



Annexure C

Schedule 2 (Code of Conduct for Municipal Staff Members) of the Municipal Systems Act 32 of 2000 (the Systems Act)

1. In terms of Section 67 (1)(h) of the Systems Act, read with Schedule 2 (Code of Conduct for Municipal Staff Members) of the Municipal Systems Act 32 of 2000 and particularly section 14 (Breaches of Code) and 14A (Disciplinary steps), breaches of this code **must be** dealt with in terms of disciplinary procedures.

In terms of the Disciplinary Procedure entered by Collective Agreement with the South African Local Government Bargaining Council which takes effect from the 1st February 2018 and which will remain in force until the 31st January 2023 (hereinafter referred to as the Disciplinary Procedure):

2. Under normal circumstances, all disciplinary action against any employee is attended to by the Labour Relations sub-section of the Human Resources Management section within the Bitou Municipality.
3. This Disciplinary Procedure does not apply to Managers directly accountable to the Municipal Manager;
4. In terms of paragraph 5.1, the purpose of this Disciplinary Procedure is to establish a fair, common and uniform procedure for the management of employee discipline;
5. In terms of paragraph 7.2, the Municipal Manager or his authorised representative shall proceed forthwith, without undue delay, and with due regard to the necessity for disciplinary proceedings to commence promptly;
6. In terms of paragraph 7.3, if the Municipal Manager or his authorised representative is satisfied that there is *prima facie* cause to believe that an act of misconduct has been committed, he may institute disciplinary proceedings against the Employee concerned.
7. In terms of paragraph 7.4, the Disciplinary Hearing shall commence as soon as reasonably possible, but no later than three (3) months from the date of the Municipal Manager's or his authorised representative's decision to institute disciplinary proceedings;



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The Presiding Officer: May the Municipal Manager appoint an external Presiding Officer?

8. In terms of paragraph 7.6.3 of the Disciplinary Code should it not be possible to appoint a suitably qualified person employed by the Municipality, to serve as a Presiding Officer due to a lack of suitably qualified persons, or where Presiding Officers are threatened or intimidated, the Municipal Manager or his authorised representative may appoint a suitably qualified person, not employed by the Municipality to serve as the Presiding Officer.
9. The Municipality would be well-advised to appoint a suitably qualified person, not employed by the Municipality, to serve as the Presiding Officer. In this regard, we suggest that the Municipal Manager ask the Arbitration Foundation of South Africa (which has recently formed a Garden Route branch in the Southern Cape) to recommend a Presiding Officer for these cases. Their web-site sets out the persons who are available for appointment and what their background/experience is.
10. The AFSA Garden Route website is in the process of being finalised. You may look at www.afsagardenroute.co.za.
11. The person to contact is:

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12. We suggest that the Municipality apply to the Presiding Officer to appoint external and independent legal representation to represent the Municipality due to the complexity of the cases and in the public interest. This matter is serious, and the Minister of Local Government has involved himself in it. Many officials have been implicated and there is a need to ensure objectivity and independence.

Appointing an external legal representative to represent the Municipality: May the Municipal Manager decide to instruct attorneys to facilitate the

Mosdell Pama & Cox and Boqwana Burns

Reference : Perino Pama and Shane de Beer



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prosecution of each matter and the implementation of the findings and recommendations made?

13. In terms of paragraph 7.7.3 of the Disciplinary Code, should it not be possible to appoint a suitably qualified person to represent the Municipality and to serve the function of prosecution due to a lack of suitably qualified persons, or where Employer Representatives are threatened or intimidated, the Municipal Manager or his authorised representative may appoint a suitably qualified person, from outside its employ, excluding a legal practitioner, to serve as Employer representative.
 14. However, paragraph 7.7.4 allows for both parties to be represented by attorneys, if both parties agree or if the Presiding Officer, determines that it is reasonable to allow legal representation having regards to the factors set out therein.
 15. If legal representation is permitted, Council should consider appointing attorneys on its panel to facilitate the prosecution of each matter and the implementation of the findings/recommendations made. Alternatively, it may make more sense to continue to instruct us i.e. Boqwana Burns and Mosdell Pama and Cox to attend to this. We are familiar with all the facts and the law. It would more cost-effective and efficient to appoint attorneys who are familiar with the matter and who have already researched the law.
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