

ELIAS MOTSOLEDI LOCAL MUNICIPALITY-MASEPALA WA SELEGAE



TERMS OF REFERENCE: FINANCIAL MISCONDUCT DISCIPLINARY BOARD

APPROVED AT THE FIRST ORDINARY COUNCIL MEETING

RESOLUTION NUMBER: M25/26-04

DATE: 30 JULY 2025

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1. Abbreviations

TOR- Terms of References

MFMA – Municipal Finance Management Act

2. Definitions

“accounting officer”- (a) in relation to a municipality, means the municipal official referred to in section 60; or

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

“chief financial officer” means a person designated in terms of section 80(2)(a)

“councillor” means a member of a municipal council;

"designated official" means the official identified in a municipality or municipal entity to receive reports of allegations of financial offences against 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 board, treasury, person or team conducting a full investigation in terms of regulation 5(4).

"mayor" in relation to (a) a municipality with an executive mayor, means the councillor elected as the or required, with the primary aim of preserving those funds; executive mayor of the municipality in terms of section 55 of the Municipal Structures Act; or the mayor of the municipality in terms of section 48 of that Act;

(b) a municipality with an executive committee, means the councillor elected as the mayor of the municipality in terms of section 48 of that Act;

"municipal council" or "council" means the council of a municipality referred to in section 18 of the Municipal Structures Act;⁵

"Regulations" Municipal Regulations for Financial Misconduct Procedures and Criminal Proceedings as published per GN 430 of 30 May 2014

"senior manager"- in relation to a municipality. means a manager referred to in section 56 of the Municipal Systems Act and in relation to a municipal entity, means a manager directly accountable to the chief executive officer of the entity.

3. Purpose

The purpose of the Disciplinary Board is to investigate allegations of financial misconduct in the municipality or municipal entity, and to monitor the institution of disciplinary proceedings against an alleged transgressor.

To be an independent advisory body that assists 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.

4. Legislation requirements

Municipal Finance Management Act No.56 of 2003, Chapter 15 provides guidance on what constitutes financial misconduct and offences by municipal officials, penalties and the development of regulations on financial misconduct procedures and criminal proceedings.

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

The Council Resolution approving the establishment of a Disciplinary Board on 26 March 2025 Resolution no: **M25/26-05**

5. Reporting of Allegations of Financial Misconduct

5.1. 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

5.2. 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 (7) days** after receipt thereof or at the next sitting of the council.

- 5.3. The person to whom an allegation of financial misconduct has been reported must ensure that the report is treated in a confidential manner.
- 5.4. This regulation must not be read as preventing a person from laying a criminal charge with the South African Police Service against any councillor of the municipality in relation to any conduct that may constitute an offence in terms of sections 173 of the Act.
- 5.5. 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 (7) days of being notified of the allegation.
- 5.6. 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, the Mayor, The Speaker or Internal Auditor uses the National fraud hotline – 0800 701 701.
- 5.7. Whistle Blowers will be protected as per the Elias Motsoaledi Municipal Anti – Corruption and Fraud Prevention Policy.

6. Composition of Financial Disciplinary Board

- 6.1. The Financial Disciplinary Board shall consist of a maximum of five (5) members according to regulation 4 (3) of the Regulations.
- 6.2. The members of the Disciplinary Board appointed by the Council (**Resolution no: M25/26-05**) for a three-year term, in terms of regulation 4(3) of the Regulations are as follows:
 - a) Chairperson of Audit Committee
 - b) Head of Internal Audit
 - c) Head of Legal Services

d) A delegate from Limpopo Treasury Department

6.3. 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.

7. Responsibilities and Functions of the Disciplinary Board

7.1. The responsibilities and functioning of the Disciplinary board are stipulated in regulations 5 and 6 **of the Regulations**, are among other things as follows:

- a) Conduct Preliminary investigation of allegations of financial misconduct in line with regulation 5 of the Regulations.
- b) Conduct Investigation of allegation of financial misconduct and submission of reports in line with regulation 6 of the Regulations.
- c) Must establish-
 - (i) whether the allegation of financial misconduct has any substance; and
 - (ii) if it has substance, whether sufficient grounds exist for instituting disciplinary proceedings against the alleged transgressor.
- d) Investigations restricted to alleged offences of financial misconduct related to municipal officials as per section 171 and 172 of the Municipal Financial Management Act, 2003 (Act 56 of 2003).

8. The Authority and reporting requirements of the Disciplinary Board

8.1. The Disciplinary Board is mandated to interview any relevant person and to obtain all relevant documentation from any official that may assist with the investigations.

- 8.2. 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.
- 8.3. If the Disciplinary Board has determined that the allegations are frivolous, vexatious, speculative, or obviously unfounded and terminated the investigation, a report in this regard must be submitted to the Council under signature of the Chairperson of the Disciplinary Board.
- 8.4. If the Disciplinary Board determines that the allegations are founded, the Disciplinary Board must submit a report, under signature of the Chairperson of the Disciplinary Board, with recommendations to the Council as follows:
- a) Whether the allegation(s) of the financial misconduct has substance and warrant a full investigation, and
 - b) 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
 - c) Whether an independent team of investigators have been appointed by the Council in accordance with the applicable supply chain management prescripts.
- 8.5. A team of investigators appointed in terms of sub-regulation (4)(c)(ii) may include-
- a) a person, other than an official of the municipality or municipal entity, with appropriate specialist expertise, designated by the municipal council or the board of directors; or
 - b) an official of the department responsible for local government in the relevant province, designated by the department; or
 - c) an official of the provincial treasury or the National Treasury designated by the relevant treasury.

- 8.6. 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.
- 8.7. 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).
- 8.9. 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.
- 8.10. The Disciplinary Board may take recommendations that disciplinary proceedings be instituted against the alleged transgressor and the Council must by way of a resolution institute disciplinary hearings as follows:
- a) 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
 - b) In the case of an official who is not a senior manager, in accordance with the applicable collective bargaining agreement established for municipalities.
- 8.11. If the recommendations of the Disciplinary Board are rejected by the Council, the Accounting Officer must inform the Disciplinary Board within **five (5) days** of the rejection.
- 8.12. If the council resolves to appoint a team of investigators or a sole investigator the stipulations of **regulation 5(5) and (6)** of the Regulations is to be followed.

- 8.13. If the council or the board of directors has not acted on the recommendation by the disciplinary board that the financial misconduct is founded and sufficient grounds exist to warrant a full investigation into the allegation, the disciplinary board may request the provincial treasury or the National Treasury for assistance and a possible intervention in terms of regulation 19.
- 8.14. If a municipality, designated official or municipal entity fails to investigate an allegation of financial misconduct or financial offence, the Provincial Treasury or the National Treasury may direct that the allegation be investigated

9. Organisational Arrangements

- 9.1. 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.
- 9.2. The quorum of the Disciplinary Board is the Chairperson including at least 50 % of members plus one.
- 9.3. The Municipal Manager will dedicate staff for the secretarial function.
- 9.4. The meetings of the board will be recorded and minuted by the secretariat. Minutes of the board meetings will only be made available to Municipal Council¹ 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.

10. Relationship with Council and Management

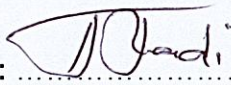
¹ As an Item through the office of the Speaker

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

11. Review and Amendments of Terms of References.

The review and amendment of the terms of reference is the responsibility of the Municipal Council as and when required.

Approved on 30/07/2025 (Date) at Groblersdal (Place)

Signature: 

CLLR. MD TLADI

THE MAYOR