



The Msunduzi Municipality

INTERNAL AUDIT UNIT

'Auditing to Enhance, Protect and Promote Service Delivery'



DISCIPLINARY BOARD ON FINANCIAL MISCONDUCT CHARTER

DECEMBER 2019

NOTE: *This charter must be read in conjunction with the Municipal Regulations of Financial Misconduct Procedures and Criminal Proceedings, National Treasury MFMA Circular 76 on Financial Misconduct Regulations, Protected Disclosure Act, 26 of 2000 and the Whistle Blowing Policy of Msunduzi Municipality.*

TABLE OF CONTENTS

1.	Definitions	3	
2.	Purpose	4	
3.	Organization	4	
	3.1	<i>Constitution of the Disciplinary Board</i>	4
	3.2	<i>Composition of the Disciplinary Board</i>	4
	3.3	<i>Secretariat to the Disciplinary Board</i>	5
	3.4	Frequency of Meetings	6
4.	Powers and Authority of the Disciplinary Board	6	
5.	Duties & Responsibilities of the Disciplinary Board	7	
	5.1	<i>General Responsibilities of the Disciplinary Board</i>	7
6.	Disclosure of Interest by Disciplinary Board Members	9	
7.	Disciplinary Board Remuneration	10	
8.	Removal from Office of the Disciplinary Board Members	10	

CHARTER AND TERMS OF REFERENCE FOR DISCIPLINARY BOARD ON FINANCIAL MISCONDUCT

1 DEFINITIONS

Definitions

For purposes of this charter, a word or expression to which a meaning has been assigned in the Act has the same meaning as the Act, unless the context indicates otherwise, and-

“**Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“**designated official**” means the official identified in a municipal or municipal entity to receive reports of allegations of financial offences against officials, councillors or members of the board of directors of municipal entities;

“**disciplinary board**” means a disciplinary board established in terms of regulation 4(1) or a disciplinary board of a district municipality or provincial structure referred to in regulation 4(8);

“**financial misconduct**” means any act of financial misconduct referred to in-

- (a) section 171 of the Act committed by an official of a municipality; or
- (b) section 172 of the Act committed by an official of a municipal entity;

“**financial offence**” means any offence referred to in section 173 of the Act committed by-

- (a) an official of a municipality or municipal entity;
- (b) a councillor of a municipality
- (c) a member of the board of directors of a municipal entity; or
- (d) any other person;

“**investigator**” means the disciplinary board, internal audit unit, treasury, person or team conducting a full investigation in terms of regulation 5(4)

2 PURPOSE

- 2.1 The purpose of this charter is to:
- 2.1.1 provide guideline framework on the organisation, functioning and the position of the Disciplinary Board on Financial Misconduct (“the Disciplinary Board”) within the municipality structures;
 - 2.1.2 define the terms of reference, scope, activities, purpose, authority, disclosure & removal of Disciplinary Board members from office;
 - 2.1.3 create common understanding between the Msunduzi Municipal Council (‘the Council’) Political Leadership and Management and the Disciplinary Board members; and
 - 2.1.4 serve as a reference in case of disagreements and disputes arising between Council Political Leadership, Management, and the Disciplinary Board members on matters relating to the functions, powers and authority of the Disciplinary Board.

3 ORGANISATION

3.1 Constitution of the Disciplinary Board

- 3.1.1 It is a Disciplinary Board established by Council or Board of Directors in case of a municipal entity in terms of Regulation 4.6 and is an independent advisory body that assist the Council or the Board of Directors with the investigation of allegations of financial misconduct and provide recommendations on further steps to be taken regarding disciplinary proceedings, or any other relevant steps to be taken.

3.2 Composition of the Disciplinary Board

- 3.2.1 The Disciplinary Board shall consist of at least a maximum of five members, appointed by the Council. The Council from among members of the Disciplinary Board shall appoint the Chairperson.
- 3.2.2 The Council shall appoint appropriately qualified, experienced, competent, fit, sober, solvent, proper people who have integrity with no criminal record and be from relevant sectors to serve as members of the Disciplinary Board.
- 3.2.3 All members must be independent of management, free from any conflicting relationship with any member of the Council, management and staff that would interfere with the exercise of independent judgment as a Disciplinary Board member.

- 3.2.4 Each board member shall be both independent and financially literate. The members, as collective, shall possess the blend of skills, expertise and knowledge in a municipality environment, including familiarity with the concepts, principles and practices of financial misconduct. At least two members shall have expertise in law and at least one member shall have an expertise in financial accounting and management or auditing in the public sector. The Council shall also appoint a person who is well vest with Municipal Finance Management Act. In the absence of the chairperson of the Disciplinary Board from a specific meeting, the members present shall elect a chairperson from members present to act as chairperson for that meeting.
- 3.2.5 The members of the Disciplinary Board shall serve for a period three years but the Council shall strive for continuity when appointing the Disciplinary Board members.
- 3.2.6 The Chairperson of the Disciplinary Board and/or Disciplinary Board is empowered to communicate directly and freely with the Council, Speaker, Mayor, or City Manager or National Treasury or to any official of the municipality.
- 3.2.7 The meetings of the Disciplinary Board shall be held at the offices of the municipality and not outside municipal premises.

3.3 Secretariat to the Disciplinary Board

- 3.3.1 A secretariat shall be provided by Msunduzi Municipality to the Disciplinary Board to prepare and distribute the agenda and minutes, Disciplinary Board packs in consultation with the Chairperson of the Disciplinary Board; liaise with Disciplinary Board members and Committee Officer designated by the Senior Manager Secretariat and Auxiliary Services.
- 3.3.2 Any further administrative work of the committee shall be the responsibility of internal audit unit of the municipality.
- 3.3.3 The secretariat shall co-ordinate agenda items from the members of the Disciplinary Board and Chief Audit Executive.
- 3.3.4 The agenda shall be included on the Disciplinary Board pack and distributed to members seven calendar (7) days before the ensuing Disciplinary Board meeting.
- 3.3.5 The secretariat shall electronically record and also document all the proceedings of the Disciplinary Board meetings and keep the tapes for a period of at least five years before they can be destroyed or erased, or as determined by the archives legislation.

- 3.3.6 The Secretariat shall ensure that draft minutes are verified by the Chairperson of the Disciplinary Board and circulate the draft minutes of the meetings to all members & Chief Audit Executive within two weeks of the Disciplinary Board meeting.
- 3.3.7 Minutes must be kept of all meetings of the Disciplinary Board, and all the resolutions, conclusions and opinions of the Disciplinary Board must be included therein. The Secretariat shall keep a register of all resolutions of the Disciplinary Board in a separate document, which shall be devised by the Disciplinary Board.
- 3.3.8 The secretariat shall keep all Disciplinary Board matters strictly confidential and shall not disclose any matters to any official and member of the public.

3.4 Frequency of Meetings

- 3.4.1 The Disciplinary Board shall meet at least in such times a year to be in compliance with Regulations at all times and as determined by cases submitted to the Disciplinary Board, with authority to convene additional meetings, as circumstances require. All Disciplinary Board members are expected to attend each meeting, in person. A quorum must consist of 50% plus one member. Whenever a quorum (50% plus one member) cannot be achieved, the Chairperson must adjourn the meeting for up to fourteen days. If at least 50% of the members are present at the adjourned meeting as per the above, the Chairperson may deem the Disciplinary Board to be properly constituted even if a quorum is not present. Decisions taken at a meeting where at least 50% members were present but did not constitute a quorum shall be ratified in the next meeting that quorate.

4 **POWERS AND AUTHORITY OF THE DISCIPLINARY BOARD**

- 4.1 The Disciplinary Board is authorised by Council to investigate any activity within its terms of reference that has been reported to it and that relates to financial misconduct only. It has, *inter alia*, the authority to interview officials, councillors, other members of executive management, advisors and consultants, third parties and other employees of the municipality and to deal directly with the internal auditors or forensic investigators employed by the municipality or appointed by the municipality through Supply Chain Management Policy. Furthermore, it shall have unrestricted access to records and information and be able to peruse appropriate resources.
- 4.2 The Disciplinary Board is authorised by Council to obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary. Such outside or other independent professional advice shall be acquired through Supply Chain Management Policies, Procedures and Processes.

5 DUTIES, OBLIGATIONS & RESPONSIBILITIES OF THE DISCIPLINARY BOARD

- 5.1 The Disciplinary Board members shall cooperate with any disciplinary tribunal set up by Council or Accounting Officer to deal with financial misconduct during consultation process when charges are being and during the hearing.
- 5.2 The Disciplinary Board members shall obliged to give evidence in disciplinary cases if they have been subpoenaed and present evidence in relation to the report of the Disciplinary Board.

5.3 General Duties and Responsibilities of the Disciplinary Board

- 5.3.1 The Disciplinary Board shall amongst other things be responsible for the following.

Reporting Procedure of allegations of financial misconduct

- 5.3.1.1 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 Director, the Mayor and the Accounting Officer of the entity's parent municipality;
 - (d) an official of the Municipal Entity other than its Accounting Officer, to that Accounting Officer.
- 5.3.1.2 The Mayor, the Accounting Officer or Chairperson of the Board of Directors, as the case may be, must table an allegation referred to in sub-regulation 3.(1) before the Municipal Council or, Board of Directors in the case of Municipal Entities, not later than seven days after receipt thereof or at the next sitting of the Council or the board of directors.
- 5.3.1.3 The person whom an allegation of financial misconduct has been reported in terms of sub-regulation 3(1) must ensure that the report is treated in a confidential manner.
- 5.3.1.4 Any person who choose to be anonymous shall do so as per the Protected Disclosures Act, 26 of 2000 read with the Msunduzi Municipality Whistle Blowing Policy.

- 5.3.1.5 On receiving a report in terms of Regulation 3(1) of the Disciplinary Board Regulations on financial misconduct, if the Municipal Council, Board of Directors, or Accounting Officer of the Municipality or Municipal Entity, is satisfied that there is reasonable cause to believe that an act of financial misconduct has been committed, it must within seven days refer the matter to the Disciplinary Board to conduct a preliminary investigation into the allegation as envisaged in terms of Section 171 (4) (a) or 172 (3) (a) of the act.
- 5.3.1.6 Similarly, when Council receive Forensic Investigation Reports emanating from Internal Audit Unit with findings that financial misconduct has been committed, referred to it by the Audit Committee through Executive Committee as it is the normal procedure for consideration and resolution, Council if satisfied that there is reasonable cause to believe that an act of financial misconduct has been committed, it must within seven days refer the matter to the Disciplinary Board shall.
- 5.3.1.7 The regulation must not be read as preventing a person from laying a criminal charge with the South African Police Service against any Councillor members of the Board of Directors of a Municipal Entity, or official of a municipality or Municipal Entity in relation to any conduct that may constitute an offence in terms of Part 2 of Chapter 15 of the Act.
- 5.3.1.8 An official against whom an allegation of financial misconduct is made must be given an opportunity to make written representation to the municipality or municipal entity as to why he or she should not be suspended, within seven days of being notified of the allegation in terms of the Local Government: Disciplinary Code and Procedures for Senior Managers Regulations and Disciplinary Code and Collective Agreement for other employees as the case may be.
- 5.3.1.9 The Board shall conduct a preliminary investigation to determine whether or not the allegation is founded and make a recommendation to the Council or Board of Directors as to whether sufficient grounds exist to warrant a full investigation into the allegation in terms of Regulation 6.2.

-
- 5.3.1.10 If the Disciplinary Board determines that the allegation is founded a full investigation must be conducted by –
- (a) the Disciplinary Board;
 - (b) a person with appropriate specialist expertise who is contracted by the municipality through its Supply Chain Management Policy and report to the Chief Audit Executive.
 - (c) where the cost, the seniority of the alleged transgressor and seriousness or sensitivity of investigating the alleged financial misconduct, warrant such a step, by-
 - (i) a person appointed by the Council or Board of Directors who has appropriate specialist expertise and who is not an official of the municipality or municipal entity; or
- 5.3.1.11 an independent team of investigators appointed by Council of the Board of Directors;
- 5.3.1.12 A team of investigators appointed in terms of paragraph 3.1.2 (e)(ii) *supra* may include-
- (a) an official designated by the National Treasury; or
 - (b) official of the department responsible for local government in the Province of KwaZulu-Natal, designated by the department; or
- 5.3.1.13 The investigator or investigating team appointed in terms of sub-regulation (4) (c) must within a period of 30 days of the appointment, submit a report with recommendations to the Mayor or Accounting Officer as may be appropriate.

Investigation of allegation of financial misconduct and submission of reports

- 5.3.2 After completion of a full investigation, the investigator must-
- (a) Compile a report on the investigation
 - (b) Submit its report to the mayor or the chairperson of the board of directors and the accounting officer together with its findings and recommendation, if applicable, regarding disciplinary steps that should be taken against the alleged transgressor; and
 - (c) Immediately inform the Speaker of the Council of the submission of the report referred to in paragraph (b) and submit a copy of the report to the Provincial Treasury and the National Treasury.
- 5.3.3 The Mayor, Speaker, Accounting Officer or the Chairperson of the Board of Directors must table the report of the investigation referred to in sub-regulation (3)(b) in the Council or the Board of Directors at the first sitting after the report is finalised.

- 5.3.4 If the report that is tabled in the council or the board is amended, the person tabling the report must provide written reasons for the amendments to the council or the board.
- 5.3.5 If the findings or recommendations of the report referred to in sub-regulation (3)(b) are rejected by the council or the board, reasons for the rejection must be provided to the investigator within five days of the rejection.
- 5.3.6 Where the recommendations of the report referred to in sub-regulation (3)(b) regarding disciplinary steps against the alleged transgressor are not implemented, the investigator must notify the Provincial Treasury and the National Treasury for a possible intervention in terms of regulation 19.
- 5.3.7 If the investigator recommends that disciplinary proceeding be instituted against the alleged transgressor the Council or Board of Directors must by way of resolution institute the disciplinary proceedings-
- (a) In the case of a senior manager, in accordance with the Local Government Disciplinary codes and Procedures for Senior Managers Regulations made in terms of the Municipal Systems Act; or
 - (b) In the case of an official who is not a senior manager, in accordance with the applicable collective bargaining agreement concluded in the bargaining council established for municipalities and municipal entities.
- 5.3.7.1 Clause 4(1) of the Disciplinary Regulations stipulates that the Disciplinary Board must investigate allegations of financial misconduct in the municipality and monitor the institution of disciplinary proceedings against the alleged transgressor.
- 5.3.8 The Disciplinary Board shall:
- 5.3.8.1 evaluate its processes and ensure that it achieve on its statutory mandate;
 - 5.3.8.2 produce reliable and relevant reports;
 - 5.3.8.3 comply with laws, regulations, policies and set procedures;
 - 5.3.8.4 conduct its investigations, meetings and processes in the most effective, efficient and cost effective manner; and
 - 5.3.8.5 enhance the reliability, integrity and objectivity of its operations
 - 5.3.8.6 provide a forum for communication between the Council, Mayor, Speaker and Accounting Officer

- 5.3.8.7 Clause 4(1) of the Disciplinary Regulations stipulates that the Disciplinary Board must investigate allegations of financial misconduct in the municipality and monitor the institution of disciplinary proceedings against the alleged transgressor.

6 DISCLOSURE OF INTEREST BY DISCIPLINARY BOARD MEMBERS

- 6.1 Every member, appointed, involved in the Disciplinary Board meetings, deliberation and resolutions, is obliged to declare in writing any conflict of interest or vested interest at the date of appointment as well verbally in each and every meeting which shall be recorded in the minutes of all meetings.
- 6.2 Every member of the Disciplinary Board is responsible for representing the interests of the Disciplinary Board and the Msunduzi Municipality.
- 6.3 A member of the Disciplinary Board may not -
- (a) use his or her position to promote any special financial or other interest, including but not limited to the interest of any individual, company or other entity;
 - (b) act in a manner that is inconsistent with his or her membership and the role of the Disciplinary Board;
 - (c) expose himself or herself to any situation involving the risk of a conflict between his or her official and / or professional responsibilities and a personal interest;
 - (d) use his or her position or any information entrusted to him or her or obtained as a result of his or her involvement in the Disciplinary Board to enrich himself or herself or improperly benefit any other person or entity; and
 - (e) act in a manner that may compromise the credibility, workings and integrity of the Disciplinary Board and that of the Msunduzi Municipality.

7 REMUNERATION OF THE DISCIPLINARY BOARD MEMBERS

The members of the Disciplinary Board who are not employees of Msunduzi Municipality or any other municipality or government department shall be paid emoluments in lieu of their time spent in preparation and attending meetings and/or out of pocket expenses incurred on the Disciplinary Board activities at Msunduzi Municipality. Emoluments shall be determined by Council and reviewed on annual basis in line with the National Treasury Guidelines and also taking to account the trend in the public sector organisations of a similar size and nature.

8 REMOVAL FROM OFFICE OF THE DISCIPLINARY BOARD MEMBERS

- 8.1 The Council may remove a member of the Disciplinary Board from office if the member -
 - (i) fails to attend three consecutive meetings without reasonable justification;
 - (ii) becomes incapacitated; or
 - (iii) contravenes any provision of this MFMA, MSA and this charter.

- 8.2 The Council must remove a member of the Disciplinary Board from office if the member -
 - (i) is convicted of an offence involving dishonesty, including but not limited to offences such as theft, fraud, corruption, forgery, perjury or an offence under the Prevention and Combating of Corrupt Activities Act, 2004(Act No. 12 of 2004); or
 - (ii) is convicted of an offence and sentenced to imprisonment without the option of a fine.

Approved by the Council

Date:

.....
Signature of the Speaker:

.....

Adopted by the Disciplinary Board

Date:

.....
Signature of the Chairperson of the Disciplinary Board:
Chairperson of the Disciplinary Board

.....

Date