

OVERSTRAND MUNICIPALITY



FRAUD AND RISK MANAGEMENT STRATEGY

*Approved by Council
30 August 2023*

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LIST OF ABBREVIATIONS, TERMINOLOGY AND DEFINITIONS

In this document, unless the context indicates otherwise, a word or expression, to which meaning has been assigned in the Municipal Finance Management Act (“MFMA”) and the Local Government Risk Management Framework (“framework”) has the same meaning.

In interpreting the under-mentioned definitions, cognizance must also be taken of the definitions as encapsulated in applicable enabling legislation and framework.

Terminology	Definition
Accounting Officer (AO)	In relation to a municipality, the Municipal Manager (as referred to in section 60 of the MFMA). A person appointed in terms of section 82 (a) or (b) of the Municipal Structures Act, who is the head of administration.
AGSA	Auditor General of South Africa
Chief Audit Executive (CAE)	A senior official who is the head of the IAA.
Chief Risk Officer (CRO)	A senior official who is the head of the RMU.
Combined Assurance (CA)	A process that seeks to optimise the scope of assurance to the OM by harmonising the work of various providers of assurance through eliminating fragmentation and duplication of efforts.
Competent	Having the knowledge and skills to accomplish a certain task
Council	The Municipal Council as referred to in section 18 of the Municipal Structures Act, and as defined in section 1 of the MFMA.
Conflict of interest	A person’s private interests interferes or is perceived to interfere with the interests of the OM. This usually happens when the interest impairs the employee’s ability to act impartially.
Corruption	The giving or offering, receiving or agreeing to receive, obtaining or attempting to obtain any benefit which is not legally due to or by a person who has been charged with a duty or power by virtue of any employment, to do any act or omit to do any act in relation to that power or duty.
Enterprise-wide Risk Management (ERM)	A systematic, co-ordinated and inclusive process which uses the Institution’s strategy (IDP) and objectives (SDBIP) as the focal point to manage the range of risks and optimisation of opportunities to enhance the achievement of the strategy and objectives.
Event	An incident or occurrence from internal or external sources that affects the achievement of the OM’s objectives.
Favouritism	The practice of giving unfair preferential treatment to one person or group at the expense of another.
Fraud	An unlawful and intentional making of a misrepresentation, which is prejudicial or potentially prejudicial to another. The term is used to describe acts such as deception, bribery, forgery, extortion, theft, conspiracy, embezzlement, misappropriation, false representation, concealment of material facts, collusion etc.

Terminology	Definition
Impact	A result or effect of and event. The impact of an event can be positive or negative. A negative event is referred to as a “risk”. Impact can also be referred to as consequence.
Incident	A risk that has actualised.
Inherent Risk	The exposure arising from risk factors in the absence of deliberate management intervention(s) to exercise control over such factors. The risk to OM in the absence of any actions management might take to alter either the risk’s impact or likelihood.
Integrated Development Plan (IDP)	A single, inclusive and strategic plan aimed at the integrated development and management of a municipality, as envisaged in Chapter 5 of the Municipal Systems Act.
Internal Auditing	An independent, objective assurance and consulting activity designed to add value and improve the institution’s operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.
IAA	Internal Audit Activity/ unit
Joint Audit & Performance Committee (JAPAC)	An independent committee constituted to review the control, governance and RM within the OM, established in terms of section 166 of the MFMA.
King IV	The King Code of Corporate Governance for South Africa, 2016 for corporate governance best practice (Specifically “Part 6.2: Supplement for municipalities”).
Likelihood / Probability	The probability of the event occurring and can also be referred to as severity.
Management	Collectively, all levels of management personnel and officials of the OM responsible for planning, organising, leading and controlling municipal activities. In other words, everyone except the CRO, CAE and staff reporting to them, who are deemed to be independent of management in the exercise of their responsibilities for RM.
MFMA	Municipal Finance Management Act (Act No. 56 of 2003), whose aim is to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith.
Municipality	When referred to as — a) an institution, means as a municipality as described in section 2 of the Municipal Systems Act 32 of 2000; and b) a geographic area, means a municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998).
Municipal Services	Local government matters listed in Part B of Schedules 4 and Part B in Schedules 5 to the Constitution, and any function assignment to a municipality in Section 9 or 10 of the Municipal Systems Act (Act 32 of 2000).
OM	Overstrand Municipality

Terminology	Definition
Operational Risk	Risks that affect the achievement of the SDBIP, mainly resulting from inadequate or failed internal processes, actions of staff, loss of key personnel, failure of IT systems, failure of equipment, the actions of regulatory authorities, customers, suppliers and the public, as well as other external events that impact on the objectives.
Priority/ Key Risk	Risk that is rated high on either inherent or residual level. Risk that need to be acted upon that possess a serious threat to the OM.
Project Risk	Risk that are identified for all major projects, covering the whole lifecycle and for long-term projects.
Residual Risk	The exposure remaining after the mitigating effects of management intervention(s) to control such exposure, i.e. the remaining risk after management has put in place measures to control the inherent risk.
Risk	a) The effect of uncertainty on the achievement of the OM's IDP and SDBIP caused by the presence of risk factors; and/or b) The failure to optimise opportunities to enhance the achievement of the IDP and SDBIP.
Risk Appetite	The level of risk which is established through a rigorous analytical process that the OM is prepared and able to accept in furtherance of its objectives.
Risk Factor	Any threat or event which creates, or has the potential to create risk.
Risk Management (RM)	A systematic, coordinated set of activities and methods used to direct and to control OM risks, including a set of principles, frameworks and related processes.
Fraud and Risk Management Committee (FARMCO)	A committee appointed by the AO to apply specialist skills, knowledge and experience and assist him/her to dispose of his/her responsibilities for all matters concerned with the establishment, maintenance and functioning of the municipality's system of RM, especially the management of priority risks.
Risk Management Unit (RMU)	A business unit which reports to and supports the CRO to fulfil his/her functions.
Risk Owner	The person accountable for managing a particular risk linked to the objective(s) he/she is responsible for.
Risk Response	Strategies developed by Management to reduce or eliminate the threats and factors that create risks.
Risk Tolerance	The amount of risk the OM is capable of bearing (as opposed to the amount of risk it is willing to bear "risk appetite").
Service Delivery and Budget Implementation Plan (SDBIP)	A detailed plan approved by the Mayor of a municipality in terms of section 53(1)(c)(ii) of the MFMA for implementing the municipality's delivery of municipal services and its annual budget.
SOP	Standard Operating Procedure
Strategic Risk	Risks connected with strategy selection, implementation or revision which affects the achievement of the IDP. Strategic risks occur both from poor business decisions as well as the failure to effectively implement good decisions.
3LoA	3 Lines of Assurance

1 INTRODUCTION

The Fraud and RM Strategy outlines how the OM will go about implementing fraud prevention and RM within the municipality. The strategy is designed to provide all role players with the necessary information to enable them to understand the roles and responsibilities of their office in terms of fraud and RM processes.

OM subscribes to the principles of good corporate governance, which requires conducting business in an honest, ethical and transparent manner.

Consequently, OM is committed to fighting corrupt and fraudulent activities and behavior at all levels within the municipality. In addition to promoting ethical conduct within the municipality, the strategy is also intended to assist in preventing, detecting, investigating and sanctioning fraud and corruption.

The management of fraud and corruption risks form part of the ERM of the municipality. Fraud and corruption risk identification, assessments, management, monitoring, reporting and oversight take place during the course of ERM activities.

2 MISSION

To assist the OM in ensuring that municipal strategic objectives are achieved without compromising the stakeholders' trust and quality of municipal services, by implementing an effective approach to fraud and RM and leveraging its benefits to enhance performance.

The OM will strive to implement an effective approach to combat fraud and corruption, to minimise losses and to prevent, detect, investigate and invoke sanctions against fraud and corruption.

3 OBJECTIVES

- Align strategic objectives with supporting activities of fraud prevention, RM and control;
- Coordinate fraud, RM and control processes to respond to potential threats and opportunities;
- Assist the OM to reach a common understanding on identifying risks that poses threat to the achievement of municipal objectives and applying relevant controls;
- Coordinate the process of developing the OM's risk appetite—risks must be taken in

the pursuit of opportunities;

- Assist to identify and prioritize potential fraud and risk events, use established RM methods, tools and techniques to effectively respond to identified risks;
- Embed instinctive and consistent consideration of risks, fraud and corruption in the day-to-day planning and operational activities; and
- Incorporate fraud and risk reporting into the OM's systems to support risk-based decision-making.
- Create and encourage a culture within the OM where municipal officials, members of the public and other stakeholders continuously behave with and promote integrity in their dealings with or on behalf of the OM;
- Encouraging community participation in the fight against fraud and corruption in the OM.

4 LEGAL MANDATE, ROLES AND RESPONSIBILITIES

Management is responsible to identify and manage risks; however, each employee can contribute towards successful Fraud and RM within the OM.

Second and third-line assurance providers should have the skills, qualifications and experience required to enable them to provide credible assurance over key risks.

Legislating the implementation of Fraud and RM in public sector institutions is part of a macro strategy of the National Government towards ensuring the achievement of national goals and objectives.

4.1 MUNICIPAL COUNCIL

4.1.1 Legal Mandate, Roles and Responsibilities

The following legislative instruments provide the legal foundation for the Municipal Council's responsibility for Fraud and RM:

- Section 44 56(2) of the Local Government: Municipal Structures Act (No.117 of 1998)
- Section 52(b),(e) and 58 of the Local Government: Municipal Finance Management Act (No. 56 of 2003)
- Schedule 1 of the Municipal Systems Act No. 32 of 2000: Code of Conduct for Councillors provides a legal basis for the Municipal Council's responsibility for

fraud prevention and anti-corruption.

- Chapter 10 of the Public Sector & Local Government RM Frameworks

Responsibilities of the Council in RM include:

- a) ensuring that the OM strategy and objectives are aligned to the government mandate and community's priorities;
- b) insisting on the achievement of objectives, effective performance management and value for money.
- c) understand the OM's risk profile;
- d) being aware of and concurring with the OM's risk appetite;
- e) understanding the priority risks, especially those where Council can play a role in risk mitigation without interfering with the mandate of the AO;
- f) obtaining assurance from management that the OM's strategic choices were based on a rigorous assessment of risk;
- g) obtaining assurance that priority risks inherent with OM's strategies were identified and assessed, and are being properly managed;
- h) assisting the AO with fiscal, intergovernmental, political and other risks beyond his/her control and influence;
- i) the Municipal Council is responsible for oversight of the municipal administration, which includes holding the AO accountable for instituting fraud prevention and anti-corruption measures.

4.2 AO

4.2.1 Legal Mandate, Roles and Responsibilities

- Sections 61 and 62(1)(a),(b),(c),(d), and (e) of the MFMA
- Section 79(1) of the MFMA;
- Sections 55 (1)(g) and (2) of the Municipal Systems Act No. 32 of 2000
- Schedule 2 of the Municipal Systems Act: Code of Conduct for Municipal Staff Members
- Sections 34(1); 34(4)(b) of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004
- Chapter 11 of the Public Sector & Local Government RM Frameworks
- Recommended Practices 1.3.5; 1.3.6; 2.2.3 and 2.20.4 and Principle 4 of the King III Code of Governance Principles

Responsibilities of the AO include:

- a) the AO is the ultimate CRO of the OM, assumes ownership of Fraud and RM and is accountable for the municipality's overall governance of risk;
- b) setting an appropriate tone by supporting and being seen to be support the OM's aspirations for effective fraud prevention and RM;
- c) delegating responsibilities for fraud and RM to Management and internal functions such as the FARMCO, Finance Committee, Information and Communication Technology Committee, and holding them accountable;
- d) holding Management accountable for designing, implementing, monitoring and integrating RM into their day-to-day activities;
- e) providing leadership and guidance to enable Management and internal structures responsible for various aspects of Fraud and RM to properly perform their functions;
- f) ensuring that the control environment supports the effective functioning of Fraud and RM
- g) considering the inputs and recommendations of JAPAC and FARMCO, endorse:
 - i. the Fraud and RM policy, strategy, and implementation plan;
 - ii. risk appetite
- h) devoting personal attention to overseeing management of the priority risks;
- i) leveraging the IAA, AGSA, JAPAC and FARMCO for assurance on the effectiveness of Fraud prevention and RM;
- j) ensuring appropriate action in respect of the recommendations of the IAA, AGSA, JAPAC and FARMCO to improve Fraud prevention and RM; and
- k) providing assurance to relevant stakeholders that priority risks are properly identified, assessed and mitigated.
- l) amongst other legislated administrative responsibilities, set the tone at the top and promote ethical behaviour within the organization.

4.3 MANAGEMENT AND OTHER OFFICIALS

4.3.1 Legal Mandate and Frameworks

- Section 78(1) and (2) of the Local Government: MFMA.
- Schedule 2 of the Municipal Systems Act: Code of Conduct for Municipal Staff Members.
- Chapters 15 and 16 of the Public Sector & Local Government RM Frameworks.

Responsibilities of Management include:

- a) executing their responsibilities as set out in this document;
- b) empowering officials to perform effectively in their Fraud and RM responsibilities through proper communication of responsibilities, comprehensive orientation and ongoing opportunities for skills development;
- c) aligning the functional Fraud and RM methodologies and processes with municipal processes;
- d) devoting personal attention to overseeing the management of priority risks within their area of responsibility;
- e) maintaining a co-operative relationship with the RMU;
- f) providing Fraud and RM information to relevant stakeholders;
- g) reporting to the FARMCO and JAPAC as may be requested;
- h) maintaining the proper functioning of the control environment within their area of responsibility;
- i) monitoring Fraud and RM within their area of responsibility; and
- j) holding officials accountable for their specific Fraud and RM responsibilities.
- k) accountable to the AO for designing, implementing and monitoring fraud prevention and anti-corruption controls and integrating it into the day-to-day activities of the municipality, as well as ensuring compliance to the relevant municipal legislative prescripts.

Responsibilities of other officials include:

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- a) applying the Fraud and RM processes in their respective functions;
- b) implementing the delegated action plans to address the identified risks;
- c) informing their supervisors and/or the RMU of new risks and significant changes in risks;
- d) escalating instances where management of risk is beyond their control;
- e) co-operating with other role players regarding Fraud and RM processes and providing information as required;
- f) accountable to their respective managers for adherence to and monitoring the process of fraud prevention and anti-corruption measures and integrating them into their day-to-day activities, as well as compliance to municipal legislative prescripts.

4.4 RISK CHAMPIONS

4.4.1 Legal Mandate and Frameworks

Certain responsibilities regarding fraud and RM maybe delegated by the AO to Risk Champions.

The following legislative instruments provide a legal foundation for the Risk Champions' responsibility for Fraud and RM:

- Section 62(1)(c)(i) of the Local Government: MFMA, delegated in terms of Section 79(1)(b)(ii) of the MFMA
- Letter of appointment for Risk Champions
- Chapter 17 of the Public Sector & Local Government RM Frameworks

Responsibilities of the Risk Champion include:

- a) advocating the culture of change and adopting RM as a professional discipline to be adopted in every day management of activities and to strategically influence the current way of doing things which is compliance driven;
- b) educating the stakeholders of the importance of managing risk in dealing with public funds, the responsibility that goes beyond meeting the requirements of meeting the requirements of financial management prescripts but most importantly impacting positively service delivery;
- c) communicating the right message and driving this message to influence behaviour and discipline in getting the basics right. This extends further to ensuring the use of a common

RM language and consistent messages in all communications, and

d) informing the users and stakeholders of current demands, need to improve, what to improve and how to improve to leave the legacy that goes beyond compliance but continuous improvement of accountability and service delivery.

e) a key part of the Risk Champion's responsibility should involve intervening in and escalating instances where Fraud and RM efforts are being hampered, for example, by the lack of co-operation by Management and other officials and the lack of skills and expertise.

4.5 CRO

To be effectively executed and monitored, Fraud and RM requires ethical, qualified, skilled and experienced individuals.

The RM support function should be adequately capacitated to implement, maintain and improve the risk management systems and processes of the municipality and support staff with their risk management responsibilities.

4.5.1 Legal Mandate and Frameworks

The following legislative instruments provide a legal foundation for the CRO's responsibility for Fraud and RM:

- Section 78(1)(a) of the Local Government: MFMA
- Employment Contract
- Performance agreement
- Chapter 14 of the Public Sector & Local Government RM Frameworks

Responsibilities of the CRO include:

- a) being responsible and accountable for the RMU and other delegations by the AO;
- b) working with senior management to develop the OM's vision for Fraud and RM;
- c) developing, in consultation with management, the OM's Fraud and RM framework incorporating, inter alia, the:
 - (i) Fraud and RM policy;
 - (ii) Fraud and RM strategy and implementation plan;
 - (iv) risk identification and assessment methodology;
 - (v) risk appetite; and
 - (vi) risk classification.

- d) determining, implementing and maintaining effective Fraud and RM infrastructure, policies, procedures and processes;
- e) communicating the OM's Fraud and RM framework to all stakeholders in the municipality and monitoring its implementation;
- g) facilitate training for all stakeholders in their Fraud and RM functions;
- h) assisting Management with risk identification, assessment and development of response strategies, and monitoring implementation thereof;
- i) working with management and staff to establish and maintain effective Fraud and RM in their areas of responsibility, including the reform of internal processes and policies to incorporate elements and practice of RM at the operational/functional level;
- j) collating, aggregating, interpreting and analysing the results of risk assessments to extract risk intelligence;
- k) reporting pertinent risk information to the AO, FARMCO, JAPAC and other stakeholders as may be required;
- m) monitoring the OM's risk profile, ensuring that major risks are identified and reported to relevant stakeholders;
- l) facilitating municipal-wide risk evaluation and monitoring the capabilities around the management of the major risks;
- m) participating with IAA, Management and AGSA in developing the combined assurance plan for the OM;
- o) overseeing the RMU's participation in the combined assurance process;
- p) drafting the RM disclosures/ comments for the annual report for approval by the AO;
- q) continuously driving Fraud and RM to higher levels of maturity.

4.6 FARMCO

4.6.1 Legal Mandate and Frameworks

The following frameworks provide recommended practice guidelines for FARMCO regarding Fraud and RM:

- Chapter 13 of the Public Sector & Local Government RM Frameworks
- Principle 4.3 of the King III Code of Governance Principles
- FARMCO Terms of Reference

Responsibilities of FARMCO include:

a) review and recommend to the AO for Council approval, the:

(i) Fraud and RM policy;

(ii) Fraud and RM strategy and implementation plan;

(iv) risk appetite;

b) evaluate the extent and effectiveness of integration of the Fraud and RM framework within the OM;

c) evaluate the effectiveness of the mitigating strategies implemented to address the priority risks of the OM;

d) review the material findings and recommendations by assurance providers on the system of RM and monitor the implementation of such recommendations;

e) collaborate with the JAPAC on all matters concerning Fraud and RM;

f) provide timely and useful reports to the AO and JAPAc on the state of Fraud and RM, together with recommendations to address any deficiencies identified.

4.7 IAA

4.7.1 Legal Mandate and Frameworks

- Section 165(2)(a) and (b)(iv) of the Local Government: MFMA
- Chapter 18 of the Public Sector & Local Government RM Frameworks
- Recommended Practices 4.9.2; 7.1.2.2 and 7.1.2.4 and Principles 4.9; 7.2 and 7.3 of the King III Code of Governance Principles
- International Standards for the Professional Practice of Internal Auditing– Performance Standard 2120.
- Internal Audit Charter

Responsibilities of IAA include:

1) provide an independent, objective assurance on the effectiveness of the OM's system of RM.

(2) evaluate the effectiveness of the entire system of RM and provide recommendations for

improvement where necessary.

(3) develop its internal audit plan on the basis of the key risk areas.

(4) In terms of the International Standards for the Professional Practice of Internal Audit, determining whether RM processes are effective is a judgment resulting from the Internal Auditor's assessment that:

- a) OM objectives support and align with the its mission;
- b) significant risks are identified and assessed;
- c) risk responses are appropriate to limit risk to an acceptable level; and
- d) relevant fraud and risk information is captured and communicated in a timely manner to enable the AO, Management, FARMCO and other officials to carry out their responsibilities.

4.8 JAPAC

4.8.1 Legal Mandate and Frameworks

- Section 166(2) of the Local Government: MFMA
- Chapter 12 of the Public Sector & Local Government RM Framework
- Recommended Practice 3.5.1 and Principle 3.8 of the King III Code of Governance Principles
- JAPAC Charter

Responsibilities of the JAPAC include:

- a) reviewing and recommending disclosures on matters of risk in the annual financial statements and annual report;
- b) reviewing and providing regular feedback to the AO on the adequacy and effectiveness of Fraud and RM in the OM, including recommendations for improvement;
- c) ensuring that the IAA and AGSA plans are aligned to the risk profile of the OM;
- d) providing oversight over the combined assurance process
- e) reviewing and concurring with the OM's risk appetite
- f) receiving and considering reports from FARMCO
- g) satisfying itself that it has appropriately addressed the following areas:
 - (i) financial reporting risks, including the risk of fraud;

- (ii) internal financial controls; and
- (iii) IT risks as they relate to financial reporting.
- h) evaluate the effectiveness of IAA in its responsibilities for Fraud and RM.
- i) provide the AO and Council with independent counsel, advice and direction in respect of relevant and necessary fraud and RM measures for continuous improvement.

5 REPORTING REQUIREMENTS

The information regarding Fraud and RM should ideally reach the Directors, AO, FARMCO, JAPAC and Municipal Council through the normal reporting processes in place.

6 MONITORING

Monitoring Fraud and RM is a process that assesses the presence and functioning of its components monthly. This is accomplished through ongoing monitoring activities, separate evaluations or a combination of the two. Ongoing monitoring occurs in the normal course of management activities. The scope and frequency of separate evaluations will depend primarily on an assessment of risks and the effectiveness of ongoing monitoring procedures.

7 IMPROVEMENT OF RISK MATURITY

Fraud and RM should be integrated into the culture of the OM. The key driver for OM's RM maturity is the attitude that the Municipal Council, JAPAC, FARMCO and senior management has towards the role of the RM within the OM.

RM is a central part of the strategic management of any organization. It is the process whereby organizations methodically address the risks attached to their activities. A successful RM initiative should be proportionate to the level of risk in the organization, aligned with other corporate activities, comprehensive in its scope, embedded into routine activities and dynamic by being responsive to changing circumstances.

8 CONFIDENTIALITY

Information relating to fraud and corruption that is received by RMU will be treated confidentially and will not be disclosed or discussed with any persons other than those who have a legitimate right to such information.

9 PROTECTION OF WHISTLE BLOWERS

The OM will not tolerate harassment or victimization of whistle blowers and will put necessary measures to protect whistle blowers when they raise concerns in good faith. This does not mean that if the person is already the subject of disciplinary or legal proceedings, those proceedings will be halted as a result of their whistle blowing.

The OM will do what is reasonable under the prevailing circumstances to protect the person's identity when he/she raises a concern and chooses to remain anonymous. It must be kept in mind though that investigations might reveal the source of the information. The detailed process is outlined in Annexure A of this document.

10 REVIEW

The Fraud and RM Strategy will be reviewed by FARMCO and AO and approved by the Municipal Council as and when necessary.

Review history:

Policy Section	Risk Management Unit
Current update	30 August 2023
Previous reviews	24 June 2020
	27 June 2018
	31 May 2017
	29 March 2017
	30 March 2016
	Approval by Council

PROTECTION OF WHISTLE-BLOWERS**1. INTRODUCTION**

No person will suffer any penalty or retribution for good faith reporting of any suspected or actual incident of illegal activity or maladministration involving OM.

OM will not tolerate the victimisation of whistle-blowers and will take action to protect whistle-blowers when they raise a concern in good faith. This does not mean that if the person is already the subject of disciplinary or legal action, that action will be halted as a result of their whistle blowing.

2. SCOPE

These provisions are applicable to all whistle-blowers, internal and external, who report transgressions involving OM, to the municipality.

Transgressions include any contravention of the law, policy of the OM, Code of Conduct for Municipal Staff, Code of Conduct for Councillors, Code of Ethics for Municipal Staff, deviations from approved standard operating procedures or any other act of maladministration.

3. PROTECTION OFFERED TO WHISTLE-BLOWERS**3.1 ANONYMITY**

A person who reports suspected illegal conduct or maladministration may remain anonymous should he/she so desire. The OM will do its best to protect the person's identity when he/she raises a concern and wants to remain anonymous. It must be kept in mind though that the investigation could reveal the source of the information.

All whistle-blowers who report to someone at the OM without concealing their identity, but wish to remain anonymous in subsequent investigations, will have their demand for anonymity respected. The employee or Councillor, to whom the report was made, may not disclose the identity of the whistle-blower and may not be ordered by the municipal administration or Council to disclose the identity. If the employee or Councillor becomes a target for not disclosing the identity of the whistle-blower, they will be entitled to the same protection as whistle-blowers.

3.2 PHYSICAL SAFETY

The OM is aware that sometimes whistle-blowers suffer or are threatened with physical harm.

Therefore, the OM's protection goes beyond the usual protection against reprisals that have financial or emotional consequences (e.g. loss of job, intimidation, refusal of service, etc.) and includes the physical security of whistle-blowers as well.

Threats to whistle-blowers' lives will be treated seriously and investigated. OM has a law enforcement unit that may be assigned to protect whistle-blowers within the boundaries of the municipality. The OM will also work closely with the SAPS to protect whistle-blowers and arrest perpetrators.

When employees or Councillors are threatened for blowing the whistle, the person responsible for workplace security and law enforcement, must arrange security measures to protect the whistle-blower.

3.3 PROTECTED DISCLOSURES ACT

The Protected Disclosures Act (PDA), No. 26 of 2000, provides protection to employees from occupational detriment for certain disclosures made without malice and in good faith to certain persons within or outside the municipality.

The following disclosures are covered by the PDA:

- A criminal offence has been committed, is being committed or is likely to be committed;
- A person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- A miscarriage of justice has occurred, is occurring or is likely to occur;
- The health or safety of an individual has been, is being or is likely to be endangered;
- The environment has been, is being or is likely to be damaged;
- Unfair discrimination;
- Any of the above-mentioned matters has been, is being or is likely to be deliberately concealed.

The PDA provides legal protection to employees from occupational detriment for disclosures made:

- in terms of Section 13 of the OM Code of Conduct for Municipal Staff;
- in terms of Section 10 of the OM Code of Ethics for Municipal Staff;
- to a legal adviser;

- to the Public Protector
- to the AGSA;
- to a Cabinet member or member of a Provincial Executive, or a body which is appointed by such members, and the disclosed impropriety falls within any description of matters which in the ordinary course are dealt with by the person or body concerned (e.g. reporting fraud with MFMA grants to the minister of finance);
- in terms of Section 8 and 9 of the PDA;
- in terms of any other policy or prescribed procedure of OM regarding the reporting of transgressions.

“Occupational detriment” in relation to the working environment of an employee, means being:

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

In other words, the OM is legally forbidden from doing any of the above to an employee who blew the whistle in accordance with the PDA. The forbidden actions are only related to punishment for whistleblowing and do not forbid the OM from disciplining a whistle-blower who is guilty of the offence(s) he/she disclosed in terms of the PDA.

3.4 PROTECTION FROM EMPLOYEES AND COUNCILLORS

Any employee or Councillor who victimise a person for whistleblowing will be disciplined and sanctioned, in addition to any other sanctions that may result from an investigation due to the whistleblowing.

It is the responsibility of the manager, Director or AO, whoever is the immediate senior, to

institute disciplinary proceedings against employees who victimise whistle blowers. The Municipal Council must institute disciplinary proceedings against Councillors or the Municipal Manager who victimise whistle blowers.

Where a whistle blower's career advancement in the OM is in the hands of a person that victimised him/her for whistle blowing or who, as a result of the investigation that followed, was reprimanded, the interview and judgement of the whistle-blower for the position will be conducted by a more senior person who was not involved in the victimisation or negatively affected by the investigation.

3.5 PROTECTION OF EMPLOYEES AND COUNCILLORS FROM EXTERNAL VICTIMISATION

Municipal corruption may involve an outside party. Thus there may be people from outside the municipality who may be compromised when corruption is exposed, stopped and remedial action instituted and they may become hostile towards the whistle-blower.

OM will not tolerate victimisation by external people against its employees and Councillors.

Any external person who victimises an employee or Councillor of OM will be barred from the OM's premises and the law enforcement unit will be instructed to arrest them for trespassing.

The OM will assist the whistle-blower in laying criminal charges for victimisation that occurs outside his/her workplace.

3.6 PROTECTION OF EXTERNAL WHISTLE BLOWERS FROM EXTERNAL VICTIMISATION

External whistle-blowers could be employees of suppliers contracted by the OM, employees/representatives of other suppliers, people from NGOs, members of rate payers associations and other members of the public.

OM will do all that is reasonable under the prevailing circumstances to protect external whistle-blowers from external victimisation, given the fact that the OM has no control over the whistle-blower or the victimisers.

External whistle -blowers exposed to external victimisation should contact the OM and request assistance, where possible, to deal with the victimisation.

4. REPORTING WHISTLE BLOWER VICTIMISATION TO THE MUNICIPALITY

4.1 EMPLOYEES

Employees should report any victimisation they are exposed to as a result of their whistleblowing to their immediate senior not involved with the victimisation, up to and including the AO. It is the responsibility of the senior to escalate the matter further in order to protect the employee and eliminate the victimisation.

If all the employee's seniors are involved in the victimisation, the employee should report the victimisation to the Executive Mayor or Speaker.

4.2 COUNCILLORS

Councillors should report any victimisation they are exposed to as a result of their whistleblowing to the Speaker. If the victimisation is perpetrated by an OM employee, the Speaker must report the victimisation to the AO, who must report it to the employee's senior in order to institute disciplinary proceedings against the employee.

The Speaker may forward cases of Councillor victimisation to the AO if the Municipal Administration can assist with the protection of the Councillor and/or eradication of the victimisation.

4.3 EXTERNAL WHISTLE BLOWERS

External whistle-blowers should report victimisation they are exposed to as a result of their whistleblowing to a Director, the AO, Executive Mayor or other Councillor. It is the responsibility of the person receiving the report to forward the information to the relevant municipal or external officials who may be able to assist the whistle blower.

5. INELIGIBILITY FOR PROTECTION

The protection of whistle-blower provisions will not apply to a person who reports allegations knowing that they are false or for reports that have no substance to support the allegations.