

**FRAUD PREVENTION AND ANTI-CORRUPTION  
STRATEGY AS AMENDED  
FOR  
2019/2020**



## TABLE OF CONTENTS

| No | Description   | Page NO. |
|----|---|----------|
| 1  | Definitions   | 1        |
| 2  | Introduction  | 5        |
| 3  | Policy statement on Fraud Prevention and Anti-Corruption            | 5        |
| 4  | Legal Framework   | 6        |
| 5  | Scope   | 6        |
| 6  | Objective   | 7        |
| 7  | Strategies in dealing with allegations of fraud and corruption      | 7        |
| 8  | General consideration affecting the investigation of matters        | 9        |
| 9  | Forms of fraud and corruption                                       | 10       |
| 10 | Actions constituting fraud, corruption, theft and maladministration | 13       |
| 11 | Anti-corruption response plan                                       | 14       |
| 12 | Responsibility to conduct investigation                             | 15       |
| 13 | Reporting procedures and resolution of reported incidents           | 15       |
| 14 | Roles and responsibilities  | 18       |
| 15 | Protected disclosures   | 21       |
| 16 | Application of prevention controls and detection mechanisms         | 23       |
| 17 | Conflict of interest  | 23       |
| 18 | Disciplinary action   | 24       |
| 19 | Code of conduct   | 24       |
| 20 | Policy approval and adoption  | 24       |

**1. DEFINITIONS:**

**CFO** “means the Chief Financial Officer of Harry Gwala District Municipality;

**Constitution**” means the constitution of the Republic of South Africa, 1996 (Act. No 108 of 1996);

**Corruption**” means any conduct or behaviour where a person accepts or agrees or offers any gratification for him/her or for another person where the purpose is to act dishonestly and 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;

**Corrupt Activities Act**” means the Prevention and Combating of Corrupt Activities Act 2004 (Act No. 12 of 2004);

**Council**” means the Council of Harry Gwala District Municipality;

**Councillor**” means a member of Council of Harry Gwala District Municipality;

**Disclosure**” in terms of the Protected Disclosure Act , 2000 ( Act No.26 of 2000), 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 intends to show one or more of the following:

- i. That a criminal offence has been committed, is being committed or is likely to be committed;
- ii. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- iii. That a miscarriage of justice has occurred, is occurring or is likely to occur;
- iv. That the health or safety of an individual has been, is being or likely to be endangered;
- v. That the environment has been, is being or is likely to be damaged;
- vi. Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, ( No.4 of 2000) or
- vii. That any matter referred to in paragraphs (i) to (vi) has been, is being or is likely to be deliberately concealed;

**Disciplinary Procedure**” means the disciplinary procedure of the municipality in terms of the collective agreement of the South African Local Government Bargaining Council (SALGBC) and / or the Disciplinary Code and Procedures for Senior Managers;

**Employee**” means any employee of the municipality, contractual or permanent;

**Fraud**” means the unlawful and intentional making of a misrepresentation which causes actual 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;

**Billing Fraud**” occurs when suppliers of goods and services to a municipality overcharge or otherwise produce false invoices, and payment is secured on those with the help of an employee.

**MFMA**” means the Local Government: Municipal Finance Management Act, 2003 (Act No.56 of 2003);

**Municipality**” means Harry Gwala District Municipality;

**Municipal Manager**” means the Municipal Manager of Harry Gwala District Municipality;

**NPA**” means the National Prosecuting Authority of the Republic of South Africa;

**Occupational detriment**” in relation to the working environment of an employee in terms of the Protected Disclosure Act (Act No. 26 of 2000) means:

- i. Being subjected to any disciplinary action;
- ii. Being dismissed, suspended, demoted, harassed or intimidated;
- iii. Being transferred against his or her will;
- iv. Being refused transfer or promotion;
- v. Being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her a disadvantage;
- vi. Being refused a reference, or being provided with an adverse reference, from his or her employer;
- vii. Being denied appointment to any employment, profession or office;
- viii. Being threatened with any of the actions referred to in paragraphs (i) to (vii) above; or
- ix. Being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security;

**Political Office Bearers**” mean councillors appointed to hold political offices in the municipality i.e. the Mayor and the Speaker;

**Protected Disclosure**” in terms of the Protected Disclosure Act (Act No.26 of 2000), means a disclosure made to:

- i. A legal adviser in accordance with section 5;
- ii. An employer in accordance with section 6;
- iii. A member of Cabinet or of the Executive Council of a province in accordance with section 7;
- iv. A person or body in accordance with section 8;

- v. Any other person or body in accordance with section 9; but does not include a disclosure:
  - a) In respect of which the employee concerned commits an offence by making a disclosure; or
  - b) Made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5.

**Protected Disclosure Act**” means the Protected Disclosure Act, 2000 (Act No.26 of 2000);

**Recipient of a compliant**” means any employee or councillor of the municipality to whom a compliant of fraud, corruption and maladministration is laid, this may involve but is not limited to a Supervisor, Line Manager, Executive Director, Municipal Manager or an employee acting in any such capacity, Mayor, the Speaker and/or the Chairperson of the Audit Committee.

**SAPS**” means the South African Police Force of the Republic of South Africa;

**Speaker**” means the speaker of Harry Gwala District Municipal Council;

**Systems Act**” means the Local Government Municipal Systems Act, 2000 (Act No.32 of 2000);

**Structures Act**” means the Local Government Municipal Structures Act, 1998 (Act No. 117 of 1998);

**SCM Regulations**” means the Supply Chain Management Regulations, 2005 (Act No. 27636 of 2005)

---

## **2. INTRODUCTION**

This document outlines the Fraud Prevention and Anti-Corruption strategy of Harry Gwala District Municipality and is applicable to all employees, stakeholders, contractors, suppliers, service providers, consultants, clients and councillors of Harry Gwala District Municipality.

The Fraud Prevention and Anti-Corruption Strategy require that all staff members and councillors at all times act with honesty, integrity and to safeguard the municipal resources for which they are responsible for. Fraud and Corruption are ever-present threats to these resources and hence must be a concern to all members of staff.

- 2.1. Fraudulent and corrupt practices undermine the basic values and principles governing public administration as set out in chapter 10 of the Constitution;
- 2.2. Criminal and other irregular conduct is detrimental to good, effective, accountable and transparent governance and can hamper the service delivery capacity of the municipality;
- 2.3. Procedures are provided in terms of which employees and councillors may without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct;
- 2.4. This strategy also provides guidelines for all employees and councillors of the municipality, including external stakeholders, to prevent and combat fraud and/or corruption and other acts of theft and maladministration.

## **3. HARRY GWALA DISTRICT MUNICIPALITY POLICY STATEMENT ON FRAUD PREVENTION AND ANTI-CORRUPTION.**

It is the policy of the municipality that fraud, corruption, maladministration or any other dishonest activities of a similar nature will not be tolerated. Such activities will be investigated and actions instituted against those found responsible. Such actions may include the laying of criminal charges, civil and administrative actions and the municipality recoveries where applicable.

Prevention, detection, response and investigative strategies will be designed and implemented. These will include any existing controls (system controls and manual internal controls) and those currently prescribed in existing policies, procedures and other relevant prescripts to the activities of the municipality.

It is the responsibility of all employees to report all incidents of fraud and corruption that may come to his/her attention to his/her supervisor. Alternatively such reports can be made by way of submitting a report through the prescribed whistle blowing mechanism.

All reports received will be treated with the requisite confidentiality and will not be disclosed or discussed with parties other than those charged with investigation into such reports.

All managers are responsible for the detection, prevention and investigation of fraud and corruption within their areas of responsibility.

#### **4. LEGAL FRAMEWORK**

The Fraud Prevention and Anti-Corruption Strategy have been compiled in accordance with:

- The Constitution of the Republic of South Africa, (Act No.108 of 1996 ( hereafter referred to as the Constitution);
- Protected Disclosure Act, ( Act No.26 of 2000);
- Prevention and Combating of Corrupt Activities ( Act No 12 of 2004);
- The Municipal Finance Management Act, ( Act No. 56 of 2003);
- Local Government Municipal Structures Act, ( Act No. 117 of 1998);
- Local Government Municipal Systems Act, ( Act No. 32 of 2000);
- Local Government Municipal Supply Chain Management Regulations, ( Act No. 27636 of 2005);
- National Treasury Regulations.
- The Promotion of Access to Information Act (No.2 of 2000).
- The Promotion of Administrative Justice Act (No. 3 of 2000).
- The Public Finance Management Act (PFMA) No. 1 of 1999).
- The Financial Intelligence Centre Act (FICA) No.38 of 2001.

#### **5. SCOPE**

5.1. This strategy applies to all corruption, fraud, theft and maladministration or suspected irregularities of this nature involving, but not limited to the following persons or entities:

- a) Employees of the municipality;
- b) Political Office Bearers;
- c) Councillors;
- d) Consultants, suppliers, contractors and other providers of goods and services to the municipality'

5.2. This strategy shall be applied with due observance of the municipality's strategy with regard to delegated powers. Such delegations refer to delegations between the Municipal Manager and other responsible officials, the Council and the Mayor as well as between the Council and the Municipal Manager.

## **6. OBJECTIVES**

6.1. This strategy also sets out the stance of the Municipality with regards to corruption and fraud, as well as reinforcing existing legislation aimed at preventing, reacting to and reducing the impact of fraud, corruption, theft and maladministration, where these dishonest acts subsist.

6.2. It also aims to develop and foster an environment, where all employees and councillors shall strive 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 disposal.

6.3. Furthermore, this strategy prescribes appropriate prevention and detection controls, including, but not limited to, the disclosure of unlawful or irregular acts or conduct as prescribed by the Protected Disclosures Act.

6.4. Consistent with such an Act, the Municipality has the responsibility to take reasonable steps to ensure that “whistle –blowers”, who disclose such information, are protected from any reprisal as a result of such disclosure.

## **7. STRATEGIES IN DEALING WITH ALLEGATIONS OF FRAUD AND CORRUPTION**

7.1. It is the strategy of the Municipality that fraud, corruption, theft and maladministration or any other dishonest activities of a similar nature will not be tolerated. In addition, these acts will be investigated and followed up by the application of all remedies available within the full extent of the law.

7.2. Appropriate prevention and detection controls will be applied. These include the existing controls and checking mechanisms as prescribed by existing policies and procedures, and systems of internal control.

7.3. It is the responsibility of all employees and councillors of the Municipality to report incident of fraud, corruption, theft, maladministration or any other dishonest activity.

7.4. Executive Directors are responsible for the detection, prevention and investigation of fraud, corruption, theft, maladministration, or other dishonest activities within their directorates. All managers (and other employees who hold positions of authority) shall also bear responsibility for reporting such acts, as stipulated.

7.5. The Harry Gwala District Municipality shall report all instances of prima facie criminal conduct to the appropriate authorities. Due cognizance shall be observed with regard to section 34(1)(b) of the corrupt Activities Act, which imposes an obligation to report all acts of corruption, fraud, theft, extortion, forgery, or uttering a forged document. Such acts of dishonesty must be reported to the SAPS, failing which management who are aware of the matter, will be committing a criminal offence.

7.6. The Harry Gwala District Municipality shall, however, not only report matters in terms of the above obligation, but shall report all criminal conduct irrespective of the value involved

7.7. The Harry Gwala District Municipality shall take appropriate legal resources to recover losses or damages arising from fraud, corruption, theft or maladministration.

7.8. The efficient application of National Treasury regulation, issued in terms of the MFMA, relevant circulars and the application of strategy resolutions of the Municipality with regard to unauthorized, irregular, fruitless and wasteful expenditure, and other acts of financial dishonesty.

7.9. Any fraud or corruption committed by councillors or staff will be pursued by through investigations and to the full extent of the law including:

- a) Taking disciplinary action within a reasonable period of time after the incident;
- b) Instituting civil action ( particularly to recover losses incurred by the municipality);
- c) Initiating criminal prosecution by reporting the matter to the SA Police Services or any other relevant law enforcement agency; and
- d) Any appropriate legal remedies available.

7.10. The municipality accepts that those people who reported alleged fraud or corruption need to be assured that the matter has been properly addressed. Thus subject to legal constraints, information about outcomes of any investigation will be disseminated on a “need to know basis”

7.10. In respect of all reported incidents of alleged / suspected fraud and corruption, management is required to immediately review and where possible improve the effectiveness of controls which have been breached in order to prevent similar irregularities from taking place in the future;

7.11. It the municipality’s policy to refer alleged fraud and corruption of a criminal nature for prosecution by the appropriate authorities. Any decision by the Municipal Manager to refer or not to refer an incident can only be undertaken after consultation with Internal Audit. In cases that involve the councillors or senior management, the Municipal Manager may want to appoint outside independent advisers to assist in this evaluation;

7.12. Any alleged/suspected acts of fraud and corruption as defined in this policy document must be reported to Internal Audit without delay;

7.13. Internal Audit obtain, assembles and researches information on alleged/suspected acts of fraud and corruption and other unlawful and/or

irregular conduct and practices in order to identify causes, advise and consult on interventions and action plans;

- 7.14. Council and management of the municipality shall, within the bounds of their authority render appropriate support and assistance to investigation undertaken by Internal Audit and shall arrange/take the necessary steps to facilitate free access to municipality controlled building, equipment, staff and information sources needed;
- 7.15. All practices and procedures utilised during investigations shall comply with the requirements of South African Law.

## **8. GENERAL CONSIDERATION AFFECTING THE INVESTIGATION OF MATTERS**

The Municipal Manager should consider the following general points together with Internal Audit when deciding whether or not to refer an alleged criminal contravention to the appropriate authorities:

- a) Prima facie existence of an alleged criminal offence;
- b) Provisions of relevant legislation;
- c) Legal advice obtained;
- d) Labour relations advice obtained;
- e) The sensitivity of the matter and possible impact on the labour force;
- f) The opinion of the director of public prosecution and /or senior public prosecutors and SAPS;
- g) The specific merits of the individual case;
- h) The magnitude and seriousness or complexity of the matter;
- i) The probable impact on the municipality's image ( positive or negative);
- j) The public interest in the matter.

## **9. FRAUD, CORRUPTION, THEFT AND MALADMINISTRATION**

### **9.1. FORMS OF FRAUD AND CORRUPTION**

#### **9.1.1. Bribery**

Bribery involves the promise, offering or giving of a benefit that improperly affects the actions or decisions of an employee. This benefit may accrue to the employee or councillor, another person or an entity.

#### **9.1.2. Embezzlement**

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

### **9.1.3. Fraud**

This involves actions or behaviour by an employee, councillor or other person or entity that provides a benefit that would not normally accrue to the person(s) or entity. Such fraud is frequently committed by persons who enjoy position of trust or authority within the Municipality, and may involve acts such as issuing falsified financial statements or performance reports with the object of misleading council. External fraud occurs when persons outside the organization perpetrate fraud against the Municipality:

- Such as the inadequate supply of deliveries at delivery points exploiting loopholes in the Municipality's security system,
- False statements or reports regarding work done on construction sites, or
- Repair and service contracts where there is inadequate control over these contracts.

### **9.1.4. Extortion**

This involves coercing a person or entity to provide a benefit to an employee, councillor or another person or an entity in exchange for acting (or failing to act) in a particular manner.

### **9.1.5. Abuse of Power**

This involves an employee or councillor using his or her vested authority to improperly benefit another employee or councillors, person or entity or using vested authority to improperly discriminate against an employee or councillor, another person or entity.

### **9.1.6. Conflict of interest**

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

### **9.1.7. Abuse of privileged information**

This involves the use of privileged information and knowledge that an employee or councillor 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 to him or herself. This may also involve the misuse of confidential information of the Municipality by people in positions of trust, for example through the misuse of computer access control.

**9.1.8. Looting/robbing**

This is when an individual is involved in the illegal and illegitimate transfer/handover of money or goods from the municipality or the municipal bank account to another company/individual. Looting may also take the form of diversion of goods and services from an intended destination to another (unintended one). An example of this type of corruption is where suppliers or contractors collude with staff to be paid for goods and services that were never delivered.

**9.1.9. Patronage**

Patronage systems consist of the granting favours, contracts or appointments to positions by a local public office holder or candidate for a political office in return for political support. Many times patronage is used to gain support and votes in elections or in passing legislation. Patronage systems disregard the formal rules of a local government and use personal instead of formalized channels to gain an advantage.

**9.1.10. Cronyism**

It is the practice of appointing friends to high-level, especially political posts regardless of their suitability.

**9.1.11. Nepotism**

When a municipal official or councillor uses his influence to ensure that family members or friends or partners are appointed into any municipal vacancies or that family members or friends or partners receive contracts from the municipality, is it regarded as nepotism;

**9.1.12. Trans-active Corruption**

Trans-active corruption arises from dealings between an official and a supplier of goods and services. It may occur when particular officials want to enrich themselves at the expense of the municipality. For instance, when an official colludes with a supplier of uniforms and the latter supplies goods of substandard quality to the municipality at an inflated cost so that they not only share the profits but also so that colleagues get poor quality uniforms, then trans-active corruption is said to have taken place.

**9.1.13. Systemic Corruption**

Is when corruption becomes accepted as the norm and as part and parcel of the procedures of running public affairs of a municipality or a society at large. A common

manifestation of systemic corruption in our country is the frequent bribes by offenders to traffic police officers either to ignore the lack of road worthiness, or over-loading, or over-speeding.

#### **9.1.14. Collusion**

It means conspiring with others by staff/councillors/bidders/suppliers especially in planning fraud or conniving and entering into secret agreement for wrongful and improper purposes.

#### **9.1.15. Conspiracy**

Any person who unlawfully and intentionally conspires with any other person to aid or procure a commission from or to commit any offence, whether at common law or against statute or a statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which the person convicted of actually committing offence would be liable.

#### **9.1.16. Misappropriation**

- A non-violent criminal taking of property which includes embezzlement, theft, and fraud. Often applied to a staff members taking of an employer's property. E.g. stationary, fuel, tools and equipment;
- Taking/using what belongs to someone else like municipal quotes and tenders and using it unfairly for one's own gain, for example, or using your position with suppliers for own gain;
- To use wrongly or improperly. In terms of copyright, it is the act of theft or improper use of intellectual property for financial or personal gain;
- Often called unfair competition. A common law form of unfair completion in which an individual or firm copies or appropriates some creation of another that is not protected by patent, copyright, or trademark law, or any other traditional theory of exclusive rights.

**9.2. ACTIONS CONSTITUTING FRAUD, CORRUPTION, and THEFT AND MALADMINISTRATION:** The term fraud, corruption, theft and maladministration refer to, but are not limited to:

- a) Any dishonest, fraudulent or corrupt act;
- b) Theft of funds, supplies, or other assets;
- c) Maladministration or financial misconduct in handling or reporting of money or financial misconduct in handling or reporting of money or financial transactions;
- d) Making a profile from insider knowledge;

- e) Disclosing confidential or proprietary information to outside parties;
- f) Deliberately and dishonestly altering document, records or vouchers for financial gain; creating false invoices or credit notes; creating fictitious suppliers accounts; creating false purchasing items for private use on the municipality's accounts; submitting false claims for remuneration of expenses; or buying goods on credit with the full knowledge that council does not have the means to pay for them; approving unauthorized deliveries and/or creating fictitious employees on the Municipality's payroll.
- g) Irregularly accepting or requesting anything of a material value from contractors, suppliers, or persons providing services /goods to the Municipality;
- h) Irregular offering or giving anything of a material value to contractors; suppliers; or other persons providing services/goods to the Municipality; and/ or special favours or concessions to clients/suppliers or contractors or other parties in exchange for remuneration in the form of cash or other benefit.
- l) Destruction, removal, or abuse of records, furniture and equipment,
- j) Deliberately omitting to report or act upon reports of any such irregular or dishonest conduct;
- k) Acts of financial misconduct contemplated in terms of section 171 to 173 of the MFMA
- l) Incidents of unauthorized, irregular or fruitless and wasteful expenditure as defined in section 32 of the MFMA; and
- m) Any similar or related irregular as prescribed by the Prevention and Combating of Corrupt Activities Act, the MFMA and other applicable legislation.

#### **10. ANTI-CORRUPTION RESPONSE PLAN**

Flexible detection techniques should be established to meet the changing risks and to uncover fraud events when preventative measures fail or unmitigated risks are realized. Process controls specifically designed to detect corrupt activity, as well as errors, include reconciliations, independent reviews, physical inspections, counts, analysis and audits.

In addition to detective process controls, the municipality may use be able to use data analysis, continuous auditing techniques, and other technology tools effectively to detect fraudulent activity. Data analysis uses technology to identify anomalies, trends, and risk indicators within large populations of transactions.

Internal Audit using this analytics might be able to continuously drill down into journal entries looking for doubtful transactions or once occurring at the end of financial year and later reversed in the next financial year.

Evidence of fraud can sometimes be found in email as well. The ability of a municipality to capture, maintain, and review the communications of any of its employees has led to the detection of numerous frauds in the past decade. This is accomplished through the use of strict and regular backup programs that capture data, not with the intent of uncovering fraud, but merely as a safeguard in the event that a retrospective search for evidence may be necessary.

### **10.1 DETECTING PROCEDURES**

- i. The municipality will implement detection measures to ensure that high risk areas and reported suspicions are thoroughly assessed and audited. This will include but not be restricted to the following:
  - a) Conduct forensic investigations into alleged acts of fraud and corruption;
  - b) Undertake regular fraud risk assessments in critical areas;
  - c) Compile and present monthly reports to Council on incidences and suspicions reported;
  - d) Management and quality assurance to ensure appropriate levels of supervision.
- ii. Implement the right of the municipality to check on its staff members and those who do not disclose their interests whether it may be:
  - a) Directorships or Partnerships in any business entity;
  - b) Share and securities in any company;
  - c) Membership of any close corporation;
  - d) Other financial interest in any business undertaking whether he/she is a silent partner or a non-executive director'
  - e) Interest in any trust or property;
  - f) Gifts, sponsorship and grants from other organisations no matter how trifling the gifts, sponsorship and grant may be.

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

- 11.1. The responsibility to conduct investigations relating to the actions listed in this strategy resides with Council, the Municipality Manager and the Executive Directors within the Municipality who have the advisory and supporting

assistance from departments and external state agencies which may include any of the following:

- a) Internal and external audit services;
- b) State Attorney;
- c) External Investigating agencies, for example the SAPS, where matters fall within their mandate;
- d) External consultants, for example Forensic Accounting consultants;
- e) Office of National Director of Public Prosecutions;
- f) Special Investigating Units established under any law;
- g) The Public Prosecutor;
- h) Any other authority as may be determined by Council.

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

- 12.1. It is the responsibility of every employee of the Municipality to report incidents of fraud, corruption, theft, maladministration and other suspected irregularities of this nature to his/her Manager . If the employee is not comfortable reporting such matters to his/her immediate Supervisor or manager, he/she should report the matter to any other member of management, the Municipal Manager and/ or the Chairperson of the Audit Committee.
- 12.2. Should an employee wish to make a report anonymously, such a report may be made to any member of management, the Municipal Manger; the Chairperson of the Audit Committee and or/the speaker or the Mayor.
- 12.3. It is the responsibility of any recipient of a complaint to promptly report all incidents of fraud, corruption, theft maladministration and other suspected irregularities of this nature to the Municipal Manager.
- 12.4. Where an employee is alleged to have committed an act of fraud, corruption, theft, or maladministration, the Municipal Manger must institute disciplinary proceedings in terms of the applicable disciplinary procedure of the Municipality.
- 12.5. Where a councillor is alleged to have committed an act of corruption of fraud, the Speaker or Council must institute an investigation in terms of section 13 and 14 respectively, of the Code of Conduct for Councillors as contained in the Municipal System's Act.

- 
- 12.6. As soon as disciplinary hearings concerning charges of fraud, corruption, theft, maladministration and other suspected irregularities of this nature are completed, the outcome must be reported promptly to the Municipal Manager.
- 12.7. The Municipal Manager must also report to SAPS all cases of alleged –
- a) Irregular expenditure that constitute a criminal offence, and
  - b) Theft, fraud, corruption, theft and maladministration including other suspected irregularities of this nature.
- 12.8. Consistent with section 32 of the MFMA and in terms of this Strategy, the Municipal Manager must inform the Executive Mayor, Council, and the MEC for Local Government in the Kwa-Zulu Natal and the Auditor General, in writing of:
- a) Any unauthorized, irregular, fruitless and wasteful expenditure incurred by the Municipality, and in terms of this strategy, shall also include serious incidents of fraud, corruption, theft, maladministration and other irregularities of this nature;
  - b) Whether any person is responsible or under investigation for such unauthorized, irregular, wasteful or fraudulent expenditure; and
  - c) The steps that have been taken to:
    - I. Recover or rectify such expenditure; and
    - II. To prevent a recurrence of such expenditure.
- 12.9. The writing off of any unauthorized, irregular, fruitless and wasteful expenditure or any other expenditure incurred as a result of fraud, corruption, theft, maladministration and any other suspected irregularities as irrecoverable, does not prevent criminal or disciplinary proceedings being instituted against a person charged with an offence relating to such expenditure.
- 12.10. The Municipality may, in terms of this strategy and section 176(2) of the MFMA, recover such losses or damages incurred by the Municipality. Therefore an employee or councillor who due to deliberate or negligent unlawful actions shall be held liable for the recovery of such financial losses.
- 12.11. In pursuance of section 9.9 of this strategy, the Municipal Manager may utilize the amendments to the Pension Funds Act, which allows an employer, on registration of a criminal docket with the SAPS, to request the pension fund to freeze the employee's or the councillor's benefit payments who has been allegedly involved in financial misconduct, pending finalization of the criminal prosecution. Thereafter, if the employee or the councillor is convicted, any

losses by the employee or the councillor shall be recovered from the assets owned by the person concerned.

12.12 Council must take all reasonable steps to ensure that cases that are referred to in the section 9.6 are reported to the SAPS if-

- a) The charge is against the Municipal Manager
- b) The Municipal Manager fails to comply with that section.

12.13. Consistent with section 171(4) of the MFMA, the Municipality shall institute an investigation regarding all allegations of financial misconduct against the Municipal Manager, the CFO, any senior manager or other official of the Municipality, unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and

12.14. If the investigation warrants such a step, Council shall institute disciplinary proceedings against the Municipal Manager, the CFO or any other senior manager in accordance with the Disciplinary Code and Procedures for Senior Managers (Notice 1568 of 2009)

12.15. The Municipality shall also investigate allegations of financial misconduct involving any councillor, such allegations shall be dealt with in terms of breaches of the Code of Conduct for the Councillors as stipulated in schedule 1 of the Systems Act and the Municipality's Rules of Conduct for Councillors.

12.16 The failure of a recipient of complaint to take prompt and reasonable steps to ensure that allegations of fraud, corruption and/or any other similar irregular or dishonest activity are appropriately dealt with, may result in disciplinary measures being instituted against such a recipient.

## **13 ROLES AND RESPONSIBILITIES**

### **Council**

Council is responsible for setting the tone at the top by:

- a) Considering and adopting a fraud prevention and anti-corruption strategy for the municipality;
- b) Annual reviewing and amending where necessary the fraud prevention and anti-corruption strategy;
- c) Overseeing the implementation of the fraud prevention and anti-corruption strategy;

- d) Consider reports from the Municipal Manager, Risk Committee and the Audit Committee in respect of fraud and corruption matters;
- e) Acting in an ethical and responsible manner.

### **Municipal Manager**

The Municipal Manager is responsible for ensuring that the strategy is implemented within the municipality. These include the following:

- a) Ensuring that the municipality develops and implements a fraud prevention and anti-corruption strategy;
- b) Establish the Fraud and Corruption/ Risk Committee;
- c) Ensure that councillors and staff are educated and aware of the strategy;
- d) Ensures that training sessions for staff on the fraud and corruption strategy in particular, and fraud and corruption in general is conducted;
- e) Oversee the implementation of prevention, detection, investigation and resolution measures in respect of fraud and corruption are within the municipality;
- f) Abides by the code of conduct of the municipality.

### **Internal Audit**

In relation to fraud, internal auditing should provide assurance to the council and management that the controls both manual and computerised reviewed are appropriate to deter, detect and prevent fraud. These include the following:

- a) Perform fraud and corruption detection reviews on high fraud and corruption risk areas surprisingly and planned;
- b) Investigate of all alleged/suspected fraud and corruption;
- c) Advise the Municipal Manager and report to the Audit Committee on the investigation of alleged/suspected fraud and corruption;
- d) Recommend controls to identify , detect and prevent fraud and corruption pressures;
- e) Investigate high-risk business areas and processes, and advise on the implementation of appropriate internal and external fraud and corruption threats.

### **AUDIT COMMITTEE**

The Audit Committee is appointed by council as prescribed in Section 166 of the MFMA, No 56 of 2003. The Audit Committee will be responsible for the following:

- a) Advising the municipal council, political office bearers, the accounting officer and management staff of the municipality on matters relating to good governance, fraud and corruption;
- b) Support the implementation of the fraud prevention and anti-corruption strategy;
- c) Carry out investigations into allegations of fraud and corruption;
- d) Compile reports of such investigations and recommend disciplinary and corrective measures.

Council can delegate the oversight role to an Ant-Fraud and Corruption/ Risk Committee to oversee the implementation of the fraud prevention, fraud detection strategies and to respond to fraud and corruption incidents.

### **RISK COMMITTEE**

- a) Monitor the application of the strategy and policy and ensuring adequate supervision and dynamism of the controls and procedures;
- b) Review the fraud prevention and anti-corruption strategy and recommend for approval by the Council;
- c) Evaluate the effectiveness of the implementation of the fraud prevention and anti-corruption strategy; Review the process implemented by management in respect of fraud prevention and ensures that all fraud related incidents have been followed up appropriately;
- d) Ensure that appropriate fraud risk assessment is completed;
- e) Reports of fraud and misconduct are effectively handled;
- f) Consistent and appropriate action is taken on known incidents of fraud and misconduct;

### **RISK MANAGER**

- a) Conduct fraud and corruption risk assessments and susceptibility assessments to identify and address high risk areas;
- b) Facilitate presentations and working sessions relating to fraud and corruption risks to promote awareness and the ethics and integrity standards required by the municipality;

### **Councillors**

All councillors of the municipality are responsible for the following:

- a) Share the municipality's policies and strategies in respect of fraud and corruption with Ward Committees and other broad-based citizen forums;
- b) Abide by the code of conduct of the municipality;
- c) Perform oversight functions that support the implementation of the fraud and corruption strategy of the municipality;
- d) Providing support to the municipal manager and efforts to the management team to implement the fraud and corruption strategy.

## **MANAGEMENT**

Management has overall responsibility for the design and implementation of a fraud risk management program, including setting the tone at the top for the rest of the organization. As mentioned an organization's culture plays an important role in preventing, detecting and deterring fraud. Management needs to create a culture through words and actions where it is clear that fraud is not tolerated, that any such behaviour is dealt with swiftly and decisively and that whistle-blowers will not suffer retribution.

The management of the municipality is responsible for the following:

- a) Share the municipality's policies and strategies in respect of fraud and corruption with all staff members;
- b) Ensure that adequate internal controls are implemented, appropriate systems, and processes are in place to prevent fraud and corruption;
- c) Report incidences or suspicions of fraud and corruption;
- d) Participate in initiatives to prevent, minimise, detect and investigate fraud.

## **STAFF**

Management must ensure that they and the staff (permanent, contract and temporary) of the municipality be held responsible and accountable for:

- a) Abiding by the code of conduct of the municipality;
- b) Reporting incidences or suspicions of fraud and corruption;
- c) Participating in initiatives to prevent, minimise, detect and investigate fraud;
- d) Avoid conflict of interest.

## **COMMUNITY**

Management must ensure that the community is able to report alleged or suspected fraud and corruption to the municipality. In this regard they can table matters with their Ward Councillor or utilise the reporting mechanisms that the municipality has established.

## **14. PROTECTED DISCLOSURES**

**14.1 PROTECTION OF WHISTLE BLOWERS**

- 14.1.1 The protected Disclosure Act makes provision for the protection of employees or councillors who make a disclosure in terms of the provision of this Act.
- 14.1.2 Any disclosure made in good faith and in accordance with the procedures outlined in clause 8 of this strategy, is considered a protected disclosure. An employee or councillor making such a disclosure is protected from being subjected to an occupational detriment.
- 14.1.3 An employee who suspects or reports suspected dishonest activity which he/she has witnessed should be afforded an opportunity to remain anonymous should he/she require.
- 14.1.4 Allegations made by employees which are false and made with malicious intentions should be discouraged by managers. Where such malicious or false allegations are discovered, the person who made the allegations must be subjected to firm disciplinary action. Such disclosures are not protected by the Protected Disclosure Act.
- 14.1.5. The Municipality recognizes that employees or councillor's will be concerned about potential victimization, recrimination and even threats to their personal safety as a consequence of disclosing such fraudulent and /or corrupt activities. The Municipality shall provide measures to protect the information and the identity of the person (when such protection is required)

**14.2 HARRASSMENT**

- 14.2.1 The Municipality acknowledges the fact that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for any fraudulent or corrupt conduct or irregularity.
- 14.2.2 The Municipality shall not tolerate harassment or victimization and shall take action to protect employees or councillors when they report an irregularity in good faith.
- 14.2.3 Any act of harassment or victimization should be reported, in line with the reporting protocol of the Municipality. This does not mean that if an employee is already the subject of the disciplinary process, that action will be halted as a result of making a "protected disclosure" in terms of the Protected Disclosure Act.

**14.3 CONFIDENTIALITY**

14.3.1. Information relating to fraudulent, corrupt or dishonest acts that is received and reported to any supervisor, manager or an executive director and/or the municipal manager shall be treated with utmost confidentiality.

14.3.2 The progression of the investigation 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 important in order to avoid harming the reputations of the suspected person(s) who may be subsequently found innocent of any wrongful conduct.

#### **14.4 ANONYMOUS ALLEGATIONS**

14.4.1 The Municipality encourages employees or councillors to put names to allegations of acts of corruption and/or fraud. Nevertheless they will be followed up at the discretion of the Municipality. This discretion will be applied by taking into account the following:

- a) The seriousness of the issue raised;
- b) The credibility of the concern; and
- c) The likelihood of confirming such allegations

#### **14.5. FALSE ALLEGATIONS**

10.5.1. Employees or councillors must understand the implications (resources and costs) of undertaking investigations and should therefore guard against making allegation, which are false and made with malicious intent.

10.5.2. If in the course of the investigation it should be found that the allegations were made with malicious intent, such allegations shall be treated in a very serious light. The employee concerned must be subjected to a disciplinary enquiry. Should the councillor be involved, the Code of Conduct for Councillors shall be applied.

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

15.1. In all instances where incidents of fraud, corruption, theft, maladministration and other similar irregularities of this nature take place, executive directors are required to immediately review the controls which have been breached in order to prevent similar irregularities from taking place in future.

The head of Internal Audit should be consulted when necessary for assistance in this regard.

#### **16. CONFLICT OF INTEREST**

- 16.1 Employees and councillors are compelled to declare their business interests in terms of the disclosure of business interest. For the sake of clarity in respect of the anti-fraud obligations, this requirement goes further in that all employees and councillors are required to declare their business interests whether such business interests are registered or not. The declaration is required regardless of the status of such entity: whether active or dormant.
- 16.2 Notwithstanding what appears in Schedule 1 of item 6(2) a (i) and schedule 2 item 4(2) (a) (i) of the systems act, any person who is “in the service of the state” in the service of the state” as defined in the MFMA Supply Chain Management Regulations is prohibited from 1 July 2005, under regulation 44 of the said regulations, from conducting business with or being awarded tenders by the Municipality or any other organ of state.
- 16.3 Furthermore, it should be noted that the disclosure of business interests as originally contemplated in items 6(2)(a)(i) of Schedule 1 and 4(2)(a)(i) of Schedule 2 of the Systems Act, shall no longer enable councillors and/or officials to conduct business with the Municipality or any other organ of state. Section 44 of the SCM Regulations (Act No.27636 of 2005) prohibits the awards of tenders to any person(s) who is in the service of the state.
- 16.4 Employees and councillors must comply with section 45 and other applicable sections of the SCM Regulations. Such regulations stipulate requirements for the disclosure with regard to awards in excess of R2000.00 to close family members such as spouse, child or parent of a person who is in service of the state or has been in the service of the state for more than twelve months.

## **17 DISCIPLINARY ACTION**

In terms of its zero tolerance policy, the municipal manager must institute disciplinary action and legal actions at his/her disposal, on all individuals found responsible for acts of fraud and corruption.

## **18 CODE OF CONDUCT**

The municipality subscribes wholly to the code of conduct for staff and councillors as outlined in the Municipal Systems Act, No.32 of 2000. In line with Section 70 and item 13(4) of schedule 1 of the Act, the municipality commits to ensure that all councillors and staff are aware of the code of conduct and the consequences of breaching the code.

## **19. POLICY APPROVAL AND ADOPTION**

This strategy shall be considered and approved by the Council of Harry Gwala District Municipality, during June 2019 for 2019/2020 financial year.

