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TERMS OF REFERENCE FOR THE DISCIPLINARY BOARD AND PROTECTED DISCLOSURE PROCEDURE

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TERMS OF REFERENCE: DISCIPLINARY BOARD

1. Introduction

The purpose of this document is to serve as Terms of Reference for the Municipal Disciplinary Board to conduct the Financial Misconduct allegations against officials, senior management and councillors.

2. Legislation Associated with Disciplinary Board

Council approved on 15 July 2016 the establishment of a Disciplinary Board in terms of the Municipal Regulations for Financial Misconduct and Offences, No 37682 promulgated in Government Gazette 425 on the 30th May 2014 and that the Board submits a reference framework to the Municipal Council for consideration and approval.

2.1. Reporting of allegations of financial misconduct.

2.1.1. Only the designated persons in Umsobomvu Municipality may receive reports of allegations of financial misconduct and offences in terms of section 171 and 173 of the MFMA. The designated persons are the Accounting Officer in the case of employees and the Mayor in the case of the accounting officer, senior managers including the chief financial officer. The Speaker is the designated person to receive reports of allegations against councillors who might have committed financial offences.

2.1.2. The designated person, as the case may be, must table the allegations not later than seven days after receipt thereof or at the next sitting of the council, together with the implicated person's reasons for not getting suspended on the allegations, in order for Council to consider if an investigation and/or suspension are necessary or not.

2.1.3. The designated person must indicate in the report to Council which Financial Misconduct in terms of section 171 and/or which Financial Offence in terms of section 173 was committed.

3. Objectives of the Disciplinary Board

The Objectives of the Disciplinary Board is to conduct an independent preliminary or full investigation in terms of the Municipal Regulations for Financial Misconduct and Offences.

4. Responsibilities and functions of the Disciplinary Board

Once the instructions are received, the Disciplinary Board must determine its own procedures within the Standard Operating Procedures, attached as Annexure A to this Terms of Reference.

5. The authority of the Disciplinary Board

The Disciplinary Board Chairperson and/or the investigators have a mandate to interview any relevant person and to obtain all relevant documentation from any official or councillor that may assist with the investigations.

The Disciplinary Board has the authority to terminate a preliminary investigation if there are no grounds to support the allegations.

The Disciplinary Board Chairperson will submit a report on the findings and recommendation of the Disciplinary Board as “In-Committee reports” at the first next Council meeting after completion of its investigation(s), with consultation of the Speaker. Should an urgent report have to be submitted, the Chairperson will also arrange accordingly with the Speaker.

6. Organisational Arrangements

Council approved the appointment of three permanent Disciplinary Board members consisting of; the Head of the Pixley ka Seme Internal Audit Unit for internal audit purposes (secundus – member of the Internal Audit Unit), Manager Corporate Services for legal purposes (secundus Senior Manager of Umsobomvu municipality) and an Audit Committee Member as the Chairperson of the Disciplinary Board (secundus – other member of the Audit Committee).

If a designated official is implicated, that official will be replaced by Council with a member of the senior management of the municipality.

The Disciplinary Board will agree and meet, as and when required and the presence of all members will constitute the quorum. The secretariat role will be taken by an official of the Corporate Services Department or a nominee and minutes will only be available to members and Council and the Accounting Officer to protect the rights of the implicated persons and the interests of the municipality.

7. Reporting Requirements

7.1. The Disciplinary Board Chairperson must complete the **preliminary investigation** and submit his report within 30 days or at the first next sitting of Council, recommending that;

- 7.1.1. The allegation(s) of financial misconduct has substance and warrant a full investigation, and
- 7.1.2. An outside specific specialist should/should not be appointed as part of the team responsible for the full investigation, **or**
- 7.1.3. That Council take note that the allegation of financial misconduct was found frivolous and no grounds warrant a further full investigation.
- 7.2. Once a **full investigation** is completed and the Disciplinary Board Chairperson is satisfied that the allegations are founded and sufficient grounds for a charge of financial misconduct and /or financial offence exist, the Chairperson must submit the Disciplinary Boards report to the designated person or his/her nominee for disciplinary action and inform Provincial and National Treasury.
- 7.3. The Disciplinary Board Chairpersons report to the designated person or his/her nominee must indicate;
 - 7.3.1. In the case of a senior manager that disciplinary proceedings be instituted in accordance with the Local Government: Disciplinary Codes and Proceedings for Senior Managers Regulations in terms of the Municipal Systems Act; or
 - 7.3.2. In the case of an official who is not a senior manager, in accordance with the applicable collective bargaining agreement established for municipalities; or
 - 7.3.3. In the case of a councillor, in accordance with the Code of Conduct for Councillors in Schedule 1 to the Municipal Systems Act, and
 - 7.3.4. Whether or not the findings must be reported to the SAPS in terms of the Regulation.

8. Relationship with Council and Management

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

9. Maintenance of the Terms of Reference

The reviewing and amending of this Terms of Reference is the responsibility of the Municipality as and when required. Any proposed changes to the Terms of Reference must be reported to the Disciplinary Board for comments/recommendations to Council.

PROTECTED DISCLOSURE PROCEDURE

1. INTRODUCTION

Umsobomvu Municipality is committed to the highest standards of openness, probity and accountability. It seeks to conduct its affairs in a responsible manner taking into account the requirements of Municipal Regulations for Financial Misconduct and Offences, No 37682 promulgated in Government Gazette 425.

The Protected Disclosure Act, 26 of 2000 (Act 26 of 2000), which came into effect on 7 August 2000, give legal protection to employees against being unfairly dismissed or penalised by their employers as a result of publicly disclosing certain serious concerns. It is a fundamental term of every contract of employment that an employee will faithfully service his or her employer and not disclose confidential information about the employer's affairs. However, where an individual discovers information, which he or she believes shows malpractice or wrongdoing within the organisation, then this information should be disclosed without fear of reprisal and may be made independently of line management.

It should be emphasised that this policy is intended to assist individuals who believe they have discovered malpractice or impropriety. It is not designed to question financial or business decisions properly taken by Umsobomvu Municipality, nor may it be used to reconsider any matters which have already been addressed under harassment, complaint or disciplinary procedures. Once it is in place, it is reasonable to expect employees and others associated with Umsobomvu Municipality to use it rather than air their complaints outside.

2. SCOPE OF PROCEDURE

This policy is designed to allow employees or others associated with Umsobomvu Municipality to raise, at a high level, concerns and/or disclose information which the individual believes shows malpractice. A number of policies and procedures are already in place including grievance, harassment and discipline. This policy is intended to cover concerns, which are in the public interest and may (at least initially) be investigated separately, but might then lead to the invocation of such procedures. These might include:

- financial malpractice or impropriety, or fraud;
- dangers to health and safety or the environment;
- criminal activity;
- academic or professional malpractice;
- improper conduct or unethical behaviour;
- failure to comply with a legal obligation;
- attempts to conceal any of the above.

In appropriate cases, such matters may be investigated jointly with any Umsobomvu Municipality and parties affected.

3. SAFEGUARDS

3.1 Protection

This policy is designed to offer protection to those employees, or others associated with Umsobomvu Municipality, who disclose such concerns, provided disclosure is made:

- in good faith; and
- in the reasonable belief of the individual making the disclosure that it tends to show malpractice.

The individual will also be protected if they make the disclosure to an appropriate person or body (see section 4 below). It is important to note that no protection from internal disciplinary procedures is offered to those who choose not to use the procedure.

3.2 Confidentiality

Umsobomvu Municipality will treat all such disclosures in a confidential and sensitive manner. The identity of the individual making the allegation may be kept confidential so long as it does not hinder or frustrate any investigation. However, the investigation process may reveal the source of information and the individual making the disclosure may need to provide a statement as part of the evidence required.

3.3 Anonymous Allegations

This policy encourages individuals to put their name to any disclosures they make. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of Umsobomvu Municipality. In exercising this discretion, the factors to be taken into account will include:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from attributable sources.

3.4 Untrue Allegations

If an individual makes an allegation in good faith, which is not confirmed by subsequent investigation, no action will be taken against that individual. If, however, an individual makes malicious or vexatious allegations, and particularly if he or she persists with making them, disciplinary action may be taken against him or her.

4. PROCEDURES FOR MAKING A DISCLOSURE

4.1 Initial Step

The individual should make the disclosure to the Designated Person who will normally be the Municipal Manager, who should immediately inform the Council and the Disciplinary Board unless requested not to do so by the discloser.

In cases involving financial malpractice, the Municipal Manager should act throughout in close consultation with the Designated Officer for Umsobomvu Municipality. In the event that the disclosure relates to the Municipal Manager, then the disclosure should be made to the Mayor or where collusion between the Municipal Manager and the Mayor is thought to exist then disclosures should be made to the Designated person of the Disciplinary Board or the Chair of the Audit Committee (in a personal capacity) If the individual does not wish to raise the matter with either the Municipal Manager or the Designated person, then he or she may raise it with the a person or entity as per the Protected Disclosure Act, 2000 (Act 26 of 2000)

4.2 Process

The Designated Person will consider the information made available to him or her and decide on the form of investigation to be undertaken. This may be:

- to investigate the matter internally; and/or
- to refer the matter to the police; and/or
- to call for an independent inquiry.

If the decision is that investigation should be conducted by more than one of these means, the Designated Person should satisfy him or herself that such a course of action is warranted. Where the matter is to be the subject of an internal inquiry, the Designated Person will then consider how to conclude whether there is a prima facie case to answer.

This consideration will include determining:

- who should undertake the investigation;
- the procedure to be followed; and
- the scope of the concluding report.

4.3 Investigation

Normally an independent officer of Umsobomvu Municipality will undertake this investigation and will report his or her findings to the Designated Person. Investigations should not be carried out by the person who will have to reach a decision on the matter. Any investigation will be conducted as sensitively and speedily as possible.

As a result of this investigation, other internal procedures may be invoked, including:

- disciplinary;
- grievance;
- harassment;

or it might form the basis of a special investigation.

In some instances, it might be necessary to refer the matter to an external authority for further investigation as provided for in the Regulations.

4.4 Feedback

The Designated Person will inform the individual making the disclosure of what action, if any, is to be taken and if no action is to be taken, then the individual concerned should be informed of the reason for this. If he or she remains dissatisfied, the individual may remake the disclosure to another

appropriate person. This other person will consider all the information presented, the procedures that were followed and the reason for the original decision. The outcome of this will be either to confirm that no further action is required, or that further investigation is required and will follow the procedures referred to in 4.2 above.

Where a disclosure is made, the person or persons against whom the disclosure is made will be told of it, the evidence supporting it and will be allowed to comment before any investigation, or further action, is concluded. They will also be advised of what action, if any, is to be taken.

4.5 Reporting of Outcomes

A report of all disclosures and any subsequent actions taken will be made by the Designated Person who will retain such reports for a period of three years. In all cases, a report of the outcome will be made to the Council and the Audit Committee. The report to the Audit Committee will be in detail where the issue falls within its purview and, in other cases, in summary form, as a means of allowing the Committee to monitor the effectiveness of the procedure.

Date First Approved by Council

15 July 2016