

SOL PLAATJE MUNICIPALITY



CONSEQUENCE MANAGEMENT POLICY

*Final Approved version of October 2020
Approved by Council on the 14th October 2020 in
terms of Council resolution C174/10/20*

1. **Definitions**

“**Act**” means the Municipal Finance Management Act (Act No. 56 of 2003);

“**Council**” means the municipal council of the Sol Plaatje Local Municipality;

“**disciplinary board**” means a disciplinary board established in terms of section 4(1) terms of Regulations or a disciplinary board of a district municipality or provincial structure referred to in section 4(8);

“**financial misconduct**” means any act of financial misconduct referred to:

(a) Section 171 of the Act, committed by an official of the Municipality;

(b) Section 172 of the Act, committed by an official of a municipal entity.

“**financial offence**” means any offence referred to in section 173 of the Act committed by:

(a) An official of the Municipality’

(b) A councillor of the Municipality;

(c) Any other person

“**investigator**” means the treasury person or team conducting a full investigation in terms of 5(4) of the Regulations;

“**Municipality**” means the Sol Plaatje Local Municipality.

“**Regulations**” means the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

2. Introduction

1. The Municipality has a zero-tolerance approach to fraud, corrupt activities or acts of dishonesty.
2. Political leaders and municipal officials who deliberately or negligently ignore their duties and disobey legislation will be face accountability by enforcing the legislated consequences for transgressions.
2. The purpose of this policy is to
 - a) Promote a culture of a culture of accountable, professional ethical public administration that places emphasis on good governance and service delivery.
 - b) To promote a culture a culture of accountability by implementing systems and processes to enforce consequence management.

3. Legislative Framework

- Constitution of the Republic of South Africa, 1996
- Local Government: Municipal Structures Act (Act No. 117 of 1998)
- Local Government: Municipal Systems Act (Act No. 32 of 2000)
- Local Government: Municipal Finance Management Act (Act No. 56 fo 2003)
- Promotion of Administrative Justice Act (Act No. 3 of 2000)
- Protected Disclosure Act (Act No. 26 of 2000)
- Prevention and Combatting of Corrupt Activities Act (Act No. 12 of 2004)
- Municipal Regulations on Financial Misconduct and Criminal Proceedings (2014)
- Municipal Finance Management Act: MFMA Circular 68
- Municipal Finance Management Act: MFMA Circular 76

4. Objectives

- 2.1 To ensure that the Council and the Management has created and maintained an effective control environment in the organization that demonstrates and stimulates the necessary respect for legislative requirement and compliance and for the Municipality's systems, processes and policies, by:
 - a) Adhering to Section 32 of the Municipal Financial Management Act, 2003 (Act 56 of 2003);
 - b) Implementing the Regulations for Financial Misconduct and Offences, 2014;

- c) Identifying and act against financial misconduct and offences in terms of section 171 and 173 of the Municipal Financial Management Act, 2003 (Act 56 of 2003).
- 2.2 To ensure that the following Committees are relevant and functional and that they are guided by the Councils policies and the specific terms of reference developed for each of them;
- a) The Municipal Public Accounts Committee (MPAC);
 - b) A Special Committee to investigate misconduct by councillors in terms of the code of conduct for councillors as contained in Schedule 1 to the Systems Act, 2000 (Act 32 of 2000).
- 2.3 To develop and maintain the following policies that will also take into account the principles as contained in this Policy;
- a) Anti-Corruption and Fraud Prevention Policy and Plan
 - b) Code of Conduct/Ethics Policy
 - c) Human Resources Strategy and related policies.
- 2.4 To ensure that councillors and employees are aware that there are different transgressions and available remedies to manage transgressions as described in this Policy as set out in different pieces of legislation.

3 Principles

The Basic values and principles governing public administration

Section 195(1) of the Constitution

- (a) A high standard of professional ethics must be promoted and maintained;
- (b) Efficient, economic and effective use of resources must be promoted;
- (c) Public administration must be development-oriented;
- (d) Service must be provided impartially, fairly, equitably and without bias; accessible and accurate information;
- (e) A public administration must be accountable;
- (f) Transparency must be fostered by providing the public with timely.

4 Measures to Enforce Compliance

- 4.1 Financial misconduct, fraud, theft, corruption, maladministration and dishonest activities will be not be tolerated by council and management;
- 4.2 All incidents that have been reported will be investigated and where applicable the necessary and prescribed remedial- and disciplinary steps will be taken;
- 4.3 All cases of alleged irregular expenditure that constitutes a criminal offence and all cases of theft, fraud and corruption will be reported to the South African Police Service (SAPS);
- 4.4 Councillors and employees are responsible for reporting financial misconduct, financial offences or corruption. The public may also report financial misconduct, financial offences or corruption;
- 4.5 The Council will apply appropriate prevention and detection controls and take appropriate legal action to recover losses or damages incurred due to financial misconduct and financial offences committed by councillors or employees.
- 4.6 This Policy does not consider reporting and review procedures in respect of general misconduct and poor work performance by municipal employees or political office bearers.
- 4.7 General misconduct and poor work performance of employees must be managed in accordance with relevant human resources policies, employment contracts and collective agreements; and
- 4.8 All cases of misconduct in the case of councillors will be managed in terms of the code of conduct as contained in Schedule 1 to the Systems Act, 2000 (Act 32 of 2000);

5 Reporting Allegations of Financial Misconduct

- 5.1 Section 4 of the Regulations provide that any person must report an allegation of financial misconduct against
 - (a) Accounting officer, a senior manager or the chief financial officer of the Municipality to the council, the provincial and national treasury
 - (b) An official of the Municipality other than the accounting officer, to that accounting officer.
- 5.2 The Regulations further provide that the Mayor, the accounting officer as the case may be, must table an allegation referred to in 5.1 before the council not later than seven days after receipt thereof or at the next sitting of the council.
- 5.3 A preliminary investigation of allegations of financial misconduct must be conducted in accordance with section 5 of the Regulations.

- 5.4 The investigation of an allegation of financial misconduct and the submission of reports must be conducted in a manner contemplated in section 6 of the Regulations.
- 5.5 The process outline above, must be implemented having due regard to the process envisaged in the Municipality's Fraud Prevention and Anti-Corruption Policy.
- 5.6 Where a financial offence has been committed by any person referred to in section 173 of the Act, the relevant person in terms of section 9 and 10 of the Regulations, must report the matter to the South African Police Service (SAPS).
- 5.7 In terms of section 10(3) of the Regulations, where a financial offence is successfully prosecuted, the judgement must be reported to the National Treasury, together with full details of the convicted person, the name of the municipality, where the offence was committed and the sanction that was imposed.

4. **Disciplinary Board**

- 4.1 In terms of section 4 of the Regulations, council must establish a disciplinary board to investigate allegations of financial misconduct in the Municipality and to monitor the institution of disciplinary proceedings against an alleged transgressor.
- 4.2 A disciplinary board in an independent advisory body that assists council with the investigation of financial misconduct and provide recommendations on further steps to be taken regarding disciplinary proceedings or any other relevant step to be taken.
- 4.3 A disciplinary board must consist of a maximum of five members appointed on a part-time basis by council for a period not exceeding three years, in accordance with a process as determined by council.
- 4.4 The disciplinary board must be constituted in accordance with section 4 – 7 of the Regulations.
- 4.5 In the event the Municipality does not have sufficient capacity to establish a disciplinary board, a disciplinary board established by the district municipality or an equivalent provincial or national structure established for a similar purpose, may with approval of the district, provincial or national structure be used as a disciplinary board of the Municipality.

5. **Financial Misconduct**

- 5.1 Financial misconduct as defined in terms of sections 171 and 172 of the Municipal Financial Management Act, 2003 (Act 56 of 2003), refers to the actions of officials of municipalities and municipal entities and means the misappropriation, mismanagement, waste or theft of municipality funds. It includes instances where

a senior manager or official deliberately or negligently fails to carry out a delegated duty, contravenes or fails to comply with a condition of a delegated duty and provides incorrect or misleading information to the mayor, council, Auditor General National Treasury or an organ or to the public.

5.2 Depending on the circumstances and the nature of the incident, financial transgressions or misconduct can be serious or less serious. The seriousness will indicate the consequence management steps to be followed. This may inter alia, includes any of the following or a combination thereof:

- a) a suspension; and or
- b) disciplinary hearing; or
- c) internal sanction and or
- d) the recovery of financial losses incurred; and or
- e) the institution of criminal proceedings.

5.3 Section 173 of the Municipal Financial Management Act, 2003 (Act 56 of 2003), indicates that any transgressions relating to fraud, theft and corruption are deemed to be financial offences and, in this case, it may warrant the institution of criminal proceedings.

5.4 Other than financial misconduct, which is acts of employees, financial offences can be committed by councillor, employees and any other person.

6. **Unauthorised, Irregular, Fruitless and Wasteful Expenditure**

6.1 Section 32 of the MFMA provides the conditions under which an official, accounting officer and/or political office-bearer becomes liable for unauthorised, irregular, fruitless and wasteful expenditure.

6.2 It further provides that the Municipality, must recover unauthorised, irregular, fruitless and wasteful expenditure from the person liable for that expenditure: unless the expenditure:

- (a) in the case of unauthorised expenditure, it is authorised in the adjustment budget or certified by the municipal council, after an investigation, as irrecoverable and written off by council; and
- (b) in the case of irregular or fruitless and wasteful expenditure; is after an investigation by a council committee, certified by council as irrecoverable and written off by council.

6.3 The accounting officer, a senior manager commits an act of financial misconduct by deliberately and negligently in by making or instructing another official of the Municipality to make an unauthorised, irregular or fruitless and wasteful expenditure

or any other act of financial misconduct as detailed in section 32(2) and (3) of the MFMA.

- 6.4 The Municipality must investigate allegations of financial misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the Municipality, unless those allegations are frivolous, vexatious, speculative or obviously unfounded and
- 6.5 If the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or that senior manager or other official in accordance with systems and procedures in section 67 of the Municipal Systems Act, read with Schedule 2 of that Act.
- 6.6 Such an investigation and the outcome of that investigation, must be conducted in accordance with the *Regulations on Financial Misconduct Procedures and Criminal Proceedings* and the *Disciplinary Procedure for Senior Managers* or the *Disciplinary Procedure of the Collective Agreement of the South African Local Bargaining Council (SALBC) for officials who not senior managers*.

7. **Code of Conduct for Employees and Councillors**

- 7.1 Schedule 1 and Schedule 2 of the Municipal Systems Act, provides a Code of Conduct for Staff and Councillors. Consequence management processes must be invoked when there are transgression of the Code of Conduct for staff and councillor

8. **Monitor and review**

- 8.1 The Municipal Manager or his/her delegate must monitor the implementation of this policy.
- 8.2 This Policy, must be aligned, in its implementation with the Fraud Prevention and Anti-Corruption Policy of the Municipality. They are complementary.
- 8.3 This Policy shall be reviewed as and when required.