



**ANTI - FRAUD AND CORRUPTION
POLICY
2023 - 2024**

King Sabata Dalindyebo Anti – Fraud and Corruption Policy

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1. BACKGROUND

The reason for implementing the Anti - Fraud and Corruption Policy is to:

- 1.1. Emphasise the stance of the King Sabata Dalindyebo Municipality (“KSD”) of zero tolerance on fraud, corruption, theft, maladministration, or any other dishonest activities of unethical nature.
- 1.2. Lay down the organizational framework on Anti - Fraud and Corruption; and
- 1.3. Promote and reinforce existing legislation, systems, policies, procedures, rules, and regulations of the KSD aimed at deterring, preventing, detecting reacting to and reducing the impact of fraud, corruption, theft, maladministration, or any other activities of a dishonest nature.

2. LEGISLATIVE FRAMEWORK

This policy is derived from and must be read in conjunction with the following relevant legislation and guidance, which is not repeated in detail here:

- i) The Constitution of the Republic of South Africa Act No. 108 of 1996.
- ii) Municipal Systems Act No 32 of 2000.
- iii) Municipal Finance Management Act No, 56 of 2003
- iv) The Protected Disclosures Act, Act No. 26 of 2000, As amended.
- v) South African Criminal Procedure Act No. 51 of 1977
- vi) Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004

3. SCOPE OF THE POLICY

This policy applies to all allegations, attempts and incidents of fraud, corruption, theft, maladministration, or any other activities of a dishonest nature impacting or having the potential to impact the KSD.

It is applicable to all employees, councillors, members of the public and service providers.

4. DEFINITION OF TERMS

4.1 Fraud is defined as the unlawful act or omission by which misrepresentation is made with the intention to defraud or making a misrepresentation which causes actual prejudice, or which is potentially prejudicial to another person or entity.

4.2 Person defined as means and includes legal or natural person I terms of South African Law

4.3 Corruption in terms of section 3 of the Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004 is committed by any legal person who, directly or indirectly accepts 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 gives or agrees or offers to give any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person to act in a manner that amounts to the illegal, dishonest, unauthorized, incomplete or biased: or misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers. Duties or functions

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arising out of a constitutional, statutory, contractual or any legal obligation that amounts to:

4.2.1 Abuse of a position of authority

4.2.2 Breach of trust; or

4.2.3 Violation of a legal duty or a set of rules designed to achieve an unjustified result; or that amounts to any other unauthorized or improper inducement to do or not to do anything that is guilty of the offence of corruption.

4.2.4 Corruption is further defined as the abuse of a position of employment by; the offering or acceptance of a benefit that is not legally due for the commission of an act in connection with that position of employment.

The following are examples of different types of corruption:

(a) Bribes

Is the offering, giving, receiving, or soliciting of any item of value to influence the actions of an official or other person in charge of a public or municipal duty.

Essentially, bribery is offering to do something for someone for the expressed purpose of receiving something in exchange.

Gifts of money or other items of value which are otherwise available to everyone on an equivalent basis, and not for dishonest purposes, is not bribery.

Offering a discount or a refund to all purchasers is a legal rebate and is not bribery. For example, it is legal for an employee of a Public / municipality involved in electric rate regulation to accept a rebate on electric service that reduces their cost for electricity, when the rebate is available to other residential electric customers.

Giving the rebate to influence them to look favourably on the electric utility's rate increase applications, however, would be considered bribery.

A bribe is the gift bestowed to influence the recipient's conduct. It may be money, goods, rights in action, property, preferment, privilege, emolument, objects of value, advantage, or merely a promise to induce or influence the action, vote, or influence of a person in an official or public capacity.

(b) Illegal Gratuity

Is a lesser-included offense of bribery and it is an extra "thank you" or "reward" payment to an official for the performance of normal duties. An illegal gratuity does not require proof if intent is to influence.

(c) Extortion

Forcing a person or entity to provide a benefit to a staff member, another person, or an entity in exchange for acting in a particular manner.

(d) Kickbacks

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In the commercial sense, are the giving or receiving anything of value to influence a business decision without the employer's knowledge and consent and it is a negotiable bribe.

(e) Collusion

"An agreement between two or more persons to defraud a person of his rights. It is a conspiracy or concert of action between two or more persons for fraudulent or deceitful purposes." - Black's Law Dictionary

(f) Conflict of Interest

Refers to situations in which financial or other personal considerations may compromise, have the appearance of compromising, an employee's / councillor's professional judgment in administration, management, instruction, research, and other professional activities.

(g) Corruption

Anybody who (a) accepts any gratification from anybody else, or (b) offers or gives any gratification (benefit) to anybody else to influence the receiver to conduct herself or himself or itself in a way which amounts to the unlawful or irregular exercise of any duties, commits corruption.

(h) Fraud

False representation of a matter of fact whether by words or by conduct, by misleading allegations, or by concealment of what should have been disclosed that deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury'.

Fraud is a deliberate act of deception by whatever means aimed at personal gain, material or otherwise at the expense of the victim.

(i) Favouritism

This involves the provision of services or resources according to personal affiliation (for example ethnic or religious) of a public servant.

Example: A regional manager in a particular province ensures that only persons from the same ethnic group are successful in tendering for a supply of food.

(j) Abuse of power

This involves public servant using his or her vested authority to improperly benefit another public servant, person, or entity (or using vested authority to improperly discriminate against another public servant, person, or entity) Example: during a tendering process but before actual selection of a successful contractor, the head of department expresses his or her wish to see the contract awarded to a specific.

(k) Gift

A gift or a present is an item given to someone without the expectation of payment.

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(l) Insider Trading

It is the use of privileged information and knowledge that a public servant possesses because of his or her office to provide unfair advantage to another person or entity to obtain a benefit.

(m) Embezzlement

This involves the theft of / misappropriation resources by persons entrusted with authority and control of such resources.

5. THE POLICY STATEMENT

- 1.1** The launching of the anti-corruption strategy by Cooperative Government and Traditional Affairs Department and its eventual roll-out to all 39 Municipalities of the EC province preceded and required the municipality to develop its own Anti-corruption and anti- fraud policy.
- 1.2** The Anti - Fraud and Corruption Policy of the KSD supports and fosters a culture of Zero Tolerance towards fraud and other acts of dishonesty. In addition, all fraud will be investigated and followed up by the application of all remedies available within the full extent of the law and the implementation of appropriate and Corruption and detection controls.
- 1.3** The current controls include the existing financial and other controls and checking mechanisms as prescribed in the systems, policies, procedures, rules, and regulations of the KSD.
- 1.4** The effectiveness and efficient application of the Municipal Management Finance Act (“MFMA”) and instructions contained in the KSD policies and procedures, circulars and manuals are some of the controls to be applied by everyone internally in the execution of their daily tasks.

6. ROLES AND RESPONSIBILITIES

6.1. The Municipal Manager

- 6.1.1** The Municipal Manager is responsible for amongst others, ensuring that an Anti - Fraud and Corruption Policy is in place and is clearly communicated to all relevant stakeholders.
- 6.1.2** The Municipal Manager is responsible for the implementation of this policy and the accompanying strategy and is to be supported by the Municipal Financial Misconduct and Disciplinary board and its regulations.

6.2. Municipal Finance Misconduct and Disciplinary Board

The Municipal Finance Misconduct and Disciplinary Board has the following responsibilities:

- 6.2.1** Coordinating, implementation and monitoring the KSD’s approach towards fraud prevention.
- 6.2.2** Receiving reports of suspected fraud, together with investigation reports.
- 6.2.3** Carryout their mandate in line with Municipal Financial Misconduct and Disciplinary Regulation’s and

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6.2.4 Reviewing the ongoing effectiveness of the KSD's Anti - Fraud and Corruption Policy and Anti - Fraud Management Register.

6.3. Audit & Performance Audit Committee

6.3.1 The objectives of the Audit and Performance Audit Committee in terms of the Anti - Fraud and Corruption Policy are to:

6.3.1.1 Support the operational development and implementation of the Anti - Fraud and Corruption Policy

6.3.1.2 Monitor the effective implementation of the Anti - Fraud and Corruption Policy

6.3.1.3 Maintain and review the Anti - Fraud and Corruption Policy on an ongoing basis.

6.4. Management and other KSD employees

6.4.1 Management is responsible for:

6.4.1.1 Implementing the fraud risk and related policies and escalating identified fraud risks to an appropriate level.

6.4.1.2 Designing and maintaining an effective system of internal controls aimed at preventing and detecting any fraud, corruption, theft etc.

6.4.2 Management is ultimately responsible for the prevention, detection, investigation and resolution of fraud, corruption, theft, maladministration, or any dishonest activities of a similar nature, within their areas of responsibility.

6.4.3 Management should further be familiar with the types of improprieties that might occur within their area of responsibility and be alert to indications of the potential or fraud to be perpetrated.

6.4.4 Employees are to be trained in preventing and detecting fraud, having a significant role in the implementation of the Anti - Fraud and Corruption Policy.

6.4.5 Employees are responsible for adhering to policies, procedures and systems implemented by management to prevent and detect fraud, corruption, theft etc.

6.4.6 All employees of the KSD must comply with the spirit and purport of the Policy.

6.4.7 All management and employees of KSD are responsible for reporting any suspected or witnessed fraud, corruption, theft, maladministration etc, in accordance with the process outlined in paragraph 11 of this policy and the whistle-blowing policy.

6.4.8 It is a primary requirement that the management often assists with formal fraud and fraud risk awareness presentations for employees and or councillors to enhance their understanding of the manifestations of fraud and Corruption and detection techniques, and the components of the plan.

6.5. Internal Audit

Internal Audit shall conduct regular internal audits to validate compliance with established policies and procedures as well as developing an internal audit strategy that includes a coverage plan. The Internal Audit strategy and coverage plan shall include audit procedures aimed at identifying indicators of fraud to be subjected to preliminary and, if substantial grounds suffice, forensic investigation.

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6.6. External Auditors – Auditor-General

The primary duty of the external auditors is to determine the fairness of the financial statements with reference to materiality. In forming an opinion, the external auditor carries out procedures designed to obtain evidence that will provide reasonable assurance that the financial information is properly stated in all material respects.

The external auditor should plan the audit so that there is reasonable expectation of detecting material misstatements in the financial information, which may result from fraud or irregularity.

6.7. Councillors

6.7.1 All KSD Councillors have responsibility to report fraud and corruption, and support management in the implementation of the Anti - Fraud and Corruption Policy's and Plans.

7. FRAMEWORK FOR INVESTIGATIONS

The following guidelines provide a framework to ensure fair, transparent, and legitimate investigations:

- 7.1** A register of investigations and all associated costs must be maintained with a log of all cases opened and closed, including implementation of sanctions instituted against perpetrators.
- 7.2** The municipality can sanction an investigation by requesting a forensic investigation agency and or the municipality can request the MEC CoGTA to commission an investigation.
- 7.3** The investigation process can only proceed after identifying, through a structured preliminary investigation process that there are clear legitimate grounds, justification, and reason to continue.
- 7.4** The reasons for the investigation must be documented upfront to prevent innocent parties from being targeted or implicated.
- 7.5** A mere "tip-off" is insufficient grounds for an immediate investigation as it is hearsay evidence or allegations during that stage.
- 7.6** If there are enough reasonable grounds documented that justify continuing with an investigation, evidence must be gathered to justify punitive measures such as terminating, direct payment or withholding funds from an entity or individual.
- 7.7** Upon completion of the investigation a decision should be made as to one or a combination of several actions to be followed to establish how to proceed with the case.

8. ACTIONS CONSTITUTING FRAUD, CORRUPTION, THEFT, MALADMINISTRATION, OR ANY OTHER DISHONEST ACTIVITY.

Fraud, corruption, theft, maladministration, or any other dishonest activity may include:

- 8.1** Systems issues: where a process / system exists, which are prone to abuse by employees, the members of council, or other stakeholders, e.g.:
 - 8.1.1** Statutory/regulatory non-compliance.
 - 8.1.2** Fraud / Corruption, e.g., a collusion in the awarding of tenders or orders for goods and/or services; private interest in contracts.
 - 8.1.3** Deliberate non-compliance with delegation of authority limits.

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- 8.1.4** Travel and subsistence fraud.
- 8.1.5** Making a profit from insider knowledge.
- 8.1.6** Irregularly accepting or requesting anything of a material value from contractors, suppliers, or other persons providing services / goods to the KSDM and / or its programmes or clients.
- 8.1.7** Irregularly offering or giving anything of material value to contractors, suppliers, or other persons providing services / goods to the KSD; and
- 8.1.8** Disclosing confidential or proprietary information to outside parties.
- 8.1.9** Non- reporting of or failure to report suspected or witnessed fraud, corruption, theft etc.

8.2 Financial issues: i.e., where employees, members of council or service providers have fraudulently obtained money from the KSDM.

- 8.2.1** Acts of financial misconduct contemplated in terms of the Municipal Finance Management Act (“MFMA”).
- 8.2.2** Incidents of unauthorized, irregular (expenditure, other than unauthorized expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation) or fruitless or wasteful expenditure (expenditure that was made in vain and that would have been avoided had reasonable care been exercised) as defined in the MFMA.
- 8.2.3** Theft of funds, supplies, or other assets.
- 8.2.4** Maladministration or financial misconduct in handling or reporting of money or financial transactions.
- 8.2.5** Procurement fraud.
- 8.2.6** Employees submitting fictitious / fraudulent quotations i.e., to show compliance with procurement policies and procedures to award contract to friends / family members.
- 8.2.7** Creditor's fraud, e.g., diverting payments to incorrect creditors.
- 8.2.8** Service providers submitting fraudulent invoices or invoicing for work not done.
- 8.2.9** Payroll fraud, e.g., creation of “ghost employees”; and
- 8.2.10** Financial misconduct in handling or reporting of money, financial transactions, or other assets.

8.3 Equipment and resource issues: i.e., where equipment of the KSD is utilized for personal benefit or stolen.

- 8.3.1** Theft of assets, e.g., computers, etc.
- 8.3.2** Personal use of resources, e.g., telephones, internet, e-mail.
- 8.3.3** Irregular destruction, removal or abuse of records, furniture, motor vehicles, equipment, or any other asset (including intellectual property); and
- 8.3.4** Leaking of confidential information.

9. CONFIDENTIALITY

- 9.1** All received and investigated information relating to fraud will be treated confidentially. The progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any person(s) other than those

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who have a legitimate right to such information. This is important to avoid harming the reputation of suspected persons who are subsequently found innocent of wrongful conduct.

- 9.2** Any employee (in junior position) who suspects fraud, corruption, theft, maladministration, or any other dishonest activity must not attempt to conduct an investigations or interrogations but report the suspicion to senior officials of the suspect or Executive Councillors.
- 9.3** No person is authorized to supply any information regarding allegations (as specified in paragraph 18 above) to the media without express permission of the Municipal Manager unless the Municipal Manager is himself/herself implicated in which case such communication will be authorised by the Executive Mayor.

10. PUBLICATION OF SANCTIONS

The Municipal Manager or the Executive Mayor must decide, in consultation with appropriate executive members / senior management, whether any information relating to corrective actions taken or sanctions imposed, regarding incidents of fraud should be brought to the direct attention of any person or made public through any other means.

11. REPORTING OF INCIDENTS OF UNETHICAL CONDUCT

- 11.1** The following description defines the reporting procedure that is currently employed by the National Hotline, which KSD Municipality intends to follow for the time being:
 - 11.1.1** Each caller or reporting party reporting an incident should be issued with a reference number for every tip off made / incident reported.
 - 11.1.2** The reporting party may use this reference number if they wish to enquire about the progress of the matter in future periods or to report further / new information should this become known.
 - 11.1.3** A detailed report must be compiled by the Call Centre Operator and furnished to the Municipal Manager, Manager / Head Legal Services and eventually Chairperson of Municipal Financial Misconduct Disciplinary Board on a monthly / quarterly basis highlighting the number and the nature of the incidents reported during the month / quarter in question.
 - 11.1.4** The Customer Care Office should submit a summary of the reported incidents to Municipal Manager; Senior Management; Head Legal Service, Council Speaker, Executive Mayor, Chief-Whip, Audit Committee Chair and Chairperson of Municipal Financial Misconduct Disciplinary Board on a quarterly basis to appraise the committees of the incidents and for monitoring purposes.
 - 11.1.5** Provincial CoGTA maybe engaged for assistance depending on the nature of the matter and its complexity.
- 11.2** The existence, purpose and related procedures of the Hotline facility should be effectively communicated to all stakeholders.
- 11.3** The KSD must ensure that there are proper procedures and controls in place by the oversight structures to ensure timeous receipt of evaluated information.

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- 11.4** The Municipal Manager in conjunction with Audit and Performance Audit Committee, Municipal Financial Misconduct Disciplinary Board from time to time should monitor the effectiveness of the Hotline in terms of the reports it receives and the level of awareness throughout the KSD.

12. PROTECTION OF WHISTLE BLOWERS

- 12.1** The KSD encourages all its councillors / employees or any stakeholder to make protected disclosures when they become aware of suspicious activities.
- 12.2** The Protected Disclosure Act, 2000 (Act No. 26 of 2000) makes provision for the protection of persons who make a disclosure that is protected in terms of the Act.
- 12.3** No person may suffer any penalty or retribution for good faith reporting of any suspected or actual incident of fraud, corruption, theft, maladministration, or any dishonest activity.
- 12.4** There must be no reprisal by management against councillors / employees or stakeholders who in good faith reported a violation or suspected violation.
- 12.5** The KSD must ensure that an effective system is maintained for recording all allegations brought to its attention. This should effectively address the risk of whistle blowers being victimised, by his or her manager and fellow employees.
- 12.6** An employee / councillor who reports suspected fraud may remain anonymous should he/she so require.
- 12.7** All managers should discourage employees or other persons from making allegations, which are false and made with malicious intentions. Where such allegations are discovered, the person who made the allegations must be subjected to firm disciplinary, or other appropriate action.
- 12.8** The Whistle Blowing Policy applies as approved by the Municipal Council.

13. ANTI-FRAUD AND CORRUPTION INVESTIGATION CAPACITY

The Manager / Head Legal Services with the assistance of senior management must assume responsibility for the investigation of fraud, theft, corruption, and other related irregularities within the KSD, and for criminal and civil proceedings. (specific)

The municipality can request CoGTA EC to commission an investigation on more serious fraud, theft, corruption, and other related irregularities. However, management and council may agree after preliminary investigation to appoint an independent investigator depending on the seriousness of the allegations submitted.

14. APPLICATION OF AND CORRUPTION CONTROLS AND DETECTION MECHANISMS

In respect of all reported incidents of fraud, corruption, theft, maladministration or any other dishonest activity, managers are required to immediately review, and where possible, improve the effectiveness of the controls, which have been breached to prevent similar irregularities from taking place in future.

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15. CREATING AWARENESS

15.1 It is the responsibility of all managers to ensure that all Councillors and employees are made aware of and receive appropriate training and education regarding this policy.

15.2 Regular fraud and Corruption workshops should be conducted to create awareness.

16. GIFTS

16.1 An employee / Councillor must not use his or her official position to obtain private gifts or benefits for him or herself in relation to performance of his or her official duties and /or whilst performing his or her official/contract duties.

16.2 An employee / Councillor is disallowed from accepting any gifts or benefits above **R1000.00 (One Thousand Rand)** from potential service provider, relevant stakeholder, client, or potential client in relation to performance of his or her official/ contract duties and/or whilst performing his or her official duties as the acceptance may be constructed as a bribe. The fair market values for each gift will be determined at the time of disclosure by the Municipal Manager.

16.3 In the event, an employee / Councillor who receives any gift or gift with a value less than R1000 (One Thousand Rand) in the course or scope of his employment / contract, and not in contravention of clause 16.1 and 16.2, must declare such gift in writing to the Municipal Manager (in case of councillor to the Speaker) of KSD within one (1) working day of receipt of such gift.

16.4 The Municipal Manager, and for the Speaker must keep a Register of Gifts Received by employees / Councillors and enter all gifts declared by employees / Councillors in the Register on receipt of the declaration.

17. ADMINISTRATION

17.1 The custodian of this policy is the Municipal Manager who is supported in its implementation by the entire KSD's senior management, councillors, and oversight structures.

17.2 The Municipal Financial Misconduct and Disciplinary Board, must be supported by all other stakeholder and, is responsible for the administration, revision, and interpretation of this policy. This policy will be reviewed annually not unless there has been a need and statutory requirement prior to one year term, and appropriate changes should be made accordingly.

18. DISCLOSURE OF CONFLICT OF INTEREST

18.1 All councillors, management, and employees of KSD must disclose any conflict of interest (direct or indirect) in line with the requirements set out in the code of conduct and sec 54 and schedule 1 and schedule 2 of the MSA, respectively.

18.2 The municipal manager and corporate services manager shall ensure that requirement set out in paragraph 18.1 are adhered to in all material respects.

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19. APPROVAL

19.1 The policy should be reviewed and approved annually. However, when there are compelling reasons for updates, like change of law and regulations, the plan must be approved accordingly with that change when appropriate.

APPROVAL OF ANTI-FRAUD AND CORRUPTION POLICY:

PREPARED BY



P Madliki
Chief Risk Officer

DATE

REVIEWED BY



N. Pakade
Municipal Manager

November 2023
~~09 April 2023~~
DATE NP

ADOPTED BY COUNCIL

CONFIRMED BY



Cllr. N Siyo Sokuthu.
Hon. Council Speaker

Date