

## **STANDARD PROCEDURES FOR THE MANAGEMENT OF ALLEGATIONS OF MISCONDUCT AGAINST SENIOR MANAGERS OR THE MUNICIPAL MANAGER IN TERMS OF DISCIPLINARY REGULATIONS**

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### EMPOWERING PROVISIONS

Allegations of misconduct against Senior Managers or the Municipal Manager are dealt with in the Disciplinary Regulations for Senior Managers (Government Notice 344 in Government Gazette 34213 of 21 April 2011) ('the Disciplinary Regulations'), which must be read with Section 120 of the Local Government : Municipal Systems Act 32 of 2000 (" the Systems Act") as well as Section 67(1) of the Systems Act. In terms of Regulation 1(1)(f) of the Regulations, the word '*misconduct*' means any of the misconduct set out in Annexure A to the Regulations. Annexure A, and the provisions of the Code of Conduct for Staff Members in Schedule 2 to the Systems Act, referred to in Annexure A, are attached to this protocol for ease of reference.

### STANDARD PROCEDURES

#### A. Reporting allegations of misconduct to the Municipal Manager or the Executive Mayor

1. Any allegation of misconduct by a Senior Manager must be brought to the attention of the Municipal Manager.
2. If the allegation of misconduct is against the Municipal Manager, it must be brought to the attention of the Executive Mayor.
3. The person making such allegation must provide the Municipal Manager or the Executive Mayor, as the case may be, with whatever information and documentation they have regarding the alleged misconduct in order to substantiate the allegations.
4. The person making the allegation shall not however investigate the allegations, either internally or externally or report these to Council, as this is the duty of the Municipal Manager or the Executive Mayor, as the case may be.
5. If the person reporting the allegations believes that the Municipal Manager is failing to comply with the obligations imposed on him by Regulation 5 (1) (2) of the Disciplinary Regulations to bring the allegation of misconduct to the attention of the Municipal Council, then the matter must be reported to the Executive Mayor.

- B. Process to be followed by the Municipal Manager or the Executive Mayor, as the case may be, after receipt of such an allegation of misconduct
6. On receipt of such an allegation of misconduct, the Municipal Manager or the Executive Mayor, as the case may be, must consider and determine:
- a. Whether the alleged misconduct, if proven, is 'misconduct' as defined in regulation 1 of the Disciplinary Regulations and set out in Annexure A thereto. In doing so, they must consider:
    - i. Whether the alleged misconduct constitutes misconduct performed by the Senior Manager whilst on duty or in relation to Municipality's business.
    - ii. If not, they must determine whether it nevertheless has the potential to prejudice the Municipality or impacts adversely on the employment relationship with the Senior Manager by undermining the Municipality's trust and confidence in the Senior Manager.
  - b. Whether, on the face of things, the allegation is supported by sufficient information to enable the Municipal Council to decide whether or not there is reasonable cause to believe that an act of misconduct has been committed.
7. Thereafter the Municipal Manager or the Executive Mayor, as the case may be must do the following:
- a. If they determine that the allegation, even if proven, is not 'misconduct' as defined in regulation 1 of the Disciplinary Regulations and does not have has the potential to prejudice the Municipality or impacts adversely on the employment relationship with the Senior Manager by undermining the Municipality's trust and confidence in the Senior Manager, they must take the matter no further.
  - b. If they determine that the allegation, if proven, is 'misconduct' as defined in regulation 1 of the Disciplinary Regulations, and if they consider the allegation is supported by sufficient information to enable the Municipal Council to decide whether or not there is reasonable cause to believe that an act of misconduct has been committed, they must prepare and finalise a full report to the Municipal Council setting out the allegations, the relevant information, the relevant type(s) of potential misconduct, any problems and the arguments for and against a finding of reasonable cause.

- c. If there are steps that they take to get further information necessary to allow the Municipal Council to determine whether or not there is reasonable cause to believe that an act of misconduct has been committed, before finalising the report they must take such steps as soon as reasonably possible.
8. Section 67(1) of the Local Government: Municipal Systems Act, Act 32 of 2000 (MSA) orders a municipality to “*develop and adopt appropriate systems and procedures*”, that is consistent with applicable law and collective agreements that will ensure fair efficient, effective and transparent personnel administration, which is not limited to, but includes inter alia the investigation of allegations of misconduct and complaints against staff, which in relation to the MSA mean “*the employees of the municipality, including the municipal manager*”.

Section 67(1)(a) provides for an opportunity for the Municipality to “*develop and adopt*” procedures to deal with allegations of misconduct brought against members of staff including the municipal manager and managers reporting directly to the Municipal Manager.

As the Executive Mayor or Municipal Manager could be faced with situations that evidently do not warrant an investigation and where initiating a charge through regulation 5(1) was used for ulterior motives an informal process to process allegations of misconduct is adopted in terms of section 67(1)(a)

- 8.1 This approach could accommodate initial responses and replies by:
- (a) *making provision for the receipt of allegations;*
  - (b) *requiring that the allegation be placed before the relevant staff member for their preliminary response;*
  - (c) *for the relevant staff member’s response be placed before the person raising the allegation for their reply;*
  - (d) *for additional information to be sought;*
  - (e) *for the allegations of misconduct and responses to be placed before a delegated committee - like a Disciplinary Board,<sup>1</sup> but not exactly the same - for them to prepare the requisite report indicating whether there is any “reasonable cause to believe that an act of misconduct has been committed”; alternatively whether the allegations should be dismissed due to them being frivolous, vexatious, an abuse of process or because there is no evidence to support the allegation; and*
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*(f) the committee's report with its recommendation can then be tabled at the Municipal Council level in compliance with Regulation 5(2) to be used meaningfully to engage a discussion and debate on the allegations. This also affords the other party an opportunity to respond to the allegations.*

9. If, when doing any of the things set out in paragraphs 6, 7 and 8 above, the Municipal Manager or the Executive Mayor consider it necessary to do so, they must seek and obtain assistance, whether from within the Municipality or from outside the Municipality, e.g. assistance with issues of interpretation, information gathering and reporting.

10. The Municipal Manager or the Executive Mayor must table the report in the Municipal Council within seven (7) days after receipt of the allegation, or in a case where further information is required to establish whether there is reasonable cause to believe that an act of misconduct has been committed, within seven (7) days after the date on which the last of such information is received.

C. Process to be followed by the Municipal Council on receipt of the report of the Executive Mayor or Municipal Manager

11. Within seven (7) days of the tabling of the report, the Municipal Council must

- a. if it is satisfied that there is reasonable cause to believe that an act of misconduct has been committed by the Senior Manager, appoint an independent investigator to investigate the allegation of misconduct; or
- b. if it is not so satisfied, dismiss the allegations of misconduct.

D. Process to be followed in relation to an investigation

12. If an investigator is appointed they must within a period of thirty (30) days of their appointment submit a report with the recommendations to the Executive Mayor or the Municipal Manager, as the case may be.

13. The Executive Mayor or the Municipal Manager must table the investigator's report in the Municipal Council within seven (7) days of obtaining it.

E. Process to be followed by the Municipal Council upon receipt of an investigation report

14. The Municipal Council must consider the investigator's report and, having done so, it must, by way of a resolution, institute disciplinary proceedings against the Senior Manager.

15. The resolution must:

- a. include a determination by the Municipal Council as to whether the alleged misconduct is of a serious or less serious nature; and
- b. authorise the Mayor, in the case of the Municipal Manager, or Municipal Manager in the case of the Senior Manager directly accountable to the Municipal Manager, to appoint an independent external presiding officer and an officer to lead evidence and to sign the letters of appointment.

## **MISCONDUCT**

### **ANNEXURE A TO THE REGULATIONS READS AS FOLLOWS:**

#### **'ACTS OF MISCONDUCT**

*A senior manager will be guilty of misconduct if he or she -*

#### **PART I**

##### **Less serious misconduct**

- 1. absents himself or herself from duty without leave;*
- 2. without written approval from his or her municipality, performs work for compensation in a private capacity for another person or organisation either during or outside working hours;*
- 3. while on duty, conducts himself or herself in an improper, disgraceful and unacceptable manner;*
- 4. demonstrates any rude, abusive, insolent, provocative, intimidating or aggressive behaviour to a fellow staff member;*
- 5. participates, either individually or with others, in any form of action, which will have the effect of disrupting the operations of the municipality, other than actions contemplated by the Labour Relations Act, 1995 (Act No. 66 of 1995);*
- 6. wrongfully discloses privileged information;*
- 7. while on duty, is under the influence of intoxicating, illegal, unauthorised, habit-forming or stupefying drug, including alcohol;*
- 8. displays disrespect towards others in the workplace or displays abusive or insolent behaviour;*
- 9. intimidates or victimises fellow staff members;*
- 10. prevents other staff members from belonging to any trade union or body; or*
- 11. without permission, possesses or wrongfully uses the property of the municipality or that of another staff member or a visitor.*

#### **PART II**

##### **Serious misconduct**

- 1. fails to comply with or contravenes any Act, regulation, or legal obligation relating to the employment relationship;*
- 2. bribes or commits a financial misconduct or fraud or corruption;*
- 3. wilfully, intentionally or negligently damages or causes loss of municipal property;*
- 4. endangers the lives of self or others by disregarding safety rules or regulations;*
- 5. prejudices the administration, discipline or efficiency of a municipality, office or institution of the municipality;*
- 6. misuses his or her position in the municipality to promote or to prejudice the interest of any political party;*
- 7. accepts any compensation in cash or otherwise from a member of the public or another staff member for performing his or her duties without written approval from the municipal council;*
- 8. fails to carry out a lawful instruction without just or reasonable cause;*
- 9. derelicts his or her duties, absents or repeatedly absents himself or herself from work without reason or prior permission;*
- 10. commits an act of sexual harassment;*

11. unfairly discriminates against others on the basis of race, gender, disability, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, family responsibility, HIV status, political opinion or other grounds prohibited by the Constitution;
12. performs poorly or inadequately for reasons other than incapacity;
13. contravenes the Code of Conduct for municipal staff members contained in schedule 2 of the [Systems] Act;
14. assaults, or attempts or threatens to assault, another staff member or person while on duty;
15. incites other municipal staff to engage in unprocedural and unlawful conduct;
16. operates any money lending scheme for employees for own benefit during working hours or from the premises of the municipality;
17. carries or keeps a firearm[s] or other dangerous weapon[s] on municipal premises, without the written authorisation of the municipal council;
18. refuses to obey security regulations;
19. gives false statements or evidence in the execution of his or her duties;
20. falsifies records or any other documentation;
21. participates in unprocedural, unprotected or unlawful industrial action;
22. fails or refuses to follow a formal programme of counselling contemplated in these Regulations; or
23. commits a common law or statutory offence while on municipal premises.'

The Code of Conduct for Municipal Staff Members in Schedule 2 to the Systems Act ('the Code of Conduct'), referred to in item 13 of Part II of Annexure A to the Disciplinary Regulations, reads as follows:

## **'CODE OF CONDUCT FOR MUNICIPAL STAFF MEMBERS**

### **1 Definitions**

In this Schedule 'partner' means a person who permanently lives with another person in a manner as if married.

### **2 General conduct**

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.

### **3 Commitment to serving the public interest**

A staff member of a municipality is a public servant in a developmental local system, and must accordingly-

- (a) implement the provisions of section 50 (2);
- (b) foster a culture of commitment to serving the public and a collective sense of responsibility for performance in terms of standards and targets;
- (c) promote and seek to implement the basic values and principles of public administration described in section 195 (1) of the Constitution;

*(d) obtain copies of or information about the municipality's integrated development plan, and as far as possible within the ambit of the staff member's job description, seek to implement the objectives set out in the integrated development plan, and achieve the performance targets set for each performance indicator;*

*(e) participate in the overall performance management system for the municipality, as well as the staff member's individual performance appraisal and reward system, if such exists, in order to maximise the ability of the municipality as a whole to achieve its objectives and improve the quality of life of its residents.*

#### **4 Personal gain**

*(1) A staff member of a municipality may not-*

*(a) use the position or privileges of a staff member, or confidential information obtained as a staff member, for private gain or to improperly benefit another person; or*

*(b) take a decision on behalf of the municipality concerning a matter in which that staff member, or that staff member's spouse, partner or business associate, has a direct or indirect personal or private business interest.*

*(2) Except with the prior consent of the council of a municipality a staff member of the municipality may not-*

*(a) ....*

*(b) ....*

*(c) be engaged in any business, trade or profession other than the work of the municipality.*

*(3) No staff member of a municipality may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.*

#### **5 Disclosure of benefits**

*(1) A staff member of a municipality who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the council.*

*(2) This item does not apply to a benefit which a staff member, or a spouse, partner, business associate or close family member, has or acquires in common with all other residents of the municipality.*

#### **5A Declaration of interests**

*(1) A person appointed in terms of section 56 or a municipal manager must within 60 days after his or her appointment declare in writing to the chairperson of the municipal council the following interests held by that person or municipal manager:*

*(a) Shares and securities in any company;*

*(b) membership of any close corporation;*

*(c) interest in any trust;*

*(d) directorships;*

*(e) partnerships;*

*(f) other financial interests in any business undertaking;*

*(g) interest in property; and*

*(h) subsidies, grants and sponsorships by any organisation.*

*(2) Any change in the nature or detail of the financial interests of a staff member must be declared in writing quarterly to the chairperson of the municipal council.*

*(3) The municipal council must determine which of the financial interests referred to in sub-item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.*

## **6 Unauthorised disclosure of information**

(1) A staff member of a municipality may not without permission disclose any privileged or confidential information obtained as a staff member of the municipality to an unauthorised person.

(2) For the purpose of this item 'privileged or confidential information' includes any information-

(a) determined by the municipal council or any structure or functionary of the municipality to be privileged or confidential;

(b) discussed in closed session by the council or a committee of the council;

(c) disclosure of which would violate a person's right to privacy; or

(d) declared to be privileged, confidential or secret in terms of any law.

(3) This item does not derogate from a person's right of access to information in terms of national legislation.

## **7 Undue influence**

A staff member of a municipality may not-

(a) unduly influence or attempt to influence the council of the municipality, or a structure or functionary of the council, or a councillor, with a view to obtaining any appointment, promotion, privilege, advantage or benefit, or for a family member, friend or associate;

(b) mislead or attempt to mislead the council, or a structure or functionary of the council, in its consideration of any matter; or

(c) be involved in a business venture with a councillor without the prior written consent of the council of the municipality.

## **8 Rewards, gifts and favours**

(1) A staff member of a municipality may not request, solicit or accept any reward, gift or favour for-

(a) persuading the council of the municipality, or any structure or functionary of the council, with regard to the exercise of any power or the performance of any duty;

(b) making a representation to the council, or any structure or functionary of the council;

(c) disclosing any privileged or confidential information; or

(d) doing or not doing anything within that staff member's powers or duties.

(2) A staff member must without delay report to a superior official or to the speaker of the council any offer which, if accepted by the staff member, would constitute a breach of subitem (1).

## **9 Council property**

A staff member of a municipality may not use, take, acquire, or benefit from any property or asset owned, controlled or managed by the municipality to which that staff member has no right.

## **10 Payment of arrears**

A staff member of a municipality may not be in arrears to the municipality for rates and service charges for a period longer than 3 months, and a municipality may deduct any outstanding amounts from a staff member's salary after this period.

## **11 Participation in elections**

A staff member of a municipality may not participate in an election of the council of the municipality, other than in an official capacity or pursuant to any constitutional right.

## **12 Sexual harassment**

A staff member of a municipality may not embark on any action amounting to sexual harassment.

**13 Reporting duty of staff members**

*Whenever a staff member of a municipality has reasonable grounds for believing that there has been a breach of this Code, the staff member must without delay report the matter to a superior officer or to the speaker of the council.*

**14 Breaches of Code**

*Breaches of this Code must be dealt with in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of this Act.*

**14A Disciplinary steps**

*(1) A breach of this Code is a ground for dismissal or other disciplinary steps against a staff member who has been found guilty of such a breach.*

*(2) Such other disciplinary steps may include-*

*(a) suspension without pay for no longer than three months;*

*(b) demotion;*

*(c) transfer to another post;*

*(d) reduction in salary, allowances or other benefits; or*

*(e) an appropriate fine.'*

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