



**XHARIEP DISTRICT MUNICIPALITY  
FRAUD AND CORRUPTION POLICY  
2020/2021**

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## 1. DEFINITIONS

**Municipal Manager** - means the person who is appointed by the Council as the head of the administration and Municipal Manager for the municipality in accordance with section 82 of the Structures Act.

**CFO**- means the Chief Financial Officer of the municipality;

**Political Office Bearer** - means the Mayor and the Speaker elected by the Council to such a post or position in accordance with the provisions of the Structures Act;

**Council** - means the Municipal Council of Xhariep District Municipality, its legal successors in title and its delegates.

**Staff/Officials** - means the Council, Political Office Bearers and the other employees of Xhariep District Municipality.

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

1. The singular shall include the plural and vice versa;
2. The male sex shall include the female sex and vice versa; and
3. A reference to a natural person shall include a legal person and vice versa.

**Corruption** - it is defined as any conduct or behavior where a person accepts, agrees or offers any gratification for him / her or for another person where the purpose is to act dishonestly or illegally. Such behavior also includes the misuse of material or information, abusing a position of authority or a breach of trust or violation of duty, and not limited to.

**Maladministration** – it is about poor governance. It is defined as an “act or omission committed by the administration or by an employee of the administration and which has the impact of infringing upon a person or institutions’ right to fair administrative action or that results in manifestly inequitable, unfair, irregular or procedural treatment”.

**Theft** - it is defined as “unlawful and intentional misappropriation of another’s property or property which is in his/her lawful possession, with the intention to deprive the owner of its rights permanently”

**Fraud** - it is defined as “the unlawful and intentional making of a misrepresentation which causes actual and or potential prejudice to another”. The use of the term is in its widest possible meaning and is intended to include all aspects of economic crime and acts of dishonesty. In other words, fraud can be described as any conduct or behavior of which a dishonest representation and / or appropriation forms an element.

## **2. INTRODUCTION**

This policy will provide Xhariep District Municipality's officials and other stakeholders such as the public, service providers and non-governmental organizations with essential information regarding the anti-corruption campaign and the responsibilities of the various role players in combating corruption.

This policy is established to facilitate the development of controls that will aid in the detection and prevention of fraud and corruption against Xhariep District Municipality.

Xhariep District Municipality recognizes the fact that: -

- 2.1** Criminal and other irregular conduct within the Municipality is detrimental to good, effective, accountable and transparent governance and can endanger the economic stability and have the potential to cause social damage;
- 2.2** There is a need for procedures in terms of which officials may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct affecting the Municipality;
- 2.3** Every official have a responsibility to disclose criminal and any other irregular conduct in the workplace; and
- 2.4** It has a responsibility to take all reasonable steps to ensure that "Whistle Blowers" who disclose such information are protected from any reprisals as a result of such disclosure.

## **3. OBJECTIVES**

The objective of this policy is to develop and foster a climate within the Xhariep District Municipality where all officials strives for the ultimate eradication of fraud, corruption, theft and maladministration by means of the application of the full spectrum of both pro-active and re-active measures at their disposals.

It is the intent of the Municipality to promote consistent organizational behavior by providing guidelines and assigning responsibilities for the development of controls and conduct of investigations.

This policy also sets down the stance of Xhariep District Municipality to fraud and corruption as well as re-enforcing existing regulations aimed at preventing, reacting to, and reducing the impact of fraud, corruption, theft and maladministration where these dishonest acts exist. In order to remain in compliance with the protected disclosure Act, Xhariep District Municipality will:

- 3.1** Strive to create a culture which will facilitate the disclosure of information by officials relating to criminal and other irregular conduct in the workplace in a responsible manner by providing clear guidelines for the disclosure of such information and protection against reprisals as a result of such disclosure; and
- 3.2** Promote the eradication of criminal and other irregular conduct within the municipality.

This policy is intended to encourage and enable officials to raise concerns within Xhariep District Municipality rather than overlooking a problem or blowing the whistle through inappropriate channels. Furthermore this policy aims to: -

- 3.3** Provide avenues for officials to raise concerns and receive feedback on any action taken;
- 3.4** Inform officials on how to take the matter further if they are dissatisfied with the response; and
- 3.5** Reassure officials that they will be protected from reprisals or victimization for blowing whistle in good faith.

#### **4. SCOPE OF THE POLICY**

This policy should be read in conjunction with the Code of Conduct. Xhariep District Municipality has zero tolerance for the commission or concealment of fraudulent 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.

This policy applies to all fraud, corruption, theft, maladministration or suspected irregularities involving the following persons or entities:

- 4.1** All officials;
- 4.2** Consultants, suppliers, contractors and other providers of goods and/or service;
- 4.3** Non-Governmental Organizations and other parties receiving benefits from the Municipality;
- 4.4** Political Office Bearers (including Councilors)
- 4.5** This Policy also applies to all activities and transactions within the Municipality, and extends to those activities and transactions by intermediaries, stakeholders and service provider organisations that directly or indirectly impact financially or reputational on the Municipality.

#### **5 OWNERSHIP AND RESPONSIBILITIES**

**5.1** The Code of Conduct for Municipal Employees sets out the standard of conduct expected of all employees. It is the responsibility of each employee to be fully conversant with the Code. Together with the Fraud Risk Management Strategy, the Code of Conduct will assist in promoting a fair and honest working environment in the Municipality.

**5.2** The Municipality's employees, service providers and suppliers have an important part to play in dealing with fraud and corruption, and are strongly encouraged to provide information if they suspect fraudulent or corrupt activities.

- 5.3** The Municipality will deal with all information fairly and confidentially. It will endeavour not to reveal the names of the people who provide the information.
- 5.4** The Municipality will ensure that any reporting or investigative process is not misused and, therefore, any abuse, such as raising unfounded malicious allegations, will be dealt with as a disciplinary matter.
- 5.5** The Municipality's employees shall, within the parameters of their respective authority, render appropriate support and assistance to investigations undertaken by Internal Audit and / or other internal or external parties and take the necessary steps to facilitate free access to the Municipality's premises, equipment and information sources as may be requested.
- 5.6** Fraud prevention is the responsibility of all the Municipality's employees. The Municipality's employees must comply with the provisions of this Policy and applicable other requirements and standards.
- 5.7** The Municipal Manager is ultimately responsible for ensuring that proper controls are implemented to prevent, detect or minimise fraud. To this end, the Municipal Manager will provide his / her full support to Managers and employees to enforce all aspects of this Policy on a corporate and business unit level. However, Managers must ensure that their business units have adequately addressed the controls to prevent, detect and investigate fraud and corruption.

## **6. DIMENSIONS OF CORRUPTION**

Corruption takes various forms in the public service and elsewhere in society. The following are examples of different types of corruption.

### **6.1 Bribery**

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of official. This benefit may accrue to official, another person or an entity. A variation of this manifestation occurs where a political party or government is offered, promised or given a benefit that improperly affects the actions or decisions of the political party or government

### **6.2 Embezzlement**

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

### **6.3 Fraud**

This involves actions or behavior by official or other person or entity that fools others into providing a benefit that would normally accrue to the official, or other persons or entity.

### **6.4 Extortion**

This involves coercing a person or entity to provide a benefit to official, another person or an entity in exchange for acting [or failing to act] in a particular manner.

### **6.5 Abuse of power**

This involves official using his or her vested authority to improperly benefit other official, person or entity [or using vested authority to improperly discriminate against another official, person or entity].

### **6.6 Conflict of interest**

This involves official acting or failing to act on a matter where the official has an interest or another person or entity that stands in a relationship with the official has in interest.

### **6.7 Abuse of privileged information**

This involves the use of privileged information and knowledge that an official possesses as a result of his or her office to provide unfair advantage to another person or entity to obtain a benefit, or to accrue a benefit him or herself.

## **7. ACTIONS CONSTITUTING FRAUD, CORRUPTION, THEFT AND MALADMINISTRATION**

The term fraud, corruption, theft and maladministration refer to, but are not limited to:

- Any dishonest, fraudulent or corrupt act;
- Theft of funds, supplies, or other assets;
- Maladministration or financial misconduct in handling or reporting of money or financial transactions;
- Making a profit from insider knowledge;
- Disclosing confidential or proprietary information to outside parties;
- Irregularly accepting or requesting anything of a material value from contractors, suppliers, or other persons providing services/goods to the Municipality;
- Irregularly offering or giving anything of a material value to contractors, suppliers, or other persons providing services/goods to the Municipality;
- Destruction, removal, or abuse of records, furniture, and equipment;

- Deliberately omitting to report or act upon reports of any such irregular or dishonest conduct;
- Incidents of unauthorized, irregular or fruitless and wasteful expenditure as defined in the MFMA; and
- Any similar or related irregularity;
- Any financial misconduct prescribed under Chapter 15 of the MFMA.

## **8. LEGAL FRAMEWORK**

The following legislation and policies, amongst others, have been considered:

- Prevention and Combating of Corrupt Activities Act, no 12 of 2004
- Municipal Finance Management Act, No. 56 of 2003 [MFMA]
- Protected Disclosure Act
- Code of conduct for the Public Service
- Constitution Chapter 2
- Administration of Justice Act, No. 3 of 2000
- Municipal Structures Act, No. 117 of 1998
- Municipal Systems Act, No. 32 of 2000
- Access to Information Act, No. 2 of 2000
- National Treasury guidelines

## **9. POLICY STATEMENT**

It is the policy of the Xhariep District Municipality to have zero tolerance on fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature. In addition, these will be investigated against any suspected perpetrator, including external parties, who commit or attempt to commit a fraudulent or corrupt act against the Municipality and follow up will be made by the application of all remedies available within the full extent of the law.

Employees of the Municipality found to have participated in any fraudulent activity will be subject to disciplinary action, including termination of employment after due processes has been followed. The Municipality will ensure that any internal proceedings do not prejudice any criminal case.

The Municipal Manager will refer all incidents to the South African Police Service or any other appropriate lines of authority if she/he suspects any fraud or criminal activity has been committed.

All recourse and actions will be taken within the constitutional context in which the Municipality operates, with due regard to the principles of fairness and administrative justice.



Appropriate prevention and detection controls will be applied. These include the existing controls and checking mechanisms as prescribed in existing policies, procedures and other relevant prescripts to the activities and systems of internal control.

It is the responsibility of the employees to report all incidents of fraud, corruption, theft, maladministration or any other dishonest activities of a similar nature.

Xhariep District Municipality will take appropriate legal recourse to recover losses or damages arising from fraud, corruption, theft or maladministration.

## **10. FRAUD PREVENTION APPROACH**

A comprehensive approach to the management of fraud and corruption risks with specific focus on the following:

- Understanding fraud risks that can undermine the municipality's objectives;
- Determining whether fraud and corruption prevention programs and controls are also adequately effective in reducing instances of fraud;
- Gaining insight into better ways of designing and evaluating controls to prevent, detect and respond appropriately to fraud and corruption;
- Reducing exposure to liability, sanctions and litigation that may arise from violations of law or stakeholder expectations;
- Deriving practical value from the development of a sustainable process of managing fraud, corruption risk, and improving performance;
- Achieving the highest level of business integrity through sound corporate governance, internal control and transparency.

## **11. RESPONSIBILITY TO CONDUCT INVESTIGATIONS**

The responsibility to conduct investigations relating to the actions listed in this policy resides with the Manager Legal Services within the Municipality who can have the advisory and supporting assistance from relevant departments within the municipality and the following institutions:

- External and Internal Audit Services;
- State Attorney;
- External investigating agencies, for example the South African Police Services, where matters fall within their mandate;
- External consultants, for example Forensic Accounting consultants;
- Office of the National Director of Public Prosecutions;
- Special Investigating Units established under any law;
- The Public Protector; and
- Any other authority as determined by Council.

The Municipality will make all evidence collected during the course of an investigation available to legal and law enforcement agencies if necessary and will pursue the prosecution of all parties involved in criminal activities.

## **12. REPORTING PROCEDURES AND RESOLUTION OF REPORTED INCIDENTS**

**12.1** It is the responsibility of all employees of the Xhariep District Municipality to report all incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to relevant Directors following the appropriate reporting lines. If the applicable official is not comfortable reporting such matters to the relevant Director the matter can be reported in writing to the Manager Legal Services or Municipal Manager.

**12.2** 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 will make to take action and initiate recovery procedures where necessary. Whistle blowers will not be expected to prove the truth of an allegation, however they may be required to demonstrate that there are sufficient grounds for concern. Whistle blowers must report the suspected incidents through one of the following:

### **12.2.1 Non-Anonymous Reporting**

- Report in writing, verbally or telephonically to the relevant Director
- Report in writing, verbally or telephonically to the Director: Human resources
- Report in writing to the Municipal Manager.

### **12.2.2 Anonymous Reporting**

- The confidential Fraud Hotline: **0800 701 701**
- Anonymous letter to Municipal Manager or Director: Human resources

**12.3** It is the responsibility of the Municipal Manager to immediately report all reported incidents to Provincial Treasury. This reporting must take place as follows:

- Telephonically within twenty four hours of receiving the report from Director; and
- This telephonic report must be followed by a detailed written report to be submitted within seven days after reporting of an incident.

**12.4** All incidents alleged to have been committed by the Municipal Manager or any member of the political office should be reported anonymously, refer bullet one of 12.2.2 above.

**12.5** All incidents where an official is alleged Manager Legal Services will initiate an investigation and then if necessary instigate necessary disciplinary actions in terms of the disciplinary code and procedure of the Municipality. The Manager Legal Services must in writing report all disciplinary proceedings'

outcomes within 48 hours to the Municipal Manager. The following details should be included in the report:

- The name and position of the official against whom proceedings are instituted;
- The disciplinary charges, indicating the type of misconduct the official as alleged to have committed;
- The findings of the disciplinary hearing;
- Any sanction imposed on the official; and
- Any further action to be taken against the official, including criminal charges or civil proceedings.

**12.6** It is advised that all whistle blowers should keep a copy of the letters used to report incidents of fraud.

**12.7** All reported incidents that could lead to laying of criminal charges will be reported within 48 hours to the South African Police Services by the Municipal Manager.

**12.8** The Municipal Manager is also required to ensure that losses or damages suffered by the Municipality as a result of an act committed or omitted by official must be recovered from such official. The Municipal Manager must determine the amount of the loss or damage and, in writing request that official to pay the amount within 90 days in reasonable instalments from his/her salary. If the official fails to comply with the request, the legal process will then be initiated by the Municipal Manager.

### **13. PROTECTION OF WHISTLE BLOWERS**

**13.1** Whistle blowing is the process by which employees or other individuals can raise a concern about serious malpractice within an organization. It is similar to an early warning system and a means of enabling stakeholders to find out when something is going wrong timely to take corrective action.

**13.2** An official who suspects or reports suspected dishonest activity or such activity which he has witnessed should be given the opportunity to remain anonymous should he so require.

**13.3** Whistle blowers that might be victimized and subjected to an occupational detriment for blowing the whistle on indecencies are protected under provisions of Protected Disclosures Act, 26 of 2000.

**13.4** Allegations made by officials that are false and made with malicious intentions are discouraged. Where such malicious or false allegations are discovered, the official who made the allegations will be subjected to a firm disciplinary action and may not be protected by the Protected Disclosures Act.

#### **14. HARASSMENT OR VICTIMISATION**

The Municipality acknowledges the fact that the decision to report a concern can be a difficult one to make because of fear of reprisal from those responsible for the irregularity. The Municipality do not tolerate harassment or victimization and will take action to protect official when they raise concerns in good faith. Any act of harassment or victimization should be reported to Manager Legal Services or the Municipal Manager. This does not mean that if the official is already subjected to disciplinary or other action, that action will be halted as a result of blowing the whistle.

#### **15. CONFIDENTIALITY**

All information relating to alleged incidents reported will be treated confidentially. The progression of investigations will be handled in a confidential manner and will not be disclosed or discussed with any other person[s] other than those who have a legitimate right to such information. This is important in order to avoid harming the reputations of suspected persons who are subsequently found innocent of wrongful conduct.

No official is authorized to supply any information with regard to the issues covered within this policy to the media without the express permission of the Municipal Manager.

#### **16. ANONYMOUS ALLEGATIONS**

Xhariep District Municipality encourages officials to put their names to internal allegations as incidents reported anonymously can at times be difficult to investigate. Nevertheless internal incidents formally reported will be followed up at the discretion of the Municipal Manager. This discretion will be applied by taking into account the following:

- Seriousness of the alleged incident;
- Creditability of the incident; and
- Likelihood of confirming the allegation.

#### **17. FALSE ALLEGATIONS**

Employees or other parties who wish to low whistle must understand the implications [resources and costs] of undertaking investigations and should therefore guard against making allegations which are false or with malicious intent.

#### **18. APPLICATION OF PREVENTION CONTROLS AND DETECTION MECHANISMS**

In all instances where incidents of fraud, corruption, theft, maladministration and other similar irregularities of this nature take place all Directors are required to immediately review the controls which are weak or have been breached in order to

prevent similar irregularities from occurring in the future. The Manager Internal Auditor, Chief Risk officer or Manager Legal Services may be consulted for assistance in this regard.

## **19. TRAINING, EDUCATION AND AWARENESS**

In order for this Policy to be sustainable, it will be communicated to all employees via email or training and awareness sessions which will be scheduled for the period. It is the responsibility of all Directors to ensure that all employees attend the scheduled training and awareness sessions when communicated.

## **20. ADMINISTRATION**

The custodian of this policy is the Municipal Manager and all Directors will support in ensuring implementation.

The Municipal Manager is responsible for the administration, revision, interpretation and application of this policy. It will be reviewed annually and revised as required.