



BITOU MUNICIPALITY

FINANCIAL DISCIPLINARY BOARD

TERMS OF REFERENCE AND REPORTING PROCEDURES

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1. Purpose

The purpose of the Disciplinary Board is restricted to alleged offences of financial misconduct related to municipal officials as per sections 171 and 172 of the Municipal Financial Management Act 56 of 2003 (hereunder further referred to as "*the Act*"), and has no jurisdiction to address any allegation relating to offences in terms of section 173 of the Act.

Any allegations relating to the conduct of councillors must be dealt with in terms of the Code of Conduct of Councillors as per items 13 and 14 of Schedule 1 of the Municipal Systems Act 32 of 2000.

This terms of reference:

- guide the reporting of allegations of financial misconduct; and
- Serves as a Terms of Reference for the Disciplinary Board to investigate allegations of Financial Misconduct against officials and senior management in terms of regulation 6 of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings, 2014.

2. Legislative requirements

The establishment of a Disciplinary Board is compulsory in terms of the Municipal Regulations for Financial Misconduct Procedures and Criminal Proceedings as published per Government Notice 430 of 30 May 2014 (hereunder further referred to as "*the Regulations*").

Council approved the establishment of a Disciplinary Board on 27 May 2015, under Council Resolution **C/1/104/05/15** and subsequent to this resolution the members were appointed during 2018.

3. Reporting of allegations of financial misconduct

3.1. In terms of regulation 3 of the Regulations, any person must report an allegation of financial misconduct against:

- “(a) the accounting officer, a senior manager or the chief financial officer of a municipality, to the municipal council of the municipality, the provincial treasury and the national treasury;
- (b) an official of a municipality other than its accounting officer, to that accounting officer;
- (c) the accounting officer of a municipal entity, to the chairperson of the board of directors, the mayor and the accounting officer of the entity's parent municipality;
- (d) an official of a municipal entity other than its accounting officer, to that accounting officer.”

3.2. The mayor or the accounting officer, as the case may be, must table an allegation of financial misconduct, referred to above, before the municipal council, not later than seven days after receipt thereof or at the next sitting of the council.

- 3.3 This procedures must not be read as preventing a person from laying a criminal charge with the South African Police Service against any councillor or official of the municipality in relation to any conduct that may constitute an offence in terms of section 173 of the Act.
- 3.4 The person to whom an allegation of financial misconduct has been reported must ensure that the report is treated in a confidential manner.
- 3.5 An official against whom an allegation of financial misconduct is made must be given an opportunity to make written representation to the municipality as to why he or she should not be suspended, within seven days of being notified of the allegation.
- 3.6 Should a staff member or councillor or member of the public wish to report allegations of fraud or corruption anonymously, they can also contact or write to any member of management, the Municipal Manager, Executive Mayor, the Speaker or Internal Audit or uses the national fraud hotline – 0800 701 701.
- 3.7 In the case of the Municipal Manager or the Mayor receiving a report in terms of paragraph 3.5, the stipulations of paragraph 3.2 prevails. Any other person receiving a report in terms of section 3.6 must refer the information received to both the Municipal Manager and the Mayor.
- 3.8 Whistle Blowers will be protected as per the Protected Disclosures Act, Act 26 of 2000.

4. Objectives of the Disciplinary Board

The Objectives of the Disciplinary Board is to conduct an independent preliminary or full investigation in terms of the Regulations to establish:

- 4.1. Whether the allegation of financial misconduct has any substance; and
- 4.2. If it has substance, whether sufficient grounds exist for instituting disciplinary proceedings against the alleged transgressor.

5. Composition

The Financial Disciplinary Board shall consist of a maximum of 5 members according to regulation 4 (3) of the Regulations.

The members of the Disciplinary Board shall be formally appointed by the Council for a three year term in terms of regulation 4(3) of the Regulations.

The members, as a collective, shall possess the blend of skills, expertise and knowledge of the municipality, including familiarity with the concepts, principles and practice of financial misconduct.

The appointment of members of the Disciplinary Board will be in compliance with regulation 4 (4), (5) and (6) of the Regulations.

6. Responsibilities and functions of the Disciplinary Board

The responsibilities and functioning of the Disciplinary board are stipulated in in regulations 5 and 6 of the Regulations. The Disciplinary Board must determine its own procedures for each case referred to the Board.

7. The authority and reporting requirements of the Disciplinary Board

- 7.1. The Disciplinary Board is mandated to interview any relevant person and to obtain all relevant documentation from any official or councillor that may assist with the investigations.
- 7.2. The Disciplinary Board has the authority to terminate a preliminary investigation if there are no grounds to support the allegations as per regulation 5 (3) of the Regulations.
- 7.3. If the Disciplinary Board has determined that the allegations is frivolous, vexatious, speculative, or obviously unfounded and has terminated the investigation, a report in this regard must be submitted to the Council under signature of the Chairperson of the Disciplinary Board.
- 7.4. If the Disciplinary Board determines that the allegations is founded, the Disciplinary Board must submit a report, under signature of the Chairperson of the Disciplinary Board, with recommendations to the Council as follows:
 - (i) Whether the allegation(s) of financial misconduct has substance and warrant a full investigation, and
 - (ii) Whether the cost, the seniority of the alleged transgressor and the seriousness or sensitivity to investigating the alleged financial misconduct warrants that a person be appointed by the Council who has appropriate specialist expertise and who is not an official of the municipality; or
 - (iii) Whether an independent team of investigators have to be appointed.
- 7.5. The Disciplinary Board will submit the report referred to above, on the findings and recommendation of the Disciplinary Board as “In-Committee report” to be tabled at the next sitting of the Council after completion of its investigation(s).
- 7.6. If the Council resolves that the Disciplinary Board must carry on with a full investigation, the Disciplinary Board is mandated to interview any relevant person and to obtain all relevant documentation from any official or councillor that may assist with the investigations.
- 7.7. The Disciplinary Board may make recommendations that disciplinary proceedings instituted against the alleged transgressor and the Council must by way of a resolution institute disciplinary hearings as follows;
 - (i) In the case of a senior manager in accordance with the Local Government: Disciplinary Codes and Proceedings for Senior Managers Regulations as per the Systems Act; or

- (ii) In the case of an official who is not a senior manager, in accordance with the applicable collective bargaining agreement established for municipalities.

7.8. If the recommendations of the Disciplinary Board is rejected by the Council, the Accounting Officer must inform the Disciplinary Board within five (5) days of the rejection.

7.9. Where the recommendations of the report of the Disciplinary Board, regarding the steps to be taken, are not implemented, the Disciplinary Board must notify the provincial- and the national treasury for a possible intervention in terms of regulation 19 of the Regulations.

7.10. If the Council resolves to appoint a team of investigators or a sole investigator, the stipulations of regulation 5 (5) and (6) will be followed.

8. Organisational Arrangements

8.1. The Chairperson of the Disciplinary Board will decide on the first meeting of the Disciplinary Board as and when required, and the consecutive meetings will be agreed upon with the members.

8.2. The quorum of the Disciplinary Board is the Chairperson plus at least two members.

8.3. The Acting Director Corporate Services will dedicate staff for the secretarial function. The meetings of the board will be recorded and minuted by the secretariat. Minutes of the board meetings will only be made available to the Accounting Officer and the Council and not individual councillors to protect the rights of the implicated persons and the interests of the municipality. Recordings will only be made available to affected parties as and when required.

9. Relationship with Council and management.

Although any person can report an allegation of financial misconduct, only the Council can instruct the Disciplinary Board to investigate and report on such allegations.

10. Maintenance of the Terms of Reference

The reviewing and amending of this term of reference is the responsibility of the Acting Director Corporate Services as and when required.