

# NTABANKULU LOCAL MUNICIPALITY



FRAUD AND CORRUPTION PREVENTION POLICY 2022/2023

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## 1. DEFINITIONS

1.1 Throughout this document, unless otherwise stated, the words in the first column below have the meanings stated opposite them in the second column (and similar expressions shall bear corresponding meaning):

NLM:	Ntabankulu Local Municipality
Corruption:	Is defined as the offering, giving, soliciting or accepting of an inducement or reward that may improperly influence the action of any person. This can also be described as any conduct or behavior in relation to persons entrusted with responsibilities in public office which violates their duties as public officials and which is aimed at obtaining undue gratification of any kind.
Fraud:	Is defined as the unlawful, intentional making of a misrepresentation or concealment of a material fact which causes actual and or potential prejudice to another.
Whistleblowing:	The disclosure by a person, usually an employee, to the public or to those in authority, of mismanagement, corruption, illegality, or some other wrongdoing.
Employee:	Is defined as someone who is: <ul style="list-style-type: none"> <li>• Employed on a permanent basis;</li> <li>• Employed on a fixed term or temporary contract of employment; and</li> <li>• On secondment to the municipality.</li> <li>• Councillors</li> </ul>
Members of the public	Is defined as someone who is: <ul style="list-style-type: none"> <li>• A Service provider</li> <li>• Or any person doing business with the</li> </ul>

	municipality
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1.2 In this document, unless the context otherwise indicates, words and expressions denoting:

1.2.1 The singular shall include the plural and vice versa; and'

1.2.2 The male sex shall include the female sex and vice versa.

## **2. PREAMBLE**

The Fraud and Corruption Prevention Policy is established to set out the Ntabankulu Local Municipality's position regarding fraudulent activity and the reporting thereof and to facilitate the development of controls that will aid in the prevention and detection of fraud and corruption against the municipality. It is the intent of NLM to promote consistent organizational behavior by providing guidelines, awareness and assigning responsibility for the development of controls and conduct of investigations.

## **3. LEGISLATIVE FRAMEWORK**

3.1 In terms of Prevention and Combating of Corrupt Activities Act Section 3 of Chapter 2, Part 1 defines corruption as: General offence of Corruption: Any person who, directly or indirectly-

3.1.1 Accept or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person or

3.1.2 Gives or agrees or offers to give to any other person any gratification; whether for the benefit of that other person or for the benefit of another person.

3.2 In South Africa fraud is defined as:

"The unlawful and intentional making of a misrepresentation which causes actual prejudice, or which is potentially prejudicial to another."

#### **4 OBJECTIVES OF THE POLICY**

This policy applies to any irregularity, or suspected irregularity, involving all the employees of the municipality, as well as consultants, contractors, councillors, outside agencies doing business with employees of such agencies, and/or any other parties with a business relationship with NLM.

Any investigative activity required will be conducted without regard to the suspected wrongdoer's length of service, position/title, or relationship with NLM.

#### **5 FRAUD AND CORRUPTION POLICY STATEMENT OF COMMITMENT**

Fraud and corruption represent a significant potential risk to the municipality's assets, operations efficiency and reputation. The Municipality has and will maintain a zero tolerance for the commission or concealment of fraudulent, corrupt or illegal acts. Allegations of such acts will be investigated and pursued to their logical conclusion, including legal action, criminal prosecution, and disciplinary action where warranted.

#### **6 ACTIONS CONSTITUTING FRAUD AND CORRUPTION**

The term fraud includes, but is not limited to:

- 6.1 Any dishonest, fraudulent or corrupt act;
- 6.2 Theft of funds, supplies, or other assets; abuse of sick leave;
- 6.3 Maladministration or financial misconduct in handling or reporting of money or financial transactions;
- 6.4 Any computer related activity involving the alteration, destruction, forgery or manipulation of data for fraudulent purposes or misappropriation of computer software;
- 6.5 Disclosing confidential information to outside parties;
- 6.6 Deliberate non-compliance with delegation of authority limits;
- 6.7 Procurement fraud, e.g. irregular collusion in the awarding of tenders or orders for goods and/or services;
- 6.8 Collusion in contracts management;
- 6.9 Payroll fraud, e.g. creation of "ghost employees"

- 6.10 Irregularly accepting or requesting anything of a material value from contractors, suppliers, or other persons providing services/goods to NLM;
- 6.11 Irregularly offering or giving anything of a material value to contractors, suppliers, or other persons providing services/goods to the NLM; duplicate, rather say: Irregularly accepting, requesting or offering
- 6.12 Destruction, removal, or abuse (inappropriate use) of records, furniture, and equipment; and deliberately omitting to report or act upon reports of any such irregular or dishonest conduct;
- 6.13 Acts of financial misconduct contemplated in terms of Chapter 15 of the Municipal Finance Management Act;
- 6.14 Incidents of unauthorized, irregular or fruitless and wasteful expenditure as defined in the Municipal Finance Management Act; and
- 6.15 Any similar or related irregularity

## **7 APPLICATION OF THE POLICY**

7.1 It is the responsibility of staff of the NLM to report all incidents of fraud, corruption, theft, maladministration, or any other dishonest activities of a similar nature to his manager. If staff is not comfortable reporting such matters to his manager, he should report the matter to his manager's superior, with final recourse to the Municipal Manager. Staff should report incidents by using the appropriate lines of authority.

7.2 All Directors, Managers are responsible for the detection, prevention and investigation of fraud, corruption, theft, maladministration, or any dishonest activities of a similar nature, within their areas of responsibility. The NLM will take appropriate legal recourse to recover losses or damages arising from fraud, corruption, theft or maladministration.

## **8 REPORTING PROCEDURES**

### **8.1 Employees/ Councillors**

8.1.1 It is the responsibility of all employees, councillors to immediately report all allegations or incidents of fraud and corruption to their immediate managers and the Speaker respectively. Should an employee be concerned that the manager is involved; the report can be made to any other member of Senior Management, the Municipal Manager and/or the Chairperson of the Audit Committee.

Concerns are better raised in writing. The background and history of the concern, giving names, dates, and places where possible should be set out and the reason why the individual is particularly concerned about the situation. The earlier the concern is reported, the easier it is to take action and initiate recovery procedures where necessary. Although staff members are not expected to prove the truth of an allegation; they will need to demonstrate to the person contacted that there are sufficient grounds for concern.

Should employees wish to report allegations of fraud and corruption anonymously, they can contact any member of management, the Municipal Manager, Chairperson of the Audit Committee, or the Speaker in the case of alleged fraud committed by one of the Councillors or the Mayor. The employee/ Councillor reporting the occurrence of fraud should be informed not to:

- 8.1.1.1 Contact the suspected individual in an effort to determine facts or demand restitution.
- 8.1.1.2 Discuss the case, facts, suspicions, or allegations with anyone unless specifically instructed to do so.

### ***8.2 Members of the public and providers of goods/services***

8.2.1 NLM encourages members of the public or providers of goods and/or services who suspect fraud and corruption to contact any member of management and/or the Municipal Manager.

8.2.2 In case both parties are not confident to report any suspected fraud or corruption to the delegated personnel of the Municipality, they should report it to the National Anti-Corruption hot line on 0800 701 701

## **9 INVESTIGATION RESPONSIBILITIES**

Management has the primary responsibility for the investigation of all suspected fraudulent acts as defined in the policy. If the investigation substantiate that fraudulent activities have occurred, the Management will issue reports to appropriate designated personnel, and to the Council through the Audit Committee. Decisions to prosecute or refer the examination results to the appropriate law enforcement for independent investigation will be made in conjunction with Management and reported to Council.

## **10 RESOLUTION OF REPORTED INCIDENTS**

10.1 For allegations made by employees, members of the public or providers of goods and/or services, the action taken will depend on the nature of the concern. The matters raised will be screened and evaluated and may subsequently:

- 10.1.1 Be investigated internally; or
- 10.1.2 Be referred to external service provider for investigation; and
- 10.1.3 Be reported to law enforcement agencies.

10.2 Any fraud and corruption committed by an employee, or any other person will be pursued by thorough investigation and to the full extent of the law, including (where appropriate) consideration of:

- 10.2.1 In case of employees, taking disciplinary action within a reasonable period of time after the incident;
- 10.2.2 Instituting civil action to recover losses;
- 10.2.3 Initiating criminal prosecution by reporting the matter to the SAPS or any other relevant law enforcement agency; and
- 10.2.4 Any other appropriate and legal remedy available.

10.3 As soon as an investigation is completed, the outcome must be reported within 48 hours to the Municipal Manager. Should the Municipal Manager be the effected party, the outcome of the hearing will be reported to the Audit Committee. The following will be reported on:

- 10.3.1 The name and position of the staff member against whom proceedings are instituted;
- 10.3.2 The disciplinary charges, indicating the financial misconduct the staff member is alleged to have committed;



- 10.3.3 The findings of the disciplinary hearing/investigation;
- 10.3.4 Any sanction imposed on the staff member; and
- 10.3.5 Any further action to be taken against the staff member, including criminal charges or civil proceedings.

10.4 The Municipal Manager is also required to ensure that losses or damages suffered by the NLM as a result of an act committed or omitted by a staff member must be recovered from such a staff member where it has been determined that he is liable.

10.5 If an investigation results in a recommendation to terminate an individual's employment, the recommendation will be recommended by the Director: Corporate Services for approval by the Municipal Manager, if necessary, by outside counsel, before any such action is taken.

## **11 WHISTLE BLOWER PROTECTION**

### **11.1 Protection**

Section 3 of the Protected Disclosures Act (Act 26 of 2000) ("the Act") states:

*"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"*

The Act defines disclosure as:

"disclosure" means any disclosure of information regarding any conduct of an employer, or an employee of that employer, made by any employee who has reason to believe that the information concerned shows or tends to show one or more of the following

- a) That a criminal offence has been committed, is being committed or is likely to be committed
- b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject
- c) That a miscarriage of justice has occurred, is occurring or is likely to occur
- d) That the health or safety of an individual has been, is being or is likely to be endangered
- e) That the environment has been, is being or is likely to be damaged
- f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); or

11.2.1 The seriousness of the issues raised

11.2.2 The credibility of the concern

11.2.3 The likelihood of confirming the allegation from attributable sources

### **11.3 Untrue Allegations**

If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. In making a disclosure the individual should exercise due care to ensure the accuracy of the information. If, however, an individual makes malicious allegations, and particularly if he or she persists with making them, disciplinary action may be taken against that individual.

### **11.4 Procedures for Making a Disclosure**

11.4.1 On receipt of a complaint of malpractice, the member of staff who receives and takes note of the complaint, must pass this information as soon as is reasonably possible, to the appropriate designated investigating officer as follows:

11.4.1.1 Complaints of malpractice will be investigated by the appropriate Director unless the complaint is against the Director or is in any way related to the actions of the Director. In such cases, the complaint should be passed to the Municipal Manager for referral.

11.4.1.2 In the case of a complaint, which is any way connected with but not against the Director, the Municipal Manager will nominate a Director to act as the alternative investigating officer.

11.4.1.3 Complaints against the Municipal Manager should be passed to the Council who will nominate an appropriate investigating officer.

11.4.1.4 The complainant has the right to bypass the line management structure and take their complaint direct to the Council. The Council has the right to refer the complaint back to management if he/she feels that the management without any conflict of interest can more appropriately investigate the complaint.

11.4.2 Should none of the above routes be suitable or acceptable to the complainant, the complainant may approach one of the following individuals who have been designated and trained as independent points of contact under this procedure. They can advise the complainant on the implications of the legislation and the possible internal and external avenues of complaint open to them:

11.4.2.1 Legal Officer

#### 14 CREATING AWARENESS

It is the responsibility of all managers to ensure that all employees are made aware of and receive appropriate training with regards to this policy.


#### 15 ADMINISTRATION

The custodian of this policy is the Municipal Manager who is supported in its implementation by all managers of NLM. The Municipal Manager is responsible for the administration, revision and interpretation of this policy. This policy will be reviewed annually.

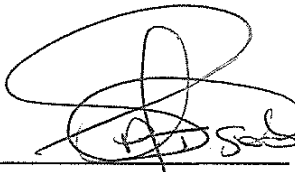
#### 16 ADOPTION OF THE POLICY

Policy adopted by Council of Ntabankulu Local Municipality on this 27th day of May 2022

Council resolution no: OCM/8/22/008.4

  
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L. Nonyongo

**MUNICIPAL MANAGER**

  
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P.T. SOBUTHONGO

**HONORABLE MAYOR**