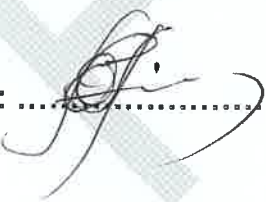




**FRAUD AND CORRUPTION MANAGEMENT AND PROMOTION OF ETHICS AND PROFESSIONALISM POLICY AND PLAN FOR THE JOHN TAOLO GAETSEWE DISTRICT MUNICIPALITY**

Policy Number: 6.9.30/05/2022	Approved Date:
Effective Date: July 2022	Review Date:

Municipal Manager:  .....

Speaker:  .....

**MR. I.E AISENG  
JOHN TAOLO GAETSEWE  
DISTRICT MUNICIPALITY  
SPEAKER**

**JOHN TAOLO GAETSEWE DISTRICT MUNICIPALITY**



**FRAUD AND CORRUPTION MANAGEMENT AND PROMOTION OF ETHICS AND PROFESSIONALISM POLICY AND PLAN**

MR. I.E AISENG  
JOHN TAOLO GAETSEWE  
DISTRICT MUNICIPALITY  
SPEAKER

## Table of Contents

1. BACKGROUND .....	3
2. PURPOSE .....	3
3. SCOPE OF THE POLICY .....	4
4. LEGAL CONTEXT .....	4
5. DEFINITIONS .....	12
6. POLICY STATEMENT .....	14
7. APPROACH .....	14
7.1. Promoting High Ethical Standards and Professionalism .....	14
7.2. Prevention and Deterring .....	17
7.3. Response and Consequences Management .....	18
8. POLICIES REPEALED .....	19
9. POLICY REVIEW .....	19
10. REFERENCES .....	19
ANNEXURE: MUNICIPAL REGULATIONS ON FINANCIAL MISCONDUCT PROCEDURES AND CRIMINAL PROCEEDINGS, 2014.....	21

MR. I.E AISENG  
JOHN TAOLO GAETSEWE  
DISTRICT MUNICIPALITY  
SPEAKER

## 1. BACKGROUND

It is common because that fraud and corruption has reached endemic proportions in South Africa. Fraud, corruption, embezzlement, theft and maladministration poses risk for any organisation and perhaps even more so at the local sphere of government. It is therefore sensible for the John Taolo Gaetsewe District Municipality to take a stand and put measures in place to combat such improprieties and unethical behaviour.

It is reasoned that fraud, corruption, misrepresentation, embezzlement, theft, and maladministration speaks to the morality of individuals and the organisation. All of these improprieties are unethical in nature, although not all unethical behaviour is illegal. It follows that the promotion of ethics should be part of any effort to address fraud and corruption. This document, with other policy documents and plans are therefore designed to put measures in place to prevent and deter fraud, corruption, theft and related activities and to promote a high standard of ethics in the Municipality. Ethics management will therefore not be handled as a separate policy matter, but as integral to this policy and possible subsequent plans.

## 2. PURPOSE

The purpose of this Policy is to develop and foster a climate of ethical behaviour within John Taolo Gaetsewe District Municipality (JTGDM) where all councillors and employees at all times strive to:

- ✓ Conduct themselves in an ethical manner;
- ✓ Promote ethics, integrity, fraud and corruption prevention, fraud detection and response awareness;
- ✓ For the ultimate eradication of fraud, corruption, theft and maladministration by means of application of the full spectrum of pro-active measures at their disposal; and
- ✓ Put measures in place to respond to instances of unethical behaviour, including fraudulent and corrupt activities.

### 3. SCOPE OF THE POLICY

This policy applies to the following persons and/or entities:

- 3.1. All political office bearers and councillors;
- 3.2. All employees
- 3.3. Consultants, suppliers, contractors and other service providers to the Municipality;
- 3.4. Non – Governmental Organisations and other parties receiving benefits from the Municipality;
- 3.5. Communities and/or community members receiving services from the Municipality and/or benefitting from the activities of the Municipality; and
- 3.6. Any person/s or legal entity acting for or on behalf of the Municipality.

### 4. LEGAL CONTEXT

The Local Government: Municipal Finance Management Act (Act 56 of 2003) (MFMA) assigns the Accounting Officer (Municipal Manager) to be responsible for the management of the financial administration of the Municipality and to this extent to take reasonable steps to ensure (Section 62(1)(b, c and e)):

- (a) *that full and proper records of the financial affairs of the municipality are kept in accordance with any prescribed norms and standards;*
- (b) *“that the municipality has and maintains effective, efficient and transparent systems –*
  - (i) *of financial and risk management and internal control; and*
  - (ii) *of internal audit operating in accordance with any prescribed norms and standards.”*
- (e) *“that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15:”*



Section 61 of the MFMA stipulates that:

- (1) *"The accounting officer of a municipality must-*
  - (a) *act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs;*
  - (b) *disclose to the municipal council and the mayor all material facts which are available to the accounting officer or reasonably discoverable and which in any way might influence the decisions or actions of the council or the mayor; and*
  - (c) *seek, within the sphere of influence of the accounting officer to prevent any prejudice to the financial interests of the municipality.*
- (2) *An accounting officer may not-*
  - (a) *act in a way that is inconsistent with the duties assigned to accounting officers of municipalities in terms of this Act; or*
  - (b) *use the position or privileges of, or confidential information obtained as, accounting officer for personal gain or to improperly benefit another person."*

Section 115 of the MFMA stipulates that:

- (1) *"The accounting officer of a municipality or municipal entity must-*
  - (b) *take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices."*

In terms of Section 171 of the MFMA *"The accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently-*

- (d) *provides incorrect or misleading information in any document which in terms of a requirement of this Act must be –*

MR. I.E AISENG  
JOHN TAOLO GAETSEWE  
DISTRICT MUNICIPALITY  
SPEAKER

Page 5 of 21

- (i) *submitted to the mayor or the council of the municipality, or to the Auditor-General, the National Treasury or other organ of state; or*
- (ii) *made public.”*

It is also financial misconduct when any other official employed by the Municipality provides such incorrect or misleading information to the accounting officer in terms of Sections 2(d) and 3(d). It is further stipulated in Section 4 that allegations of financial misconduct must be investigated and institute disciplinary proceedings if the investigation warrants such a step.

The Prevention and Combating of Corrupt Activities Act (PCCA) 12 of 2004 (Government Printing Works, 2004) defines the offence of corruption in Section 3 as follows:

*“Any person who, directly or indirectly-*

- a) *accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*
- b) *gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act personally or by influencing another person so to act. in a manner that*
  - i) *amounts to the-*
    - (aa)*illegal, dishonest, unauthorised, incomplete, or biased; or*
    - (bb)*misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation:*
  - ii) *that amounts to-*
    - (aa)*the abuse of a position of authority;*
    - (bb)*a breach of trust; or*
    - (cc)*the violation of a legal duty or a set of rules;*
  - iii) *designed to achieve an unjustified result; or*

<p style="text-align: center;">MR. I.E AISENG JOHN TAOLO GAETSEWE DISTRICT MUNICIPALITY SPEAKER</p>
---

*iv) that amounts to any other unauthorised or improper inducement to do or not to do anything.”*

The PCCA continues *inter alia* to list all manner of corruption offences in respect of supply chain management and contract related activities in Sections 12, 13, 14, and 17.

It is against the law, as defined in the PCCA Section 19, to interfere, hinder or obstruct an investigation of an offence. It is stated that:

*“Any person who, at any stage, with intent to defraud or to conceal an offence in terms of this Chapter or to interfere with, or to hinder or obstruct a law enforcement body in its investigation of any such offence-*

*(a) destroys, alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device or any entry in such book, document, account or electronic device, or is privy to any such act;*

*(b) makes or is privy to making any false entry in such book, document, account or electronic device; or*

*(c) omits or is privy to omitting any information from any such book, document, account or electronic device,  
is guilty of an offence.”*

Sections 20 and 21 deals with accessories to or after an offence and attempting, conspiring and inducing another person to commit an offence, respectively. Section 20 states that:

*“Any person who, knowing that property or any part thereof forms part of any gratification which is the subject of an offence in terms of Part 1, 2, 3 or 4, or section 21 (in so far as it relates to the aforementioned offences) of this Chapter, directly or indirectly, whether on behalf of himself or herself or on behalf of any other person-*





*(a) enters into or causes to be entered into any dealing in relation to such property or any part thereof; or*  
*(b) uses or causes to be used, or holds, receives or conceals such property or any part thereof,*  
*is guilty of an offence.”*

Section 21 states that:

*“Any person who-*

- (a) attempts;*
- (b) conspires with any other person; or*
- (c) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person to commit an offence in terms of this Act, is guilty of an offence.”*

It is an offence in terms of Section 34 of the PCCA for any person in a position of authority who knows or who ought reasonable to have known that any other person committed an offence in terms of the Act under Part 1, 2, 3 or 4, or Section 20 or 21. Such person of authority with knowledge or suspicion of an offence is also obliged to report same, or cause same to be reported to any police official. This includes “theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more.

The Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014 (Government Printing Works, 2014) outlines the procedures to be followed in instances of financial misconduct and offences and must be read with both the MFMA and PCCA.

It is prohibited in Section 3 of the Protected Disclosures Amendment Act, 2017 (Act 5 of 2017) (PDA) to subject an employee or worker to any occupational detriment

**Page 8 of 21**

by his or her employer on account, or partly on account, of having made a protected disclosure (Government Printing Works, 2017). The PDA list protected disclosures in terms of the following categories of improprieties (Section 1(b))

*"1. In this Act, unless the context otherwise indicates -*

*(b) "disclosure' means any disclosure of information regarding any conduct of an employer, or of an employee or of a worker of that employer, made by any employee or worker who has reason to believe that the information concerned shows or tends to show one or more of the following:*

*(a) That a criminal offence has been committed, is being committed or is likely to be committed;*

*(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;*

*(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;*

*(d) that the health or safety of an individual has been, is being or is likely to be endangered;*

*(e) that the environment has been, is being or is likely to be damaged;*

*(f) unfair discrimination as contemplated in Chapter II of the Employment Equity Act, 1998 (Act No. 55 of 1998), or the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); or*

*(g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed;"*

It is an offence to intentionally disclose false information, PDA Section -

*(a) "knowing that information to be false or who ought reasonably to have known that the information is false; and*

*(b) with the intention to cause harm to the affected party and where the affected party has suffered harm as a result of such disclosure..."*

**Page 9 of 21**

Schedule 1 Code of Conduct for Councillors in Local Government: Municipal Systems Act, 2000 (Act 32/2000) (Government Printing Works, 2000) compels a councillor to (Section 2):

*(a) "perform the functions of office in good faith, honestly and a transparent manner; and*

*(b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised."*

The Code continues to regulate:

- ✓ Attendance of council and committee meetings;
- ✓ Disclosure of direct and indirect business interests;
- ✓ Personal gain;
- ✓ Declaration of interest;
- ✓ Paid word by full time councillors;
- ✓ Rewards, gifts and favours;
- ✓ Unauthorised disclosure of information;
- ✓ Intervention in administration;
- ✓ Intervention in administration;
- ✓ Council property, and
- ✓ Councillor in arrears.

MR. I.E AISENG JOHN TAULO GAETSEWE DISTRICT MUNICIPALITY SPEAKER
---

The Code also prescribes procedures to be followed when the Code is breached. The Code of Conduct is also applicable to traditional leaders participating in the proceedings of council.

Similarly Schedule 2 Code of Conduct for Municipal Staff Members in Local Government: Municipal Systems Act, 2000 (Act 32/2000) (Government Printing Works, 2000) (Section 2) stipulates:

*A staff member of a municipality must at all times-*

- (a) “loyally execute the lawful policies of the municipal council;*
- (b) perform the functions of office in good faith, diligently, honestly and in a transparent manner;*
- (c) act in such a way that the spirit, purport and objects of section 50 are promoted;*
- (d) act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised; and*
- (e) act impartially and treat all people, including other staff members, equally without favour or prejudice.”*

The Code continues to regulate:

- ✓ Commitment to serving the public interest;
- ✓ Personal gain;
- ✓ Disclosure of benefits;
- ✓ Unauthorised disclosure of information;
- ✓ Undue influence;
- ✓ Rewards, gifts and favours;
- ✓ Council property;
- ✓ Payment of arrears;
- ✓ Participation in elections, and
- ✓ Reporting duty of staff members.

The Code also prescribes procedures to be followed when the Code is breached.



## 5. DEFINITIONS

All terms used in this policy have the same meaning as the meaning it has in the legislation that it relates to and that is referred to in this policy, unless otherwise specified and/or defined.

The following terms are specifically defined:

**Fraud**: CR Botha in Minnaar (2019) defines fraud as follows: “*Fraud is the unlawful, intentional making of misrepresentation which causes actual prejudice to another or holds potential prejudice to another.*” This is irrespective of whether or not there is a personal benefit to the perpetrator.

**Misrepresentation**: Minnaar (2019) defines misrepresentation as follows: “*A misrepresentation is made when X makes a representation to Y implying that a condition or set of conditions exist that, in reality, does not exist. A misrepresentation may be made:*

- *by way of behaviour (such as nodding your head); or*
- *by way of an omission (to omit to do something); or*
- *when there is a misrepresentation regarding a fact.”*

Fraudulent activities inter alia include:

- (a) Embezzlement;
- (b) Misappropriation;
- (c) Falsification and Forgery;
- (d) Overstatement of assets and income to conceal unauthorised transactions;
- (e) Understatement of liabilities and expenses to conceal illegal transactions;
- and
- (f) False or omitted disclosure.



**Corruption**: The definition of the offence of corruption in the Prevention and Combating of Corrupt Activities Act (PCCA) 12 of 2004 is retained. However,

for the purposes of this policy corruption is summarised as follows: “The giving or receiving of gratification to derive benefit from and/or influence the outcome of any administrative process.”

**Maladministration:** “Faulty, inefficient or improper management or administration, especially by a government body,” Definitions (2019).

Action or inaction related to maladministration include (Wikipedia, 2019):

- Delay;
- Incorrect action or failure to take any action;
- Failure to follow procedures or the law;
- Failure to provide information;
- Inadequate record-keeping;
- Failure to investigate;
- Failure to reply;
- Misleading or inaccurate statements;
- Inadequate liaison;
- Inadequate consultation; and
- Broken promises.

**Irregularity:** “...means the state of being irregular. It also refers to a behavior that amounts to a breach of a rule or custom. It can also be an improper or dishonest conduct,” (US Legal 2019).

**Theft:** “Theft is defined as the physical removal of an object that is capable of being stolen without the consent of the owner and with the intention of depriving the owner of it permanently,” (Encyclopaedia Britannica, 2019). It is general term and include crimes of larceny, robbery and burglary. Theft and fraud is often interrelated such as in the case of embezzlement.

## 6. POLICY STATEMENT

The John Taolo Gaetsewe District Municipality is committed to zero tolerance to any fraud, corruption, maladministration, theft and/or any other dishonest activities of a similar nature.

## 7. APPROACH



The Municipality has a three pronged approach to fraud and corruption, namely:

### 7.1. Promoting High Ethical Standards and Professionalism

Councillors and officials shall dedicate themselves to promote the vision and mission of the Municipality, which are respectively as follows:

**Vision:** *"Working Together for a Better Life for All in the District"*

**Mission:** *"Accelerating the Implementation of Integrated Development Initiatives and Providing Support to Local Municipalities."*

The Municipality strives to develop and serve the people of the District by embracing the following core values:

**Development:** strive for the development of the district and its people, while also striving for own personal development

**Commitment:** Stay committed to the vision of the JTGDM and to serving the people of the District in whatever we do.

**Care:** to show empathy and care towards others, while striving to promote a positive working atmosphere; and

**Integrity:** Stay true in whatever you commit to performing your duties to the best of your ability, while conducting yourself professionally at all times.

Councillors and employees of the Municipality, as well as any person/s or organisation/s representing and/or acting on behalf of the Municipality shall therefore:

- a. Hold paramount the safety, health and welfare of the public in the performance of professional duties;
- b. Act in such a manner as to uphold and enhance personal honour, integrity and the dignity of the profession;
- c. Treat with respect and consideration all persons, regardless of race, religion, gender, sexual orientation, maternity, marital or family status, disability, age or national origin;
- d. Engage in carrying out the mission and vision of JTGDM in a professional manner;
- e. Build professional reputations on the merit of services and refrain from competing unfairly with others;
- f. Recognize that the chief function of the Municipality at all times is to serve the best interest of its constituency;
- g. Accept as a personal duty the responsibility, to keep up to date on emerging issues and to conduct themselves with professional competence, fairness, impartiality, efficiency and effectiveness;
- h. Respect the structure and their responsibilities;
- i. Keeping the communities informed about issues affecting them;
- j. Conduct organizational and operational duties with positive leadership exemplified by open communication, creativity, dedication, and compassion;
- k. Exercise whatever discretionary authority they have under the law to carry out the mission of the organization;





- l. Serve with respect, concern courtesy and responsiveness, in carrying out the organization's mission;
- m. Demonstrate the highest standard of personal integrity, truthfulness, honesty, fortitude, in all activities in order to inspire, confidence, and trust in such activities;
- n. Avoid any interest or activity that is in conflict with the conduct of their official duties;
- o. Respect and protect privileged information to which they have access in the course of their official duties; and
- p. Strive for personal and professional excellence and encourage the professional development of others.

Programmes to promote high ethical standards accountability, transparency and professionalism may include:

- ✓ Ethics awareness and/or training sessions;
- ✓ Ethics surveys to both determine the understanding of ethics, professionalism and morality, as well as the prevalence of unethical behaviour;
- ✓ Articles in the internal newsletter of the Municipality;
- ✓ Declaration of interest clauses in future agreements with service providers;
- ✓ Undertaking to maintain high levels of ethics and professionalism in future agreements with service providers;
- ✓ Declaration of interest and/or conflict of interest in all meetings of the Council, Portfolio Committees, Oversight Committees, Tribunals, Panels, or any committee where decisions are taken;
- ✓ Skills Development Plan and Report;
- ✓ Employment Equity Plan and Report;
- ✓ Regular performance and financial reporting;
- ✓ Council outreach programmes and community meetings; and

- ✓ Annual report including annual financial statements and annual performance report.

## 7.2. Prevention and Deterring

Fraud and corruption prevention can be seen as the cumulative effect of preventative and detection systems incorporated by management. Detection of fraud can only lead to the prevention thereof if the response thereto acts as a deterrent.

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

The following measures are inter alia in place to prevent and/or detect and deter dishonest activities:

- ✓ Internal Controls in all Departments;
- ✓ Accounting Officer and Senior Management Commitment;
- ✓ Recruitment Policy and Pre-employment screening;
- ✓ Accounting and Operational Policies;
- ✓ Fraud and Corruption Management and Promotion of Ethics and Professionalism Policy and related plans;
- ✓ Employee awareness campaigns and training;
- ✓ Fraud and risk assessment workshop, risk register and risk progress reporting;
- ✓ Risk Management Policy;
- ✓ Code of conduct for both councillors and employees;
- ✓ Disclosure of interests register;
- ✓ Declaration of interest at meetings;
- ✓ Internal and External Audits;
- ✓ Other fraud and corruption reporting mechanisms;



- ✓ Investigating suspicions and/or allegations of fraud and corruption;
- ✓ Oversight Committees such as:
  - Municipal Public Accounts Committee;
  - Audit and Performance Committee;
- ✓ Management Committee;
- ✓ Risk Management Committee;
- ✓ Training Committee; and
- ✓ Local Labour Forum.

### **7.3. Response and Consequences Management**

It is the policy of John Taolo Gaetsewe District 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. Actions may include the laying of criminal charges, civil and administrative actions and financial recoveries or goods, where applicable.

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. In addition, these will be investigated and followed up by the application of all remedies available within the full extent of the law.

Allegations and reports of dishonest activities will be referred to the Disciplinary Board in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014. Said Regulations comprehensively prescribes procedures to be followed in reporting, responding to, investigating and taking action in cases of financial misconduct. These procedures will be followed in all instances of alleged

**MR. I.E AISENG  
JOHN TAOLO GAETSEWE  
DISTRICT MUNICIPALITY  
SPEAKER**

financial misconduct. The Regulations are attached to and forms part of this Policy.

## 8. POLICIES REPEALED

The following policies are hereby repealed in total:

- ✓ Fraud Prevention Policy; and
- ✓ Ethics Management Policy.

## 9. POLICY REVIEW

This policy shall be reviewed as and when circumstances dictated, but at least every five years.

## 10. REFERENCES

Definitions. 2019. Maladministration. <https://www.definitions.net/definition/-MALADMINISTRATION>. Accessed on 28 March 2019.

Encyclopaedia Britannica. 2019. Theft. <https://www.britannica.com/topic/theft>. Accessed on 28 March 2019.

Government Printing Works. 2000. Local Government: Municipal Systems Act, 2000 (Act 32/2000). Government Gazette 21776, Vol 425. Pretoria.

Government Printing Works. 2004. The Prevention and Combating of Corrupt Activities Act 12 of 2004. Government Gazette No. 26311, Vol. 466. Pretoria.

Government Printing Works. 2014. Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014. Government Gazette No. 37699, Vol. R. 430. Pretoria.



Government Printing Works. 2017. Act No. 5 of 2017: Protected Disclosures Amendment Act, 2017. Government Gazette No. 41016, Vol. 626. Pretoria.

Lexis Nexis. 2014. Local Government: Municipal Finance Management Act No 56 of 2003. Paarl Media.

Minnaar, J. 2019. Understanding fraud and white collar crime - The origin, definition and elements of fraud. The Ethics Institute. <http://tei.org.za/index.php/resources/articles/fraud-and-corruption/1712-understanding-fraud-and-white-collar-crime-the-origin-definition-and-elements-of-fraud>. Accessed on 28 March 2019.

US Legal. 2019. Irregularities Law and Legal Definition. <https://definitions.uslegal.com/i/irregularities/>. Accessed 28 March 2019.

Wikipedia. 2019. Maladministration. <https://en.wikipedia.org/wiki/Maladministration>. Accessed on 28 March 2019.

MR. I.E AISENG  
JOHN TAOLO GAETSEWE  
DISTRICT MUNICIPALITY  
SPEAKER

**ANNEXURE: MUNICIPAL REGULATIONS ON FINANCIAL MISCONDUCT  
PROCEDURES AND CRIMINAL PROCEEDINGS, 2014**

**FINAL**

**MR. I.E AISENG  
JOHN TAOLO GAETSEWE  
DISTRICT MUNICIPALITY  
SPEAKER**