly basis.

5. These principles also apply to gifts given to outside parties.

Any breach of the above policy will be regarded as a dismissible offence.

### **The Municipal Finance Management Act (The MFMA)**

The MFMA covers important provisions with respect to the financial management of ZFM and these provisions are relevant to the Fraud Ethics policy the most important provisions thereof are summarised below.

#### **Disciplinary proceedings Financial misconduct by municipal officials (Section 171)**

1) The **accounting officer** of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently – contravenes a provision of this Act; fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality; makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure; or provides incorrect or misleading information in any document which in terms of a requirement of this Act must be –

- Submitted to the mayor or the council of the municipality, or to the Auditor-General, the National Treasury or other organ of state; or Made public
- 2) The **chief financial officer** of a municipality commits an act of financial misconduct if that officer deliberately or negligently –
- fails to carry out a duty delegated to that officer in terms of section 79 or 81 (1) (e);
- 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);



- makes or permits, or instructs another official of the municipality to make , an unauthorised, irregular or fruitless and wasteful expenditure; or
- provides incorrect or misleading information to the accounting officer for the purpose 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 –

- fails to carry out a delegated duty;
- contravenes or fails to comply with a condition of the delegated power or duty;
- makes an unauthorised, irregular or fruitless and wasteful expenditure; or
- provides incorrect or misleading information to the accounting officer for the purpose of a document referred to in subsection (1) (d).

• 4) A **municipality** must –

- 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
- if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or 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 accounting authorities and officials of municipal entities (section 172)**
- The **accounting officer** of a municipal entity commits an act of financial misconduct if that accounting officer deliberately or negligently –contravenes a provision of this Act;
- fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality;
- makes or permits, or instructs another official of the municipality to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
- provides incorrect or misleading information in any document which in terms of a requirement of this Act must be –
- Submitted to the mayor or the council of the municipality, or to the Auditor-General, the National Treasury or other organ of state; or 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 79, commits an act of financial misconduct if that senior manager or official deliberately or negligently –

- fails to carry out a delegated duty;
- contravenes or fails to comply with a condition of the delegated power or duty;
- makes an unauthorised, irregular or fruitless and wasteful expenditure; or
- provides incorrect or misleading information to the accounting officer for the purpose of a document referred to in subsection (1) (d).

3) A **municipal entity** must –

- 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

- 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.

### **Criminal proceedings – Offences (section 173)**

1) The accounting officer of a municipality is guilty of an offence if that accounting officer –

- deliberately or in a grossly negligent way –
- 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);
- fails to take reasonable steps to implement the municipality’s supply chain management policy referred to in section 111;
- fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure; or
- fails to take all reasonable steps to prevent corruptive practices-
  - ✓ in the management of the municipality’s assets or receipt of money; or
  - ✓ in the implementation of the municipality’s supply chain management policy
- 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
- deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be –
  - submitted to the Auditor-General, the National Treasury or any other organ of state; or made public

2) The **accounting officer of a municipal entity** is guilty of an offence if that accounting officer –

- deliberately or in a grossly negligent way –
- 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);

- fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure; or
- fails to take all reasonable steps to prevent corruptive practises in the management of the municipality's assets, receipt of money; or supply chain management system;
- 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 municipal entity; or
- deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be –
  - submitted to the Auditor-General, the National Treasury or any other organ of state; or 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 a delegation.

4) A **councillor** of a municipality is guilty of an offence if that councillor –

- 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;
- 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;
- interferes in the financial management responsibilities of 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
- interferes in the management or operational activities of a municipal entity under the sole or shared control of the municipality.

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 –

- impedes an accounting officer from complying with a provision of this Act;
- gives incorrect, untrue or misleading information material to an investment decision relating to borrowing by a municipality or municipal entity;
- makes a withdrawal in contravention of section 11;
- fails to comply with section 49;
- contravenes a provision of section 115 (2), 118 Or 126 (5); or
- provides false or misleading information for the purposes of any document which must in terms of a requirement of this Act be –
- submitted to the council, mayor or accounting officer of a municipality or to the Auditor-General or the National Treasury; or made public.

## **REPORTING PROCEDURES**

It is expected of staff that they report all incidents of suspected unlawful conduct. If the staff member wishing to make the report does not wish to remain anonymous the report can be made to the Manager of the relevant section, or to any other person appointed by the municipality to receive such reports. Exco and Senior Management however recognise that in many instances staff may wish to remain anonymous to avoid any form of reprisal. Province has established a whistle blowing facility to accommodate reports by persons wishing to remain anonymous as well as reports in respect of matters involving Executive management. Staff is encouraged to report factual information about dishonesty, whether by management, employees, customers or suppliers of ZFM to the MUNICIPAL MANAGER. The Audit Committee, Exco and Senior Management are committed to ensuring that:

- All suspicions/reports will be treated seriously and investigated.
- The Fraud Response Plan will be adhered to.
- The outcome of any investigation and action will be made known.

## **DISCIPLINARY ACTION**

In cases involving unlawful conduct in breach of this Fraud Ethics Policy or any applicable code or legislation, steps will be taken against those involved in terms of the code of conduct and the disciplinary procedures.

## **CRIMINAL PROSECUTION**

In all cases where a criminal offence has taken place, criminal proceedings will be instituted against the offender. External Forensic Investigators may be consulted in cases where it is uncertain if the conduct constitutes criminal conduct or not. Any extenuating circumstances will be taken into account by the judge or magistrate.

### **Criminal versus civil or disciplinary action**

The level of evidence required for criminal action differs to that required for civil or disciplinary action. Criminal action requires that evidence be on a level beyond all reasonable doubt, whereas evidence for disciplinary action is only required to be on a balance of probabilities. Therefore, although sufficient evidence may exist for a finding during the disciplinary process, such evidence may be regarded as insufficient for criminal conviction.

### **STATUS AND EMPOWERMENT**

The Internal Audit unit, as mandated by the Council, Exco, Audit Committee and Senior Management, is empowered to take all steps necessary to ensure compliance with this policy and to ensure that appropriate action is taken in the event of breaches thereof.

### **REVISION**

This policy document will be submitted to Exco for approval and initial adoption and subsequently for approval of amendments where necessary.

**EMPLOYEES AGREEMENT**

I confirm that I have read and understood the contents of this Fraud Ethics Policy, and that I agree to abide by it. I further understand that, should I breach any rules contained here in, then I accept that disciplinary action may be taken against me.

.....

NAME OF EMPLOYEE

.....

DATE

.....

SIGNATURE

**For and on behalf of ZF Mgcawu District Municipality**

.....

NAME AND DESIGNATION

.....

DATE